



# Towards a New Court Management? General Report

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**Towards a New Court Management?**  
**General Report**  
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Abstract.

Court management may be defined as the administration inside the court and outside the case. It is inside the courts, so court management does not concern the general administration of justice. It is outside the cases, so court management does not deal with the administration of cases, the so-called case management. Yet, these three fields belong to the same category of judicial management or judicial administration, and there is some overlapping and even confusion. As a matter of fact, the concept of court management is not completely settled. In a descriptive approach, it can be said that court management deals with leadership inside a court, the relationship between the judges and court staff, the allocation of cases, the evaluation of judges and court staff, the court budget, the real estate, the maintenance and security of the building, the new technology, human resources and judicial communication. Court management deals with the different councils and assemblies of the court as well as with specific planning. This General Report is based on fifteen national reports (outside China). The approach to court management may vary according to the organization, the tradition and the location of the country studied (for example, the role of the public prosecutor in court management may vary). Court management is becoming a common concern everywhere in the world as part of the efforts to avoid backlogs, unreasonable duration of proceedings and costly litigation. It seems that the tasks of management are more and more given to a specialized clerk (the director of clerks or court manager) while the role of leadership remains in the hands of the head of the court who is usually a judge.

The management we are considering is a new management based on indicators, objectives and evaluations coming from the new public management. Could it be possible that the common law is more at ease with new management than the civil law? Since the judge is appointed at a certain mature age, usually forty-five in common law countries, and sometimes with the legitimacy of election, there is no risk of competition between court leadership and court management, and so between court management and procedural law. Conversely, in civil law countries judges are considered as civil servants and are chosen at a much younger age, around twenty-three, and without electoral legitimacy. As a result, there is a risk of competition between court manager (director of clerks) and judges. After the executive model based on hierarchy and the management model based on indicators and evaluation, this paper suggests that a third model of court administration is possible: the relational model based on coordination. The principle of cooperation between judges, parties and lawyers applies to case management and procedural law in general. It could be said that the principle of coordination is the equivalent of the principle of cooperation in the field of court management. One result of this is the formation of court committees and the holding of regular meetings so that staff, judges, citizen and lawyers can improve together the functioning of the court.

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***Introduction***

Management in the sense of controlling and directing a team to reach an objective has existed since time immemorial. The art of management may be traced in many civilizations and in many cultures since the times of the monumental construction of the pyramids in Egypt.

Court management may be defined as the administration inside the court and outside the case. We will see, though, that the concept is not completely settled in the countries studied. It is inside the courts, so court management does not concern the general administration of justice (which is within the purview of the Ministry of Justice, judicial councils, etc.). It is outside the cases, so court management does not deal with the administration of cases, the so-called case management. Yet, these three fields belong to the same category of judicial management or judicial administration, and there is some overlapping and even confusion especially between national judicial management, court management and case management (in Chile and in India, for example, case management seems to be understood as largely encompassing part of court management;<sup>1</sup> court administration is often seen in academic papers as synonymous with judicial administration).

In a descriptive approach, it can be said that court management deals with leadership inside a court, the relationship between the judges and court staff, the allocation of

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<sup>1</sup> See Chilean Report.

cases, the evaluation of judges and court staff, the court budget, the real estate, the maintenance and security of the building, the new technology, human resources and judicial communication. Court management deals with the different councils and assemblies of the court as well as with specific planning. A distinction between the inside perspective and the outside perspective may be drawn, but this does seem to me very clear. For example, the relationship the court has with the media and other stakeholders belongs to the outside perspective; but what about the court budget if the court is not autonomous and depends on the ministry for funding? Another way to define court management would be to take a negative approach and say that a function that is not a true judicial function (to adjudicate a case) belongs to court management.<sup>2</sup> Still, sometimes the dividing line between court management and procedural rules is not clearly drawn.<sup>3</sup>

This General Report is based on fifteen national reports (outside China) and different specific information, papers and books about other interesting nations (more to be said of them shortly). There are two Asian countries, one large and one small (India and Singapore). There is a national report from a country that belongs to both Asia and Europe (Russia). There are two reports from Africa (Algeria and Benin) and three reports from the Americas (Argentina, Chile and the United States). Lastly, there are seven national reports from European countries which are Member States of the European Union, three from the north-west (the Netherlands, Germany, England and Wales), one from the central south-west (France), one from the south-west (Spain), and two from the central east (Hungary and Poland). There are four national reports from common law countries (England and Wales, India — even though in India there is some hesitation to characterize the entire judicial system as belonging to the common law tradition, since there is a written constitution, codes and many specialized courts which are quite independent of the supreme court — Singapore and the United States). It is important to stress these differences because the approach to court management may vary according to the organization, the tradition and the location of the country studied.<sup>4</sup>

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<sup>2</sup> See Chilean Report.

<sup>3</sup> See Chilean Report.

<sup>4</sup> Here is a list, with titles and email addresses, of the national reporters. German Report: Professor Christoph Kern, University of Heidelberg, christoph.kern@ipr.uni-heidelberg.de; Spanish Report: Dr Marco de Benito, marco.debenito@ie.edu, Professor of Law, IE University, Madrid; Indian Report: Professor Yashomati Gosh, National Law School University in Bangalore, yashomati@nls.ac.in; Chilean Report: Pablo Bravo-Hurtado, Maastricht University, the Netherlands, pablo.bravohurtado@maastrichtuniversity.nl and Ramón García Odgers, Catholic University of Concepción, Chile (this national reporter would like to attend the conference in November); Benin Report: Joseph Akuesson, Doctor, University Paris 1 and University of Abomey Calavi (Benin), akuessont@yahoo.fr; Algerian Report: Mostapha Maouene, Professor at the University Djilali Liabès - Sidi bel abbès, maouene\_mostefa@yahoo.fr; United States Report: Etienne Nedellec (after a research project carried out in the United States), PhD Student at the University of Paris 1, etienenedellec@gmail.com; Dutch Report: Chantal Mahe, Lecturer, University of Amsterdam, c.b.p.mahe@vu.nl; Argentinian Report: Leandro Gianini, Professor, University La Plata Buenos Aeres, lgiannini@gmail.com; England and Wales Report: Gar Yein Ng, Doctor, University of Utrecht (expert in English law), G.Ng@law.uu.nl; Singapore Report: Yap Cai Ping (Ms), Assistant Director, Legal Policy Division, Ministry of Justice, YAP\_Cai\_Ping@Mlaw.gov.sg; Russian Report: Professor Svetlana K. Zagaynova, Ural State Law University, usla.mediator@gmail.com; French Report: Emmanuel Jeuland; Polish Report: Bartosz Karolczyk, Lawyer, Warsaw, bkarolczyk@law.gwu.edu and Kinga Flaga-Gieruszyńska, kingaflaga@gmail.com, dr hab. Kinga Flaga-Gieruszyńska, prof. US, Head of the Chamber of Civil Procedure, Faculty of Law and Administration, University of Szczecin, Poland.

For example, the role and the regime of the public prosecutor vary according to whether a country belongs to the civil law family or the common law family. Even some expressions are difficult to translate, for example 'judicial public service' is not used very much outside of France (in France, the judiciary has been a judicial public service just since the statute of 18 November 2016, previously it was only a judicial service). Another important source of difference is whether a country has a federal structure or not. When the structure is federal or based on regions, the approach to court management may vary according to the different regions or states (United States, Argentina, Spain, Germany, etc.).

The information, papers and books also drawn upon for this General Report are about Australia, Belgium, Brazil,<sup>5</sup> Norway<sup>6</sup> and Switzerland. Australia is one of the most advanced countries whose approach to court management is closely similar to the US model. Belgium's approach is in between that of France and the Netherlands, and it is trying to find its own way.<sup>7</sup>

The national reports comprise the responses to a questionnaire of eleven questions which were constructed objectively and neutral in tone, and not orientating towards new public management or old-school administration of the courts.<sup>8</sup>

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<sup>5</sup> I would like to thank Antonio Cabral for his very interesting insights on the Brazilian system.

<sup>6</sup> I would like to thank Magnus Stranberg for his very interesting insights on the Norwegian system. The organization of the tribunal is very flexible and may vary; in case of backlogs, temporary judges may be hired (which raises the question of potential conflicts of interest, since these judges, hired for 6 or 12 months, may have worked for private companies and could return to private companies afterwards). The assistants of judges (usually after University) may adjudicate a case, even a criminal case, on their own.

<sup>7</sup> I would like to thank Florian Roger for the information he provided on the Belgian system.

<sup>8</sup> 1. What is the conception of court management in your country? Is there a difference between court management and administration of the tribunal?

2. What are the roles of the court staff (judges, prosecutors, assistants, clerks, judicial officers, mediators, etc.) as far as management of the court is concerned?

3. What are the relationships among them (judges, prosecutors, assistants, clerks, judicial officers, mediators, etc.) as far as management of the court (competition of power, diarchy between judges and public prosecutors, between court managers and the head of the judges)?

4. What are the interactions on a day-to-day basis between court staff as far as management is concerned? Are there frequent meetings, for example?

5. Staff Management and Judicial Independence: Who manages: the head of the judges of the jurisdiction, the head of the court clerks, the public attorney? Who manages what: real estate of the tribunal building, maintenance of the building, new technology, security of the building, human resources, communications? Does the organization allow the judge to remain independent (e.g. workload objectives, indicators)?

6. Allocation of the cases and Appointment of the Judges (professional judges, lay judges, etc.). Is it a unilateral allocation of the cases made by the head of the tribunal or is there a commission, which allocates the cases to the judges and divisions of the tribunal? Are there objective criteria to allocate cases (name of parties, number of the case, subject matter, etc.)?

7. Evaluation, Accountability and Responsibility of judges and courts: What is the impact of bonuses, assessments, statistics, disciplinary sanctions in case of failure to meet the objectives?

8. Economic Budget of the Courts and the Justice System: What is the national budget of the justice system? What is the budget of a small, medium and large court? The different parts of the budget: for the jails, the courts, the national school, etc.?

9. Is there a concern about the emotions of the court staff (threats, security, etc.)? If so, how is this issue tackled? (Is there a special group composed of doctors, psychologists and other people, or a commission on hygiene and security?)

The primary observation of this General Report is that court management is becoming a common concern everywhere in the world as part of the efforts to avoid backlogs, unreasonable duration of proceedings and costly litigation. It seems that the tasks of management are more and more given to a specialized clerk (the director of clerks) while the role of leadership remains in the hands of the head of the court. The management we are considering is a new management based on indicators, objectives and evaluations coming from the new public management, itself coming from the private business approach (in the United States, Japan, Belgium) or the planned economy approach similar to that of the communist approach to management (Russia, Benin to a certain extent). The relationship between new court management and the independence of judges is not an explicit concern in every country. Nevertheless, it seems that there may be a conflict between the two. The question I would ask is: Can the courts manage in the same way as a business does? If so, then the judge and the staff could refer all their activities to certain business cases and measure precisely the cost of each case. The parties would be clients and the court would be client-oriented. For some reason, it seems that it is more natural in English to say that the parties are 'clients' than in other languages. But the real question is: Is there a risk in this for the rule of law and the principle of due process?

The answer is that court management has to be specific to the court, or else the new public management has to be adapted. So, court management is not the new management implemented as usual in other organizations. The peculiarity of justice has an impact on the type of management. The national reports confirm that the court belongs to a very specific kind of organization, one which involves three publics: citizen, judge and staff. The university and the hospital belong to this category as well, with student, scholar and department, and patient, doctor and administration. It is said of this kind of organization that it has a loosely coupled organizational structure with certain specificity: the high intellectual level of the agents, an unclear chain of command, the need for discussion and negotiation, grey zones of hierarchy between staff and judges, unpredictable alliances and changes in public expectations. It is management in a state of uncertainty. One of the drawbacks of this kind of organization is that in the event of difficulty it reacts by closing in on itself, becoming a bunker, a citadel to protect itself from political power or media scrutiny.

This organization also varies, depending, for example, on whether the public prosecutor has a role to play in court management or is considered an outside professional. What is specific to justice is that the 'product' involves the independence and more than that the autonomy of judges. The scholar does not have to be impartial and independent of power in the same way as the judge has to be. But the scholar may have the freedom of speech that the judge does not have in a particular case for confidentiality reasons. A doctor has independence and responsibility when making a medical decision, but the

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10. Is there a general assembly, a governing council (composed of staff and stakeholders, such as a bar representative, a media representative, a city hall representative in the court)?

11. Is there compulsory or voluntary planning for several years in the courts? If yes, who is responsible for initiating and carrying out the plan?



doctor does not have to be independent of power. Moreover, justice involves a certain procedure by which to get a judgment, which implies respect for fundamental principles such as a fair trial, the cooperation principle and the right to be heard.

Court management has to take into account all of this specificity. As a result, it seems that the court is rarely totally autonomous. There are, for example, central bodies that intervene in court management, such as the executive power, which may interfere especially through the Ministry of Justice and at times the Ministry of the Economy. Then there is the question of the role of Information Technology in court management, where managerial decisions in the field of IT may have an impact on case management.

Taken all together, I would suggest that there is no clear-cut agreement about the meaning of court management and the choice of words to describe it in the same way in different countries.

The administration of justice is rooted in history. In the West, it may have been taken very seriously in canonical justice, since there was a real concern to administer the Church as a body, and so too the abbeys. This organization has been seen as the origin of the industrial and disciplinary organization, in particular by Foucault and Musso. There is an anomaly in the common law since the word 'court' used to 'reflect the close connection between the judiciary and the monarchy', given that the same word was used when speaking of 'the court of justice' as when speaking of 'the royal court'. Court administration especially in the English colonies (Canada, Australia, Singapore and India) was carried out by the executive power.<sup>9</sup> One can speak of the executive model. An important shift seems to have occurred, from this executive model to a management model, in order to gain more independence. Scientific management was invented by Frederick Taylor and at the same time by a French mining engineer named Henri Fayol at the end of the 19th and the beginning of the 20th century. An important debate in the United States during the 1930s led to the creation of an independent branch of power with the establishment of the administrative office, which was to deal with the administration of the federal courts, leaving the independence and management of state courts to each state. This shift towards the management model was triggered not only by any concerns for independence of the courts, but also by an aggregation of political interests in the United States called progressivism which appeared in all spheres of society against the rise of big business and labour unions.<sup>10</sup> Even quality control management later formulated by the American guru of the modern corporation Peter Drucker aimed at fostering the independence of business from state power.

Court administration in civil law countries seems to have quite a different history. New management tools are used mainly by the state power. Philipp Langbroek, a Dutch specialist in court administration, considers that the judge in civil law countries is a civil servant as a consequence of the Napoleonic legacy.<sup>11</sup> It seems to me that the position of the civil law judge as a civil servant goes farther back in time to the Roman-canonical

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<sup>9</sup> Chief Justice Wayne Martin, 'Court Administrators and the Judiciary', IJCA, Dec. 2014, esp. p. 5. In France, the equivalent word *cour* is still used for the court of appeal and the Court of Cassation.

<sup>10</sup> C. Bleas Graham, 'Reshaping the Courts: Traditions, Management Theories and Political Realities', in *Handbook of Court Administration and Management*, 1993, 3-25.

<sup>11</sup> P. Langbroek, 'Court Administration in Europe, Management in a Different Context', IJCA, July 2017.

tribunals. In these courts the judge was a priest as were the parties much of the time. These judges were part of the Catholic Church's hierarchy. It may well be that the French influence at the time of Napoleon secularized this organization, but it did not create it. As a matter of fact, the judge in civil law countries is still part of a sort of hierarchy. As a result, the courts are not autonomous. The budget may be more or less decided at the central level. The rules of management are fixed by the central body as well. In this situation, the pressure for higher productivity may impede the judge from having enough space for review of case law and seminars or to give sufficient time to a difficult case. The executive model is still present, but it takes the form of the management model through the new public management. The management model is not a way for the judiciary to be more independent, but a way for the central body to get more power over the court. As a result, there is a temptation to give more power to court managers without the control of the judge. This trend can be seen in Spain, Chile and the Netherlands. This distinction between the common law approach and the civil law approach can be seen according to the famous distinction made by Damaška between hierarchical and coordinate justice.<sup>12</sup> Court administration will be different in a hierarchical, usually centralized system from that in a coordinate, usually more decentralized and flexible system.<sup>13</sup> However, the Damaškian distinction is not totally helpful since for the topic of court management it may be misleading. It seems that the system is vertical in civil law countries and horizontal in common law countries. In civil law countries, there is not a true hierarchy between judges, since they are all independent. Nevertheless, the court of appeal is a superior court which adjudicates a second time in fact and law. Conversely, in common law countries, the coordination involves a superiority of the judge upon the parties and the staff — like a god;<sup>14</sup> whereas the civil law judge is a civil servant not essentially superior to the parties and the staff. Moreover, the system of justice is not necessarily decentralized in common law countries.<sup>15</sup> At least what can be said is that there is a centrifugal force in civil law countries and a centripetal force in common law countries. The former tends to hierarchy and unity and to be top down, the latter tends to decentralization and autonomy and to be bottom up (especially in the United States).

So, the question may well be: Are we going towards a new court management and therefore towards the management model? The answer is not obvious, since the problem is not the same in civil law countries and common law countries. I would try to demonstrate that there is a subdivision to draw between the civil law court management model and the common law court management model. The influence of the common law court management model on the civil law court management model may lead to tensions in court. Then there are also many countries in between civil law countries and common law countries. For example, in Norway there is a civil law system, but the tradition is closer to the common law. The organization of the court is flexible and may

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<sup>12</sup> M.R. Damaška, *The Faces of Justice and State Authority: A Comparative Approach to the Legal Process*, Yale University Press, 1986.

<sup>13</sup> Damaška also divided systems between those which implement public policy and those which are dispute-solving. I am not sure that this distinction may be used on the topic of court administration.

<sup>14</sup> Jacob, *La grace des juges*, PUF 2014.

<sup>15</sup> The system of justice is not decentralized in England and Wales. In the United States, there are differences depending on the state between a centralized or decentralized system, with sometimes after unification a period of decentralization even at the federal level: see J.A. Gazell, 'A Current Status of State Reform: A National Perspective', in *Handbook of Court Administration and Management*, 1993, 79-97.

vary. The courts are quite independent with a court administration central body which is not located in Oslo but in Trondheim. The chief judge may hire deputy judges, and even judges, although formally that is a decision taken by the Minister of Justice. It has to be said that in Norway one becomes a judge in his/her late thirties, quite similar to what occurs in common law countries.

In any event, the encounter between court management and procedural law is not an easy one. One hypothesis would be to say that management interferes with law and procedure. For example, the allocation of cases among sections may be essential for the result of one case. One section of the court may favour a conservative solution while another is more progressive. A totally different hypothesis would be to say that management and procedure are complementary. In a way, court management is part of procedural law and so the allocation of cases could be challenged by a remedy. Court management would be a kind of internal law to the court, but a kind of law nonetheless. An Australian judge, Wayne Martin, has demonstrated that almost all aspects of court administration could have a procedural effect: allocation of cases, IT, the architecture of the building, data collection and statistics, security. As a matter of fact, it is impossible to draw a clear-cut line between judicial activity and court administration.<sup>16</sup> In Martin's view, all that should be considered purely administrative is the buying of office furniture and such office supplies as pens and file folders. I came across an example in France where the file folder had a procedural significance. At the Paris Court of Appeal, the judges liked transparent folders, because it was easy to read the name of the case at the top and to clearly see the different parts of the file. In fact, in English they are precisely called clear view folders. However, the budget was so low that it was not possible to continue to buy that kind of file folder. The transparent folders disappeared, replaced by cheaper opaque folders, and the judges complained, but to no avail. The procedural effect is that it is more difficult to find a case in a pile since you have to open all the folders.

Another small example comes from Norway, where a chief judge wanted to impose the requirement that the hearings in his court should start at 9 o'clock in the morning and no longer at 9.30 so that more cases could be handled each day. One judge complained that this would be an infringement of his constitutional right to deal with his cases the way he wanted to. I think that there is no administrative decision in a court without potential impact on judicial activities. For this reason, the leader of the court has to be the judge even though there is a court manager. At the same time, a party should have recourse against an administrative decision any time the decision directly affects the interests of the party. The Canadian Supreme Court has decided that only the functions directly related to the adjudicative process such as the assignment of judges, the scheduling of trials and the allocation of courtrooms should be under the control of the judiciary.<sup>17</sup> I would prefer a more abstract criterion based on the impact of the administrative decision on the interests of the parties. In France, recourse can be brought in front of the Court of Cassation against a judicial administrative act (*acte d'administration judiciaire*) on the basis of abuse of power. The Council of State considers that it has no jurisdiction since there is a principle of separation between the civil and criminal courts and the administrative courts. Nevertheless, the administrative

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<sup>16</sup> 'Court Administrators and the Judiciary', IJCA, Dec. 2014, esp. p. 17.

<sup>17</sup> *Valente v the Queen*, 1985, 2, SCR 673.

court could have jurisdiction over a purely administrative decision of the court. For example, a judges union brought an action before the Council of State when judges' bonuses were created by a governmental decree.

Then there are different styles of management. The new management based on objective indicators and assessments does not have the same relation with law as the old-fashioned administration of law. So maybe the administration of law did not interfere with procedural law whereas the new public management may endanger procedure. For example, if a judge has to reach a certain number of judgments, he or she is under pressure and may judge more quickly and with less attentiveness to each case. More strikingly, the judge may try to set aside or dismiss some cases for procedural reasons in order to have a better score. It seems that some judges in Australia, France and Poland are sometimes tempted to refuse to join more than one case at the same time for statistical reasons. We could call this trend the managerialization of justice.

Nonetheless, the majority of the national reports stress the point that court management does not impede respect for procedural principles. It should even foster higher quality and more reasonable time in respect of them. The dangers of managerialization seem to be felt in France, Germany and even the Netherlands, but not in the United States or Australia. Could it be possible that the common law is more at ease with new management than the civil law? Since the judge is appointed at a certain mature age, usually forty-five or older in common law countries, and sometimes with the legitimacy of election, there is no risk of competition between court leadership and court management, and so between court management and procedural law. Conversely, in civil law countries judges are chosen at a much younger age, around twenty-three, and without electoral legitimacy. As a result, there is a risk of competition between law clerks and judges. In France, for example, as in Spain or Chile, the importance of the director of the court clerk's office is increasing as he/she gets management powers. The director may have the same academic degree as the judge and sometimes has taken but failed to pass the national examination for judges.<sup>18</sup>

Maybe the old-fashioned court administration was in line with secret written procedure. In a way (allow me to be provocative), the civil law judge is already a kind of administrator. Thus, there is difficulty in making a good connection between the clerk's office and judges. There may be tension. Procedure is becoming more and more managerial with case management, and the director of the court clerk's office is becoming a manager. It seems that there is a risk of conflict between them in some sort of diarchy. It would be easy to say that management is about organization and that administration is about the institution in a very strong, symbolic sense.

It should be mentioned that there also exist critical management studies. Assessments, statistics and indicators are discussed by scholars specialized in management. There may be opposition between new management and procedure since new management may sometimes be criticized, because some elements of new management are not applicable to procedure. For example, is it reasonable to limit the number of judges in a court for budgetary reasons while at the same time the judicial branch of government is

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<sup>18</sup> In France, there may be directors of law clerk's offices who prefer management to adjudication of cases, but it is a new trend.

obliged to adjudicate cases in a reasonable time? The answer is that it depends on the conception one has of procedure. If one favours managerial principles such as efficiency, rapidity, even quality, then one may be in favour of new public management based on objective indicators, benchmarking and the like. I observe that in every national report there is a concern for the traditional principles of procedure such as independence, impartiality and the natural judge. New public management is favoured by liberal economists who base their analysis on the rational agent even though now it is said that the economic agent is not always rational. It seems to me that a third model of court administration is possible. After the executive model and the management model, I would propose, based on the national reports, a relational model. This relational model of management goes with a relational approach to procedure.

It is possible to have a relational approach to procedure in a very broad sense, meaning that the procedure, in itself, creates a legal bond, the procedural bond, between the parties under the aegis of the judge. This bond is made to transform a legal relationship existing on the merits and which is litigious. In order to achieve this goal an effective fair trial is necessary; each party has to be heard a sufficient amount of time. Court management, which complies with this relational approach to procedure, is a relational management, which does not mean a genial and delicate management. It means that staff and judges have to cooperate at the level of the court. The principle of cooperation goes beyond case management. This relational management does not rest on a purely rational agent who has to be in competition with another to be efficient, but on a rational and emotional agent, who interacts with the other. Taking into account the emotions of the staff and judges in participating in the adjudication of a case has gained growing interest in North America for about the last fifteen years.<sup>19</sup> One result of this has been the formation of court committees and the holding of regular meetings. (By the way, one of the problems here, which was not addressed in the questionnaire, is the salary of the staff.<sup>20</sup>) Many things still need to be studied. At the end of the day, I think that court management is the way to deal with legal relations in the courts with citizens, legal professionals, the staff and other judges. It is a non-litigious task having a strong influence on procedure and requires competences, which are not all legal.

It seems that the same thinking is leading to a new court management in many countries, but that the goals are not always the same, and a divide may exist between civil law countries and common law countries (Chapter 1). There is not necessarily one type of new court management, but perhaps several types. The concept is differently understood, in a certain way, according to the country studied. I could even say that there are some misunderstandings especially when the word management is used outside the common law realm (Chapter 2). Then, the level of the countries studied in terms of management tools varies considerably from the most advanced, if I take the

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<sup>19</sup> Through the movement Law and Emotion, on the growing importance of the topic of emotion in law, see R. Grossi, 'Understanding Law and Emotion', *Emotion Review*, vol. 7, January 2015, 55-60; see as well concerning the emotions of court staff as a terra nova T. Maroney, 'Law, Emotion, and Terra Nova', 30 *Quinnipiac Law Review* 481 (2012): 'If we were to look at the legal decision-makers whose emotions really matter most, and most frequently, I think we would be looking at judges, clerks, prosecutors, defense attorneys, civil litigators, mediators, police officers, probation officers, court room deputies, expert witnesses, legislators and so on.'

<sup>20</sup> The gap in salary between judges and staff is very important. This gap may result in tension between the two.

word advanced in a truly neutral way in accordance with the management model, to the not advanced at all. The understanding of what court management is may vary a great deal, and once again a line may be drawn between common law and civil law countries (Chapter 3). The professional in charge of court management is not always the same, and more and more there is a court manager even though the head of the court remains almost everywhere the judge (an example is the Netherlands, discussed in Chapter 4). The role of the council and the assembly as far as court management is concerned may vary enormously (Chapter 5). The day-to-day relationships between staff and judges may be informal or formal (Chapter 6). The concerns are not exactly the same in each studied country. We will see that there are different styles and difficulties, and I will stress the potential conflict between independence and new court management. We will see whether there are conflicts between traditional tools such as court administration, procedural law and judicial organization (Chapter 7). The allocation of the cases and the appointment of the judges (professional judges, lay judges, etc.) may comply with the principle of the natural judge, but may also try to take into account the necessary specialization of judges (Chapter 8). The evaluation, accountability and responsibility of both judges and courts are growing (Chapter 9). It is quite difficult to determine the budget of courts in comparison to the justice system and it seems that courts are rarely autonomous in this domain (Chapter 10). The psychosocial risks and security issues are more or less taken into account (Chapter 11). Moreover, court planning is not present everywhere (Chapter 12). In conclusion, it will be possible to state that there is not a new public management everywhere and on every issue, that the conception of court management may vary, but generally speaking in many countries there is rising interest in a managerial approach to court with a new character: the court manager and perhaps the fall of the traditional clerks dedicated to the authentication of the judgment. It is not obvious that the management model is going to be applied in every jurisdiction. Certain countries seem to be hesitant. I suggest that eventually the relational model will fit the needs of the courts better than the management model.

## **Chapter 1. General Interest in a New Court Management.**

All the national reports show that there is general interest in a new court management because of the failure of the current judicial system. I will take several examples where the trend is striking.

In Western countries such as England and Wales, the Netherlands, the United States, Australia, Canada, Norway and Switzerland, the management model has been the answer to the backlog of cases and judicial costs. At the same time, it seems that in the common law countries the management model is seen as the way to get beyond the executive model.<sup>21</sup>

It is interesting to then turn to non-Western countries, where one sees that it is essentially a matter of backlogs.

In Algeria, a long process led from a new constitution in 1996 to a judicial reform that transformed the judiciary into a real power, whereas formerly it was only a function of

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<sup>21</sup> Wayne Martin, n. 9 above.

one sovereign power. This process, according to the Algerian reporter, is in line with the concern to deal with the backlog of cases in a qualitative way that respects the fundamental principles of procedure and the equity between the users of the public service. The tools used to reach these objectives are based on the jurisdiction of the court and judges, specialization of judges and the management of the court using new technology and human resources.

In Chile, the topic of management has become an important part of discussion and reform because of the congestion in the courts. Judicial management, as special subject matter in Chilean procedural law, was born in 2000 with the reform of criminal procedure, which introduced a completely new system. This reform created a new prosecutorial agency (*Ministerio Público*) with investigative and prosecutorial functions, and a new public defence system. In addition, legislative changes modified the entire structure of the lower criminal courts and incorporated professional administrators, separating the judges from the management of these organizations. Budgetary issues also had an impact on the creation of a new model. For those reasons, the new criminal court organization gives the entire management of the procedures to a professional in the management field once the cases get to the court. A court manager (*administrador*) is in charge of court administration, and the judge's time, to schedule cases. Furthermore, this manager is the chief of the administrative staff. All the staff and the manager himself/herself come from the professions in the management and administration fields. This administrative structure, in the charge of the court administrator, relates to the judges through the Presiding Judge and the Committee of Judges. In that context, the reform not only separated the jurisdictional task from the managerial task, but also took away from the judges the control over their working time. Parties' lawyers, who previously dominated the progress of litigation, lost influence too. The separation between judicial and managerial functions was justified based on a cultural shift, in which courts should abandon their old autarchic and formalistic practices. After discussion and with the passage of time, the system received good evaluations and the best practices were replicated in the reforms to other courts, such as those that handle family (in 2004) and labour (in 2009) disputes. The Supreme Court enacted several rules called Performance Acts (*Actas de Gestión*), destined to standardize the best practices regarding scheduling of hearings by separating and categorizing the different cases that enter the system. The scarce empirical evidence available shows that the use of these techniques or case management tools has achieved a positive effect by diminishing the congestion in the courthouses and reducing the time frame of cases.

In India, the Constitution, through its preamble, guarantees to citizens *Justice* – economic, political and social. But even after sixty-five years of independence substantive justice has not been achieved for the vast majority of Indian citizens. In the specific area of the justice delivery system the courts are faced with the problem of large backlogs and pendency of cases. At present, there are more than 22 million cases pending in various courts across the country. On average, the length of time for a case from the date of filing to the final disposal bridges the lifespan of an individual. Often it is said that litigation in India is handed down from one generation to the next as part of inheritance. Under the separation of powers doctrine, the judiciary is an integral part of the Indian state and adjudication of disputes is part of the core functions of the State. Independence, fairness and competence of the judiciary are the cornerstones of the

Indian legal system. But the large number of pending cases has crippled the working of the judiciary and has had an adverse impact on the timely delivery of justice. The right to a speedy trial is an integral part of the fair trial; it is also fundamental to international human rights doctrine. The backlog of cases has resulted in the dilution of the right to access timely justice and is an erosion of the rule of law values, all of which has adversely affected the common people's faith in the justice delivery system.

If we examine the problem of pendency of cases, we find that there are many causes for the delay in disposing of cases. These causes include the shortage of judges, human resources and adequate facilities, the need for modernization of equipment, the litigation explosion, increases in legislative activity, the accumulation of first appeals, delays in filling vacancies in the High Courts, inadequate infrastructure, the failure to provide adequate forms of appeal against quasi-judicial orders, the lack of priority for disposal of old cases, the failure to utilize the grouping of cases and those covered by rulings, the granting of unnecessary adjournments, the plurality of appeals and hearings by division benches, as well as the increase in population.<sup>22</sup> That is the reason why at the moment there is an increasing interest in court management in India. At present, various efforts are being made to bring about reforms in the justice delivery system. The fundamental points of reform are based on achieving the three-fold goals of (a) making the judicial system 'five plus free' (i.e. free of cases more than five years old) by addressing the 26 per cent of cases that are older than five years; (b) shortening the average life cycle of all cases; and (c) substantially upgrading court management systems. The Vision Statement prepared by the Department of Justice focuses on two major judicial reforms — increasing access by reducing delays and arrears (the backlog of cases) in the system, and enhancing accountability through structural changes and setting performance standards and capacities. The Action Plan provided under the Vision Statement identifies the following as the major areas of reforms: creation of a National Arrears Grid; focus on selection, training and performance assessment of judicial personnel and court management executives; efficient utilization of the judicial system and existing infrastructure through effective manning, planning and timely management by increasing the use of technology and management methods, procedural changes, management and administration. But the solution is mainly a matter of case management and therefore of scheduling; it is not court management in the strict sense.

The example of Benin is interesting as well because it shows the priorities in developing countries. The average case duration is two to three years at first instance, two years in appeal, two years at the Supreme Court (in Porto Novo). There were about 7 million inhabitants in the African nation in 2002; there are 11 million today. There is not a direct and expressed will to unclog the courts. But this goal is in mind in the willingness to reform the judicial map. Before 2002, Benin had eight first instance tribunals and one court of appeal. Following the new statute on judicial organization of 2002, there are now twenty-eight first instance tribunals and three courts of appeal (but only 18 of the 28 tribunals are settled). Additionally, since 2016 there is an administrative section in the tribunals and the courts of appeal. More and more judges are being recruited (80 this year). The procedure of divorce cannot exceed six months; in summary proceedings, the decision should be taken within one month even though the average duration of summary judgments is one year. Furthermore, there is a project underway to create

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<sup>22</sup> Arrears Committee 1990.



commercial courts. As a whole, the solutions to the problems are not based on court management but on the creation of new courts.

In Brazil, for around ten years judges and court staff have been willing to undergo training in management in order to properly run the courts. In some courts, though, there are still managers who are civil servants; the judge who is the head of the court is still the chief of the administration of the court and of the director of the court clerk's office.

The management model seems to be gaining influence, but has not developed everywhere to reach the same goals. Despite this general interest in court management, there is still a misunderstanding in the vocabulary.

## **Chapter 2. Misunderstanding in the Vocabulary.**

The concept of management itself comes from Western culture and language. Today, it is used worldwide in business companies, and more and more in public administration. The word seems to be quite straightforward, and so 'court management' seems to be a clear concept used even in non-English-speaking countries (such as Belgium); however, it is not a clear-cut concept.

Different countries may have a different understanding of the concept. There is the problem of the words themselves. Management is an English word of Latin, Italian and French origin. It is now used in French, Spanish and in languages all over the world with the English spelling (sometimes, as in France, with a more or less proper British accent when spoken), but not always exactly with the English meaning. One of the reasons for this is that there is not exactly the same set of words under consideration in the different Indo-European languages from which it is derived.

In English, the two main words to be considered are administration and management. The former is used for a higher purpose than the latter; it is determinative of what the executive in performing the latter can and cannot do, and its scale is the long-term. In French, Italian and Spanish there are three words to be considered: administration, management and *gestion*. One of the founders of modern management, Henri Fayol, who I mentioned earlier, authored a book titled *Administration industrielle et générale*. Interestingly enough, his book has been translated twice into English, in 1930 as *Industrial and General Administration* and then again in 1949 as *General and Industrial Management*. Management tends to replace administration in French when it comes to the five functions described by Fayol: planning, organizing, staffing, controlling and directing. It tends to replace the word *gestion* as well, which is a specific Italic word meaning 'being in charge'. It is close to 'running a business' in English. So, now in France management means at the same time leading, administering and managing in the day-to-day sense or 'executing' in the English sense. Today, the management pronounced in French with an English accent appears to be more modern. It seems to me that this problem of language is very important when it comes to the comparison of different countries, since we are not talking about exactly the same thing even though we believe we are discussing the same matter when we use the same word 'management'.

What is at stake is important, because there is a general trend, as we are going to see, in the development of court management all over the world. But are we talking about the leadership in a court or the day-to-day running of a court and not about the judicial activity of a court?

The word management is English, but it comes from the French word *ménage* or *manège*. There is an ambiguity in the word in and of itself. Its etymology is debated. *Ménage* means housekeeping and used to mean dealing with the economic situation of a family (a *ménage* is still a couple in French). However, the *Oxford English Dictionary* considers that the origin of management is the French *manège* coming from the Italian *maneggiare*, which derives from the Latin *manus* (the hand), which is a horse riding arena sometimes called 'manege' in English or a carousel for children. Yet again, the same dictionary considers that the French *ménasgement* influenced the English word management in the 17th and 18th centuries. Well, the first meaning signals that the court will be considered a family or a company; it is mainly an economic matter to be handled. The second meaning signals the idea of leadership in the word management, and even dressage or training, since in a *manège* horses are trained in a particular regimented manner.<sup>23</sup> One thing that is beyond debate, though, is that the word 'man' does not enter into the etymology of management so that it would thus clearly be a matter of human resources.

The word administration comes from the Latin *administrare* and *ministare* (the one who serves) which meant 'give a hand' to the religious. Administration of justice was used in the 15th century in France. It was used as well and is still used in French to say 'take the evidence'. The modern sense of public administration comes from the French Revolution.

In Italian, the word *gestione* is used as well, but it is not equivalent to management. Management understood as directing is one aspect of *gestione*, and administration is limited to dealing with information to build the memory of the organization. Information is the input for the managerial decision.<sup>24</sup>

In Spanish, there are several words, *dirección*, *gestión*, *administración* and *gerencia* which may translate management. Behind each word there is a different agent: the director directs, and the administrator has a higher rank than the director in a firm.

In German, *die Verwaltung* is the running of an estate or other asset. *Betriebswirt* is the management of a business, *Betriebswirtschaft* is the science of management, while quality management becomes *qualität* Management in German. There are as well *die Leitung* and *die Führung*. So again, there is a set of words (and the relationships between these words are not exactly the same in every language). This is an original situation. The word *Verwaltung* is important in German and it means at the same time management and administration; it is a unique word for 'management and

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<sup>23</sup> On this different etymology see Rupin (Bibliography).

<sup>24</sup> See Argentinian Report.

administration'. *Verwalten* translates at one and the same time: administration, management, governance and the running of.<sup>25</sup>

Moreover, the culture of management is not the same everywhere. In Germany, management is not a separate science of engineering. The German management style is still based on consensus, collegiality, quality-oriented, committed to long-term prospects and loyalty to the company. It is results-oriented as in the United States, more aggressive and quick to change.

In Brazil, the expression 'case management' is often encountered, but the Portuguese *gestão do procedimento* (running of the procedure) is used as well for judicial measures. The word *administração* is used to characterize an administrative decision (*administração judiciária*).<sup>26</sup>

But even in the United States the meaning of court management is not so obvious and the conception may vary.<sup>27</sup> Court management is sometimes synonymous with court administration (as in the National Center for State Courts' Institute for Court Management) or refers to the day-to-day running of a court as compared to the general policy of court administration. This issue of terminology is important, for in France, Italy and Spain management is considered something having to do with leadership and governance of the court, whereas in the United States management is limited to the day-to-day running of the court even though there is some ambiguity even there.

### **Chapter 3. The Conceptions of Court Management.**

The conception of court management is not clear everywhere, even where it is used (it is not used in Benin and Algeria, nor in Singapore). It is often confused with the administration of justice as a whole at the national level (Argentina, Russia) or regional level (Argentina again, and Germany) and/or with case management (Chile, Norway<sup>28</sup>). The concept does not seem to be totally settled<sup>29</sup> (England and Wales, Germany, France, India). Even the word court in the expression 'court management' may be debated. For example, in Spain there is a common office for a number of tribunals in charge of managing a case (without judges) before the case is allocated to a judge in a court.

#### **3.1. Conceptions of court management in common law systems.**

In the United States, the preferred expression is the administration of justice and the word management is used for the day-to-day activity carried out by the court manager, who is not the head of the court.

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<sup>25</sup> See German Report.

<sup>26</sup> In Norwegian, the word management is not used in courts; *ledelse*, close to leadership, or *styring*, close to steering, are used along with *admistrasjon*, in a practical sense the day-to-day running of the court.

<sup>27</sup> Interview at the National Center for State Courts (NCSC).

<sup>28</sup> For example, the chief judge can take back a case from a judge who is not sufficiently diligent: Is this action part of the case management or the court management?

<sup>29</sup> See German, Chilean and Argentinian Reports.

In England and Wales, the conception of court management is an evolving one. There is currently a reform programme underway (since 2015). It has three goals: 'delivering more efficiency and high performing court administration, meeting the needs of the public as well as providing significant benefits to the taxpayer and the legal profession'.<sup>30</sup> Interestingly enough, in this official phrase there is no difference between court management and administration of the court.

In Singapore, the Constitution establishes the legislative, executive and judicial branches of government. The judiciary consists of the Family Justice Courts, the State Courts and the Supreme Court. The management of the courts is the responsibility of the Chief Justice, who performs this function independent from the other branches of government. While the Ministry of Law works closely with the courts when considering law reform proposals, the Ministry does not influence the management of the courts.

Court administration is preferred to court management in the United States. At the federal level the main body is the Administrative Office of U.S. Courts, again the word administration is favoured. Nevertheless, the National Center for State Courts has a Management Institute for State Courts. The word management deals more with day-to-day organization, and the word administration is the general word. Thus, there is not really the idea of leadership in the word management. Usually there are court managers whose duties include dealing with the human and material resources of the court. They are not judges and they are not the leader of the court (often they work in the court under a contract, which can be terminated if necessary).

Court administration has developed along so many different paths in so many different settings that it is not possible to identify one ideal model. It is, however, possible to identify the various elements in a court administrative system: a court of last resort that makes administrative policy for the judicial branch, often reflecting this policy in court rules, directives or orders; a chief justice who generally serves as an executive overseer to ensure that court policy is implemented; a state court administrator whose office provides administrative support to the chief justice and the courts in implementing policy and in serving various other administrative or legal functions; chief judges of trial courts and intermediate appellate courts who administer the operations of their respective courts in conformity with the policy set by the supreme court and by the court they serve; trial court administrators and trial court administrative offices that provide the principal, but not the sole, assistance to the chief judges in implementing their administrative responsibilities. In federal courts:

Day-to-day responsibility for judicial administration rests with each individual court. By statute and administrative practice, each court appoints support staff, supervises spending and manages court records. The chief judge of each court oversees day-to-day court administration, while important policy decisions are made by the judges of a court working together. The clerk of [the] court is the executive hired by the judges of the court to carry out the court's administrative functions. The clerk manages the court's non-judicial functions according to policies set by the court and reports directly to the court through the chief judge.

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<sup>30</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/386415/hmcts-business-plan-2014-15.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/386415/hmcts-business-plan-2014-15.pdf) last accessed 14/03/2017.

Among a clerk's many functions are: maintaining court records and dockets, managing court information technology systems, paying all fees, fines, costs, and other monies collected into the U.S. Treasury, administering the court's jury system, providing interpreters and court reporters, providing courtroom support services, sending official court notices and summonses. [This last function is interesting since it seems that it is a procedural function and not an administrative task.]<sup>31</sup>

The difference between administration and management of the court does not count very much in these examples where court management does not refer to something totally new.

### **3.2. Conceptions of court management in civil law systems.**

In Algeria, the expression court management is not used, but *gestion administrative judiciaire* is, which means judicial administrative management (in the strict sense of day-to-day activity).

In Argentina, the concept of court management may be confused with the concept of administration of justice. The concept of court management, as normally used in Argentina, includes diverse situations that can be divided into two groups of concern.<sup>32</sup> The first one is related to the strategic planning of the judicial system, the application of general resources and services needed to its actual functioning, and the design and administration of the budget of the judiciary. The second one is related to the management of each judicial organ. This second expression deals with multiple aspects of each court's running, organization and division of labour. It does not refer to the administration of the judicial system as a whole, but to problems such as the definition of the roles that will occupy each of the staff members of a first instance court, a court of appeal or a supreme court. This second group of concerns could be referred to as 'court management *stricto sensu*'. In general, this mission is developed by the judge of each court of first instance or, in some cases, by the president of a tribunal with plural composition (for example, the president of a court of appeal).

In Benin, the courts have an autonomous budget integrated into the budget of the Ministry of Justice. The administrative and financial management is assigned to the head of the tribunal. It is not a new court management, but the old court management. Having visited a court of appeal in Benin, I would say that justice is still largely based on oral debate.

In Chile, judicial performance and court management have not been the object of major studies by Chilean legal scholars.<sup>33</sup> A symptom of this is that, in Chilean legal language, there is no shared terminology or uniform concept to point at these aspects of the courts' functioning. A prominent exception among this scarcity of literature is Vargas, for whom court management comprises all the aspects of the courts' functioning, which

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<sup>31</sup> NCSC, Judicial Administration, Individual Courts, <http://www.uscourts.gov/about-federal-courts/judicial-administration>.

<sup>32</sup> See Argentinian Report.

<sup>33</sup> See Chilean Report

are necessary to the efficient and effective delivery of judgments. These aspects include the structure of the courts, workflow, division of labour, distribution of tasks and competences, among others. The goal is to configure these management aspects to increase quality and speediness, taking advantage of the available resources of the court.<sup>34</sup> Vargas's concept is broad and points at all the aspects that are necessary to produce a jurisdictional response to the dispute before the court.

Overall, Chilean scholarship has not developed clear conceptual differences between case management and court management. Instead, any topic associated with court performance is labelled as 'administration' issues. Here we will distinguish between *court* management and *case* management. *Court* management points at the general managerial aspects which apply to all courts as a whole, such as the rules on the appointment of judges, their training and promotion, the availability of human and material resources, performance measurements, among others. *Case* management, instead, points to the tools that judges have to manage the dispute at hand. Currently in Chile, however, this distinction is not frequently made. Quite the contrary, every aspect which does not strictly relate to dictating a judgment tends to be confused with general court management or court administration. In other words, particular case management issues blur within the broader notion of court management.

In France, there is an interesting shift in the choice of words. During the nineteenth century and until quite recently (before 2000), the general expression was judicial administration. It applied mainly to the administration of justice led by the Ministry of Justice. It encompassed the administration of each court (in fact the clerks were a private body until 1960, the court building belonged to the town organization, so the head of the court had nothing to administer except the allocation of cases). The management of the case existed but was considered part of the judicial and procedural power of the judge to prepare the case file (*mise en état*, to be judged of the case). In 2001, a tax statute imposed objectives on the judiciary (in terms of duration and quality). From then on the new public management applied to the judiciary and the expression judicial management tended to replace judicial administration. There is a clear distinction from case management, which is older and has a different name (*mise en état*), but not with the national judicial management. The word management is understood in a broad sense as the leadership of the court and as the administration of the court. However, it appears more and more that the director of the court clerk's office has management powers as well. So the question was addressed as to potential conflict between the director of the court clerk's office and the head of the tribunal. But this is mainly a matter of vocabulary, since in French the word 'management' has a very broad meaning which encompasses leadership. Sometimes the expression 'intermediary management' is used to describe the head of a section or services. Court management is used, but not totally distinguished from judicial management as a whole. In Quebec, the word management is not considered French and not recommended by the Quebec office of the French language (especially as a synonym of 'cadre', manager).

In Germany, court management understood as the administration of staff (human resources, e.g. recruitment of staff, supervision, disciplinary proceedings), infrastructure (e.g. construction and maintenance of court buildings; also the acquisition of material

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<sup>34</sup> Vargas Viancos, Juan Enrique (2006), p. 79.

such as furniture, stationery and IT equipment) and budget planning is among the secondary duties of judges, and apart from jurisprudence. However, there is no clear distinction between such internal tasks and the broader term *Justizverwaltung*, which encompasses a federal state's justice ministry's competences over the courts. These uniquely include the authority to issue directives, thereby making certain elements of *Gerichtsverwaltung* a means of external management.<sup>35</sup> A committee of judges conducts the administration of the tribunal, understood as the development of a distribution plan. Thus, administration of the tribunal is a competence reserved exclusively for certain judges. Hence, there is no comprehensive concept of court management in Germany.

In Russia, in a purely hierarchical approach to justice, court management is understood as the implementation of a system of measures of an organizational, personnel, financial, logistical or other nature with the aim of creating conditions for the complete and independent administration of justice. The principle of independence of the court system grounds the conception of court management in Russia. This means that only the community of judges should govern all bodies responsible for the community. The judicial branch is supposed to be autonomous as much as possible. The basic provisions of self-government are the following: according to the 2002 Federal Law on Organs of the Judicial Community, the All-Russian Congress of Judges is the supreme body of the judiciary. The Judicial Department at the Supreme Court of the Russian Federation is a body of the federal judiciary which provides support for courts and other bodies of the judiciary. It also coordinates financing of the justices of the peace. The Judicial Department of the Supreme Court of Russia is responsible for the administration of the courts, such as the selection and training of judicial candidates, working with law institutes, and the qualifications of judges and other court officers. It is expected to enhance the independence of the judicial branch. It also supports the Council of Judges and the Supreme Qualifying Collegium. The Court Department at the Russian Federation Supreme Court carries out its activities directly or through regional divisions, which are located in every region of Russia. Each federal court includes a judicial office, which should be established by the court's chairperson with the consent of the Court Department at the Supreme Court. There is no administration of the tribunal as a special purpose court. Therefore, there is no difference between court management and administration of the tribunal.

In Spain, strictly speaking, there is no notion of court management. It goes without saying that courts exercise their jurisdictional authority (*potestad jurisdiccional*) based on the principle of independence. Having said that, a number of practical issues, such as the assignment of human and material resources, the location of the courts, the organization of the work, etc., do require some 'administrative' activity, sometimes referred to generally as the 'administration of the administration of justice' (*administración de la administración de justicia*). The traditional first instance court model was unipersonal: a judge led and presided over the court's office (*Juzgado*) and worked with the assistance of the relevant staff: a court secretary (*Secretario Judicial*, broadly equivalent to the French *greffier*) and other assistant officials. These courts were specialized according to their jurisdictional order (civil, criminal, administrative, labour) and sub-specialized as required (insolvency, family, etc.), as decided by one of those courts acting as the provincial coordinating authority (*Juez Decano* or *Decanato*).

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<sup>35</sup> F. Wittrek, *Die Verwaltung der Dritten Gewalt* (Tübingen, Mohr Siebeck, 2006) 16-18.

The different courts of appeal (up to the Supreme Court and the Constitutional Court) were the only truly 'collective' entities.

Organic reforms dated 2003, 2009 and 2015 have profoundly altered this model and designed an entirely new organization, still in the process of being implemented. The new model distinguishes three types of activity: (a) 'procedural' activity: the handling of lawsuits in everything except judgments and other important decisions; (b) 'jurisdictional' activity: the power to make judgments and other important decisions; and (c) 'administrative' activity: the management of human resources, computer media and other material means.

The centre of gravity of the new model is the so-called 'procedural' activity. A provincially centralized office (*Servicio Común Procesal*) now handles the lawsuits. This new office does not include judges. In fact, it is physically separate from the old courts, where the judges remain. The *Servicio Común* is staffed with a new state corps of civil servants that has replaced the old state corps of court secretaries, the *Letrados de la Administración de Justicia*. With the only exception of hearings and major decisions, the *Servicio Común* handles the entire procedure directly with the parties' attorneys in an autonomous manner, without judicial supervision (apart from the possible appeal of the *Letrados'* decisions). The structure of the new corps is strongly hierarchical and based on the discretionary appointment of all members holding directive responsibilities. The *Letrados* are assisted by inferior categories of civil servants.

Once 'processed', the file is sent to the judge, who will hold the hearing or make the decision, assisted by a smaller group of civil servants (*Unidad Procesal de Apoyo Directo*). This strictly speaking decision-making power constitutes the new narrow meaning of 'jurisdictional' activity.

Besides these two basic units, a third one (*Unidad Administrativa*) manages human resources, computer media and material means; in a word, this unit carries out 'administrative' activity.

The idea of 'court' has therefore been dramatically altered over the last fifteen years. The complete disappearance of the old unipersonal courts is only a matter of time, as the new model continues to be implemented at different speeds depending on the region.

The Spanish example is fascinating, since it shows how a hierarchical system may lead in terms of separation between different professions. The ambiguity of the expression 'court management' and the difference in understanding are going to have consequences on the person in charge of court management.

#### **Chapter 4. The Professionals in Charge of Court Management.**

Everywhere, the leader is the judge, the head of the court. As far as court management is concerned, the role of the public prosecutor may vary. Everywhere, there is a director of the staff playing more and more the role of court manager. However, the chief judge in the common law system may have more autonomy and power than his/her counterpart in civil law countries.



#### 4.1 Leadership by the head of the court or by a committee?

Everywhere, the leader is the judge (France, Germany, Norway, the United States, etc.). It may well be that the situation is more clear-cut in common law countries. In Singapore, the Chief Justice heads the judiciary. The State Courts and Family Justice Courts are each led by their Presiding Judge. The Chief Executive of the Office of the Chief Justice oversees the efficient running of court operations and the provision of effective services to court users. There is a diarchy in certain civil law countries, and the importance of an executive board is growing (Belgium, the Netherlands). In Germany, the president of the court, his staff (assigned to the executive power) and the committee (*Präsidium*) composed of judges (assigned to the judicial power) as well as presidential and judicial councils perform the main tasks of court management.<sup>36</sup> The president of the court has the most important position in court management. He/She has supervisory powers over judicial and non-judicial staff and carries out all general business of court management. There is no legal regulation; moreover, the amount of particular competences such as the nomination of lay judges, authorization of secondary employment, etc., determines the president's power in court management. The committee is mainly responsible for the allocation of cases and the appointment of the judges' disciplinary tribunal.

In the Netherlands, since 2002, all the courts except the Supreme Court have at their head a central body: *Raad voor de rechtspraak* (RvdR). Two judges and one non-judge compose the court council for a term of six years (and then three years more). They are appointed by royal decree upon the proposal of the Ministry of Justice. Membership on the council may be revoked by a royal decree, which Bovend'Eert considers to be an infringement of the separation of powers. This council is competent for the budget and the running of the building (security). They have to take into account the exception of the independence of the judges (*onafhankelijkheidsexceptie*) and not interfere in litigation. The council oversees the quality of justice and the uniform implementation of the law. Several courts (Groningen and Rotterdam) put in place pilot programmes such as family judge or family mediation to improve the quality of justice. The council is responsible for the structure of the court (sections and the composition of them). Its decisions may be registered in the court rules of procedure<sup>37</sup> and the working order. This council is the hierarchical authority of the court.

Following the Dutch model, in Belgium each court has an executive committee composed of the head of the court, the director of the court clerk's office and the head of each division of the court (another committee is composed of members from the public prosecutor's office).

#### 4.2. The role of the public prosecutor.

In terms of the hierarchy and organization of the courts, one of the key points is whether the public prosecutor is considered part of the court. This issue is not linked with the distinction between common law countries and civil law countries. Rather, it has to be

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<sup>36</sup> See German Report.

<sup>37</sup> Beware, it is a false friend, since there are no civil procedural rules in this text.

said that the public prosecutor has a role to play in court management only in civil law countries. In this situation, the public prosecutor body is highly hierarchical.

In many countries such as England and Wales, Brazil, Singapore and Norway, prosecutors are not members of staff, nor are they part of the judiciary. In England and Wales, prosecutors are barristers who are 'officers of the court' and are expected to comport themselves appropriately. Prosecutors, as part of the criminal justice system, would fall under the Better Case Management system and would be subject to such procedures and management system under that policy. In Singapore, the public prosecutor is not a member of the court staff. Nonetheless, the public prosecutor assists the court in the administration of justice by gathering the necessary information and presenting the prosecution's case to the court for its consideration in the course of criminal proceedings.

In the Polish legal system, prosecutors, judicial officers (bailiffs) and mediators are located outside the structures of the courts. In Germany, the prosecutors are subordinated to the Ministry of Justice. On the one hand, they are subject to instructions from the Minister; on the other hand, their status approaches that of a judge. However, the prosecutor in his/her special position has no function concerning the main areas of court management.

In Algeria, Belgium, Benin and France the public prosecutor brings the criminal actions on behalf of the society. In France, there is a so-called diarchy specially to decide the hearing agenda. Also in France, the conception of court management is hierarchical with a diarchy, almost a 'triarchy'. The head of the public prosecutors participates in the preparation of the hearings: date, hours, number of cases, etc., and supervises the other public prosecutors. There may be tension between the head of the court and the head of the public prosecutors since usually the latter wants to have many more cases than the former. The director of the court clerk's office (the one who manages human resources, building safety and maintenance, etc.) helps the chief judge. In large tribunals, the head of the tribunal may have a general secretary, usually a judge, to help with managing the tribunal. In Benin, the head of the court has to consult and inform the public prosecutor in order to maintain a cordial atmosphere.

#### **4.3. The role of the staff.**

Another key point to explain the differences is the role and nature of the staff. It is not totally clear, but there seems to be a very real hierarchy in civil law countries between the judges and the staff, and a certain specialization of function in common law countries.

In Argentina, the organization of the court is generally based on a vertical structure. Almost exclusively, the judge, who has the ability to assign different tasks that must be performed, determines the roles in the judicial office. According to the common tradition in court organization, the judge assigns tasks by taking into account the hierarchy of law officials and other employees that work in the office. The number of them, in first instance courts, ranges from 10 to 15 on average, which includes 3 or 4 lawyers. The more complex tasks are assigned to law officials and employees of a higher position: the Chief Officer (*Jefe de Despacho*), a Senior Officer (*Oficial Mayor*) and a First

Officer (*Oficial Primero*). The other tasks are assigned by the judge to the rest of the employees. In principle, the clerk and/or the 'auxiliary lawyer' control due compliance with such tasks, and frequently they delegate certain supervisory tasks to the chief officer or the senior officer.

In Hungary, the presidents of general courts, courts of appeal and the *Kúria* (Curia) are the employers of the judges and law enforcement employees of that given court. Judges and law enforcement employees are subordinated to the court executives, who can apply disciplinary and other sanctions (e.g. withdraw work-from-home and other benefits, request reports on activities and official documentary evidence in writing to verify that he/she is not subject to any disqualifying factors, order professional and disciplinary examinations) against the judges and law enforcement employees. Only judges can be court executives (presidents of the courts).

In France, the judge may have assistants to help in legal research. Their position title is 'assistant of justice'. Recruited for two years (the contract may be renewed twice), they work part-time and earn between €450 and €500 a month (usually they are university students in their fourth or fifth year of study, or doctorate candidates). They have no management powers. Then there are the clerks and civil servants. The head of the court has management powers over the staff, but a judge is not clearly the superior of a clerk. They are distinct professions. Thus, tension may exist between clerks and judges.

In England and Wales, the clerk is responsible for assisting the judge and managing the courtroom, ensuring it runs smoothly and that everyone is in the right place at the right time. The clerk implements any updates and informs the judge, and prepares all the case papers for the judge to make sure they are fully prepared for court. The ushers are often the first point of contact and are responsible for preparing the courtroom, checking that witnesses, defendants and lawyers are present, calling defendants and witnesses into court and administering oaths. 'Sworn ushers' are also responsible for escorting the jury to and from the courtroom, being on duty outside the jury room and handling messages between the jury and the judge. The Court Enforcement Officers<sup>38</sup> are responsible for enforcing Magistrates Court orders, which may require them to seize and sell the offender's goods to recover outstanding debts.

The Security Officers are responsible for the control of access doors and gates to ensure that only authorized persons and vehicles are permitted access to court, conducting entry searches of all persons entering court buildings via public entrances, and preventing and dealing with security incidents.

In Germany, the role of judicial officers (*Rechtspfleger*) is assigned by federal law (*Rechtspflegergesetz*) and has a wide range of different tasks, performing executive management, among them.

In Singapore, the court staff are also members of various committees and carry out various projects together to further the objectives of facilitating access to justice and the efficient administration of cases. For example, the various State Court Committees meet regularly to plan and carry out their respective projects: Corporate Social Responsibility

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<sup>38</sup> Different arrangements at different levels, e.g. sheriffs, but outsourced.

Committee; Divisional Planning Units and Divisional Knowledge Management, Library and Training; Eco Committee; Staff Benefits Committee; Staff Welfare Committee; and Workplace Safety and Health Committee.

In Singapore, the Infrastructure and Court Services Directorate strategizes the use of resources and services that best support the hearing process. It includes the Digital Transcription Services Section, Interpreters Section and the Office Management section. This directorate oversees the maintenance of the building. The Corporate Services Directorate oversees human resources, the administration section, security section, procurement section and the library. The Office of Public Affairs oversees the planning and execution of public engagement and communication efforts so as to position the Supreme Court as a forward-thinking and outward-looking organization with effective public service delivery. The Finance Directorate promotes proper stewardship of the Supreme Court's resources. The Strategic and Planning Policy Directorate sets long-term and sustainable goals, and conducts research to identify emerging trends regionally and internationally. The Internal Audit Directorate promotes a culture of risk awareness and ensures the adequacy of internal controls and compliance. The Computer and Information Services Directorate aims to be at the forefront of new IT trends and developments, as well as to anticipate and render IT solutions for the organization. The Legal Directorate reports to the Registrar of the Supreme Court, and it oversees the processing and maintenance of all court documents and records, and makes these available to court users. It also provides administrative support to the Registrar to ensure the efficient and expeditious disposition of all cases.

In the Netherlands, each court has an administrative department competent in support functions and administrative matters. This department is not led by a judge but by another kind of civil servant. For example, the Amsterdam tribunal has a department for support functions, which comprises ten administrative offices. Some national councils offer support functions as well.<sup>39</sup>

#### **4.4. Court managers or not?**

In Australia, England and Wales, and the United States, court managers are responsible for managing the day-to-day operation of the court, for example ensuring excellent customer service and the efficient running of court administration. They are also responsible for building and maintaining partnerships with the judiciary and external agencies, and promoting engagement with the local community.

In the United States, the state courts have a head of the court, who supervises, and a director of the court. A chief judge generally serves as an executive overseer to observe whether policies are implemented. We can also find state court administrators. Their office provides administrative support to the chief judge by implementing policy. Most states, through statute or constitutional provision, designate the chief justice of the court of last resort as the chief executive officer of the court system. Some chief justices involve the full court in most administrative decisions; other chief justices make many unilateral decisions, keeping the full court informed and occasionally asking for support on controversial issues. The power and authority of chief justices vary according to the

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<sup>39</sup> See Dutch Report.

method by which they are selected, their tenure and the degree of unification within the court system. Perhaps the most important factor in the power of a chief justice is the degree of court unification. Strong vertical lines of authority running from the supreme court down through the trial court system buttressed by control over the trial court budget can greatly enhance the authority of the chief justice and the supreme court. The chief justice does not have time to get involved in the day-to-day administration of the court system and operates through the administrative office of the courts and various committees. The principal managerial deputy of the chief justice is the state court administrator. Ideally, the chief justice and the state court administrator operate as an executive team. In actual practice, some state court administrators are not delegated much authority. Procedural rules of the courts have serious administrative and financial implications, but they do not deal specifically with administrative matters that transcend the processing of individual cases. Courts, therefore, promulgate administrative rules, such as a set of rules to govern court personnel management or standards for disposing of cases within specified time periods.

Some states, to enhance the authority and prestige of the office of state court administrator, give the position to a judge. Generally, however, a person other than a judge is selected. At first, courts tended to choose lawyer-administrators from the legal culture with which judges were familiar. Over time, courts have been more willing to choose professional managers as administrators.

All court administrators are to some degree involved in planning, organizing work to achieve objectives, staffing the administrative office, and directing and supervising persons who are on the staff. However, the actual functions of an administrative office vary, particularly in regard to trial court activities. In a system with a unitary budget and vertical administration, the administrative office of courts may provide many services to trial courts; in other states, administrative office contact with trial courts is quite limited. Moreover, some state court administrative offices deliberately remain small, leaving many aspects of court administration at the local level. Among the typical functions of court administrative offices are personnel management, financial management and budgeting, case-flow management throughout the system, automation of office management, jury management, public education, information management and dissemination, records management, research and advisory services, inter-governmental relations and secretarial services to judicial committees. In the federal system, the Director of the Administrative Office, who is appointed by the Chief Justice of the U.S. Supreme Court in consultation with the Judicial Conference, serves as the chief administrative officer. Congress vested many of the judiciary's administrative responsibilities in the Director. Recognizing, however, that the courts can make better business decisions based on local needs, the Director delegates the responsibility for many administrative matters to the individual courts. This concept, known as 'decentralization', allows each court to operate with considerable autonomy in accordance with policies and guidelines set at the regional and national levels.

In civil law countries, the head of the court has a double function. In Germany, the court president, as the court manager in the proper sense, is the head of judges at the same time. He/She has a hybrid status concerning the management of the court. The judges perform their court management functions assigned by federal and state law through the committee and the Council of Judges. In the Netherlands, the head of the court is not

really a judge during his/her mandate. Actually he/she has a double function, both judicial and administrative. In Russia, heads of court are responsible for organizing court management. In this case, they have to combine the functions of two positions: court manager and judge.

In France, the director of the court clerk's office manages the court on a day-to-day basis. The director has no traditional clerk functions (authentication of judgments, writing the record of the hearings). Although before he/she was a court clerk, the director has now become the manager of the court. He/She deals with human resources (relating to law clerks and civil servants, not judges and the public prosecutor). There is not really a diarchy, but more or less a hierarchy between the head of the court and the director of the court clerk's office (the change of name to director is very recent).

There is a diarchy in Poland: the management of the courts is basically divided between two persons, i.e. the president of the court and the director of the court, who handles matters that are not the responsibility of the president. The specific rules regarding appointment of the president differ depending on the court, but generally the president is appointed by the Minister of Justice from among all the judges of the court, and with the approval of the general assembly of judges from that court. The director is appointed and dismissed by the Minister of Justice (thus, this is a political appointment; this is a very recent change in the law). The president generally handles all matters pertaining to the leadership of a court, in particular all matters pertaining to adjudication (administration of justice). The director generally takes care of all financial, fiscal and property matters of the court, so administration in the strict sense. Thus, if the president wants money, he/she needs to go to the director. In the Polish legal system, judges who perform administrative functions (president, vice president, department chair, etc.) influence the management of the court. At present, the tasks of the president of the court include, among other things court management and representation of the court outside the court (except for matters falling within the competence of the court director), in particular: to direct the administrative activities of the court in the scope specified in regulations; to determine the needs of the court necessary to ensure the proper functioning and efficient performance of the court's duties; to entrust judges, court assessors and court auditors with their duties and to release them from the duties; to analyse the judicial decisions of the court in the level of its uniformity and inform the judges and assessors about the results of this analysis, and in case of finding significant discrepancies in judicial decisions, to inform the First President of the Supreme Court about them. In turn, the tasks of the court's director include: to direct the administrative activities of the court within the scope specified in regulations; to perform tasks assigned, on the basis of separate regulations, to the head of the unit in the field of finance, economy, financial control, management of state treasury property and internal audit in these areas; to determine, in consultation with the president of the court, the location and number of posts in the court departments in which court employees are employed — judges, court assessors, court auditors, professional curators, assistant judges. The president of the court is in charge of all the judges in a court, and in practice can make a judge's life better or worse. In particular, the president appoints judges to the position of chief judge of a particular division. It is commonly said that all judges who hold these positions generally adjudicate far less than a general (line) judge, but make better money. Therefore, there is certain resentment towards chief judges. The relationship between the president of the court and the director of the court is not

clearly defined and depends on the practice developed in the particular court. However, the director of the court is significantly independent of the president of the court, since the supervisor of the director of the court is the Minister of Justice. Not all district courts, which are the lowest level of the judiciary, have a court director appointed.

In England and Wales, the key relationships are between court managers and the lead judge of the court (court managers are usually assigned several courts to manage in a region). As highlighted in a CEPEJ study 'Quality Management in courts and in the judicial organisations in 8 Council of Europe member States', in the England and Wales Report, well-run courts had good interactions between the court managers and lead judges.

The court manager deals with all the administrative matters. In Spain, under the new model, the administration is entrusted to the *Unidades Administrativas*. These units are presided over by the new *Letrados* (old court secretaries) and do not include judges. These units are designed, created and organized by either the Regional Secretaries of Justice, in the regions with competences over the administration of justice, or the Ministry of Justice, in the regions without competences over the administration of justice. Collective courts, such as all courts of appeal, including the Provincial Courts of Appeal, the Regional High Courts and the Supreme Court, retain their previous administrative autonomy.

In Russia, judges do nothing but administer justice by resolving cases. Therefore, they do not participate in court management. Clerks and judge assistants only fulfil subsidiary functions while administering justice. All judicial officers in a particular court, who are subordinate to the chairperson, are responsible for all organizational and logistical issues that occur. As a consequence, there is no competition over power or a diarchy between judges and other members of the court staff. Judges are separated from having to solve court management problems.

In Chile, a distinction has to be made between the management of the *reformed courts*, and the *non-reformed courts*. The Supreme Court — through a special management office, named *Corporación Administrativa del Poder Judicial* (CAPJ) — manages the human, financial, technological and material resources of the Chilean court system as a whole. In the reformed courts, four different organs handle management: the Committee of Judges (*Comité de Jueces*), the Presiding Judge of the Court (*Juez Presidente*), the Court Manager (*Administrador de Tribunal*) and the Heads of Departments (*Jefes de las Unidades*). These organs should coordinate their management functions based on the rules laid down by the legislature, the Supreme Court's practice directions (*autoacordados*) and the guidelines dictated by the same management organs, which can be found in the Annual Plan or in particular resolutions. For example, each court manager (*Aministrador del Tribunal*) at a local level should follow the general policies dictated by the Supreme Court's CAPJ. These general policies regulate issues such as staff appointment, evaluation and management of human and material resources, and elaboration of performance statistics, among others. The *non-reformed courts* have a staff comprised of, at least, one court manager, one head of department and administrative personnel, in the reformed areas. In the civil courts, non-reformed yet, there is no clear division between jurisdictional and managerial functions. The court

staff is not specialized in different departments. The organization is pyramidal, in which the judge at the top supervises the overall functioning of the court staff.

#### **4.5. Court managers at the regional level.**

Between the sphere of judicial administration and the sphere of court administration, there is room for judicial management at the regional level. On this matter, the situation of Spain is interesting. The regions that have assumed judicial competences provided by statute have notably increased their powers in the new model, as they are responsible for the design, creation and organization of both the centralized procedural offices (*Servicios Comunes Procesales*) and the administrative units (*Unidades Administrativas*), as well as the working hours, organization, management, inspection and management of personnel serving these units. The reforms have notably increased the presence of the executive branch — both central and regional — in the judiciary. Even though some authors have expressed doubts about the very constitutionality of the new model, the process continues to be implemented with the consensus of all the most relevant political parties at both the state and the regional levels. Historically, in the old unipersonal courts, the relationship between the judge and the court secretary was generally harmonious. One of them (the judge) held undisputed authority, whereas the other (the court secretary) was subordinated, but retained functional autonomy to authenticate or certify the files and, most importantly, manage the budget of the court through the predetermined tariffs earned from the parties. The judge's fixed state salary was normally inferior to the court secretary's variable income from court tariffs. This balance was undermined in the historical process that made the court secretaries dependant on a fixed state salary, and eventually was destroyed when, in 1985, court tariffs were abolished. Court secretaries, who were used to earning more than judges, suddenly earned less. And their natural subordination remained. They fell into a deep identity crisis. Comparative grievances became the norm. Soon they started to demand a certain equal participation in authority with judges, as well as emancipation from judicial supervision. Resolving this tension has been one of the driving forces behind the new model of administration of justice. In the new model, there is no possible diarchy or competition over power between judges and court managers, as court management has been altogether removed from the sphere of influence of judges and placed under the authority of the central and regional executive powers through the transformation of the old corps of court secretaries into the new hierarchical, discretionally appointed state corps of *Letrados de la Administración de Justicia*.

In France, there is a regional administrative office (SAR) which deals with human resources, real estate and advises the courts.

In the United States, the state courts of last resort decide the policy the lower courts will follow. The chief justice with the help of the state court administrator will implement those policies. But, even if the highest court normally makes the administrative policy for a state court system, it rarely allots much time for consideration of administrative issues (because the highest court is primarily concerned with the adjudication of cases). The role of the highest court is then to approve or disapprove the policy recommendations that are presented by the lower courts, often at the request of the highest court itself.



## **Chapter 5. The Role of the Council and Assembly as far as Court Management is Concerned.**

There is a great variety among countries as far as the council and assembly is concerned. It seems that their role is growing in the management model especially to take into account stakeholders.

In some countries, there is no general court assembly (Russia, Chile). Sometimes there is a court council where the court staff and stakeholders are present (England and Wales, France, the Netherlands). There may also be a committee composed only of judges (Germany, Poland). There is often a national committee of judges with management powers (Belgium, the Netherlands) or an independent agency (Norway, Sweden, Ireland).

It seems that in the traditional approach of civil law countries there is seldom an assembly, and if it does exist, it is mainly composed of judges. Court administration is connected to the Ministry of Justice. Quite recently, independent agencies have been created in certain countries to improve court management and the independence of the judiciary (Sweden, Norway) following the US model.

### **5.1. No assembly.**

In Russia, there is no general assembly or a governing council. The judges are responsible only to the Russian Federation authority. Other authorities' representatives are not supposed to interfere in the administration of justice or court management. Chairpersons may conduct meetings, briefings or press conferences with other representatives in case of need. All meetings are held only for the reasons of exchanging or giving information and they are organized by judicial officers.

In Chile, there is no equivalent to the Spanish, Italian or French Council of the Judicature, in which the different stakeholders of the judicial system can have representation. The, so to speak, 'internal government' of the Chilean judicature is in charge of the Supreme Court through its special management office. The Supreme Court appoints the members of this office. Therefore, other stakeholders — e.g. prosecutors, lower court judges, the government or the legislature — have no right to a voice nor to vote in this internal government of the judiciary. Certainly, this lack of representation of the other stakeholders creates political tension in Chile, particularly between lower court and higher court judges.

In Singapore, there is no general assembly. Nevertheless, there is a strong working relationship between the judiciary, the bar (as represented by the Law Society of Singapore) and the Attorney-General's Chambers.

### **5.2. Council of the court staff and stakeholders.**

To take into account stakeholders is something that belongs to the new management model. Nevertheless, in many countries 'stakeholders' are not represented at all in the administration of justice (Spain, Benin, Germany, etc.). I do not see a divide between civil

law countries and common law countries on this matter. In England and Wales, there is Her Majesty's Courts and Tribunals Service Board, which is composed of executive members, non-executive members, judicial members and a Ministry of Justice representative member. There are no media representatives or city hall representatives in court. However, past research shows that there have been some innovations to connect to the public through the use of "service level agreements", which take into account specific performance review by lawyers, police, and prosecutors'. In 2016, there were also initiatives taken on outreach and communication with the wider society, a judicial communications office with an annual press conference, publication of judgments (though not all), TV broadcasting and the creation of a judicial website and intranet.<sup>40</sup>

In France, there is a general assembly of judges, which has a power of recommendation only. The general assembly encompasses the general assembly of the judges, the general assembly of the public prosecutors, the general assembly of clerks and the general assembly of civil servants (civil servants have no judicial competence). There is a permanent committee board composed of representatives of the general assemblies. Recently (Art. R212-64 COJ, Decree 26 April 2016), the court council was created to open the door to the stakeholders (the bar, towns, associations, representatives of the penitentiary administration, etc.). Benin also has a general assembly, which is composed of judges and clerks and which takes certain decisions.

In the Netherlands, there are three assemblies: the court assembly with consultative power (composed of the judges of the court), a court committee representing all of the staff (*Ondermingsraad*, since 2002) and a committee composed of stakeholders from outside the court, for example, the Gueldre court has a committee (*De Raad van Advies*) made up of a law professor of Leiden University, a consultant in product innovation, a doctor and a management professor from Amsterdam.

### **5.3. Committee composed of judges.**

In Germany, the courts have no governing council composed of non-judicial stakeholders. The judge's council has a say in such matters as preventive health management, the duration of convalescent leave, vacation schedules and various 'soft' management concerns. Committees composed of both judges and staff are typically formed for such informal tasks as organizing internal holiday celebrations or similar events.

In the Polish legal system, common courts are organizationally separated, so in their structures there are no representatives from other professional corporations, public administration, etc. The judges form a judicial self-government, whose bodies are: the general assembly of judges of appeal, the general assembly of regional judges and the gathering of the judges of the particular court. In addition, court boards are formed inside court structures. The boards include only the judges of the particular court (five in the court of appeal, eight in the regional court, four of which are district court judges

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<sup>40</sup> Lord Chief Justice's Report 2016, pp. 30-31, <https://www.judiciary.gov.uk/wp-content/uploads/2016/11/lcj-report-2016-final-web.pdf> last accessed 14/03/2017.

operating in the area of the relevant district court). The tasks of colleges (both courts of appeal and regional courts) include in particular: expressing opinions on candidates for the position of the head of training and the position of spokesperson for the courts, and expressing opinions on the dismissal of persons from those positions; and also expressing opinions on the professional behaviour of judges and commenting on cases of judges violating ethical standards.

#### **5.4. A national committee of judges.**

This matter belongs more to judicial management than to court management. Nevertheless, it is important in order to understand the style of the court management. Traditionally in civil law countries, the Ministry of Justice is in charge of judicial management (France, Germany), which may raise an issue of independence. Strangely enough, England and Wales have only recently created a Ministry of Justice (2005). There are more and more independent national bodies to deal with judicial management (Ireland, Norway, Sweden, the United States Hungary, etc.). In certain countries, judicial management is performed by the council of judges (the Netherlands) or by the supreme court (Chile, the Council of State in France for administrative justice).

In Hungary, the National Committee of Justice (OBT) functions as the supervisory body for the central administration of the courts. In addition to its supervisory tasks, the OBT also takes part in the management of the courts. OBT meetings convene monthly. It has its own budget. Every judge may attend its public meetings, but the judicial staff (court clerks, court secretaries, court officials, manual labourers) are not represented, and they may not be present even as an audience.

In the United States, in regard to the state courts, the Conference of Chief Justices (CCJ) was founded in 1949 to provide an opportunity for the highest judicial officers of the states to meet and discuss matters of importance in improving the administration of justice, rules and methods of procedure, as well as the organization and operation of state courts and judicial systems, and to make recommendations and bring about improvements on such matters. Membership in the Conference consists of the highest judicial officer of each of the fifty states, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, and the territories of American Samoa, Guam and the Virgin Islands. The Conference is governed by a board of directors and has several standing, temporary and special committees to assist the Conference in meeting its objectives. In 1983, the board of directors voted to adopt a non-profit corporate form of organization. We can also find the Conference of State Courts Administrators (COSCA), established in 1955 and dedicated to the improvement of the state court systems. Its membership consists of the state court administrator or equivalent official in each of the fifty states.

The Judicial Conference of the United States is the national policy-making body for the federal courts. The statute establishing the Judicial Conference states that it will: comprehensively survey business conditions in the courts of the United States; plan assignments of judges to or from courts of appeals or district courts, where necessary; submit suggestions to the various courts that promote uniform management procedures and the expeditious conduct of court business; and continuously study the operation and effect of the general rules of practice and procedure in the federal courts. The

Conference also supervises the Director of the Administrative Office of the U.S. Courts in his/her role as the administrative officer of the courts of the United States. In addition, certain statutes authorize the Conference to act in a variety of specific areas dealing with the administration of the courts. There is also the Circuit Judicial Council at the regional level. It oversees the administration of courts located in that circuit. The chief circuit judge serves as chair, while an equal number of other circuit and district judges comprise the judicial council. Each judicial council appoints a circuit executive who works closely with the chief circuit judge to coordinate a wide range of administrative matters in the circuit. This detail shows that the goal is more to coordinate than to dominate as in the civil law system.

## **Chapter 6. The Interactions on a day-to-day basis between Court Staff.**

In certain countries, meetings are not legally compulsory or organized in advance. In all the countries casual and informal meetings are possible and very useful. It is difficult to say whether meetings are more organized or favoured in common law countries than in civil law countries as a matter of fact. However, meetings fit better in the coordinate system, and there have traditionally been very few meetings between judge and staff in civil law countries. The management model based on quantitative indicators and assessments does not necessarily call for meetings, whereas the relational or cooperative model assumes meetings.

### **6.1. Informal interactions.**

In many countries, interactions are usually casual and informal. In Argentina, on a daily basis, communication between court employees and officials with respect to office management is merely casual or promoted by an external requirement. In general, there is no mid- or long-term internal planning in need of constant monitoring. Work meetings around this subject are not common, since a culture of management is still in the initial stage. Therefore, internal communication channels are not highly developed. As a result, evaluation, correction and several aspects of court office management generally are undertaken unsystematically, which often leads to contradictions or perplexity at different levels. In Argentina, there are no fixed or rigorous patterns regarding functional relationships between court staff. They depend on the managerial criteria adopted by each judge. In some cases, the judge assumes a strong management profile and receives daily reports from the clerk, law assistants or other employees of the court. In other cases, the judge isolates himself/herself from office management issues, so the clerk or the law assistant receives the periodical reports. Depending on the degree of delegation, this kind of information is channelled to the chief officer or senior officer of the court.

In Hungary, the President of the National Court Office supervises the courts' activities and exercises the employer's rights in respect of the presidents (except the President of the Curia). Judges tend to keep their distance from their presidents. Only the president's personality and collegial behaviour can remedy this situation: if the president does not take the initiative to establish a close relationship with the employees, he/she functions clearly only as a real inspection body, and because their careers depend on it, judges keep their distance for good reason. Court executives do not interfere with the

professional work of the judges; they only have control over the quantitative and efficiency parts of their work. Law enforcement employees who are not judges are in almost total existential dependence on the presidents of the courts. Professional executives (the head of a college, the president of a chamber) are court executives as well who direct, help and supervise the professional work. Judges are essentially on the same level and have a collegial and proper relationship with their executives.

In Poland, at the national level there are no standards developed in this area, but in individual courts it is a matter of procedure developed by successive court presidents and court directors who work together at the intersection of their competences.

In Russia, judicial officers, according to the chairperson's orders, fulfil the day-to-day interactions relating to court management matters. Chairpersons, with the consent of the Court Department at the Russian Federation Supreme Court, also assign duties to the judicial officers. The officers are in charge of various aspects of court management according to their specialization. Chairpersons organize meetings with judicial officers if needed. Each chairperson decides for himself/herself how often these meetings should take place. In case of a small problem (e.g. lack of paper, problems with the computer) experienced by a judge, he/she is allowed to apply directly to the officer responsible.

In United States state courts, most courts periodically set aside a few hours for administrative issues. They also propose various policies that will be submitted to the highest court for approval.

## **6.2. Formal interactions.**

In England and Wales frequent meetings are highly likely. The better run courts have positive and constructive interactions.

In France, the number of meetings between court staff depends on the head of the tribunal. Some of them like to have a meeting once a week with the clerks, directors and the public prosecutor although not necessarily all together. Some of them do not organize many meetings, maybe one per month. There are no strict rules on this matter. However, there is a dialogue between management of the courts of appeal and the Ministry of Justice to prepare the budget. There are also meetings between the heads of the first-level courts and the head of the court of appeal to prepare for the dialogue by management with the Ministry. This system is highly hierarchical.

In Spain, in the new model the role of the Ministry of Justice and the Regional Secretaries of Justice in the administration of justice has been strongly reinforced. The decisions regarding human, electronic and material resources are now essentially made on a political level. The decisions are taken by consensus between *both* the Ministry of Justice *and* the Regional Secretaries of Justice on the most important matters. These decisions will then be implemented by the hierarchical, discretionally appointed *Letrados* or by the administrative units (*Unidades Administrativas*) themselves, concerning day-to-day management, these units being created by either the Ministry of Justice or the Regional Secretaries of Justice in their respective territorial areas of influence, and presided over by a *Letrado*.

In Germany, in smaller courts, informal interaction between court staff and judges/public prosecutors typically occurs during coffee breaks. Another form of communication encountered is weekly meetings (*jours fixes*) of the president, vice president, head of management, head of legal training and other office holders.

In Hungary, there are two forms of interactions: formal interactions (professional conferences, sessions), including the professional session of the heads of colleges (compulsory, four times a year), the plenary session of judges (annually), sessions of heads of groups (generally once a week/once in a fortnight); and informal interactions (open door), including heads of groups — presidents of chambers — deputy heads of colleges, which are open to addressing any problems (professional or personal) on a daily basis, and they can report to the court executives. This is the preferred form of interaction to handle problems on a confidential basis, which helps to avoid writing problems down immediately (expiration of time limits, professional problems, personnel conflicts, technical difficulties, e.g.). Judges prefer this method because since it is more confidential, it is more effective, and faster. It is less unpleasant and it has a preventive aspect.

In the Netherlands, as required by the rules of procedure, the court council has to have at least twelve meetings a year according to a scheme proposed by the head of the court. There are ad hoc meetings as well.

## **Chapter 7. Staff Management and Judicial Independence.**

Some countries hold the view that management and independence may overlap, so they protect the judges (Hungary). Other countries think there is no risk at all of interference between court management and the independence of the judiciary (Germany). In certain situations, there are conflicts between the council in charge of judicial management and the Ministry of Justice (Argentina, the Magistrate's Council).

### **7.1. No threat to independence.**

In Benin, the tribunal handles operating expenditures. The Ministry of Justice handles investment expenditures. This distinction does not impede independence, which must attach to the chief judge and to the head of the court, taking into account the good administration of justice.

In Germany, concerning the federal courts, the ministries with the Minister of Justice represent the head of court management. Subordinate to the ministry is the president of the court, who is the head of the staff. Material concerns and requirements such as the maintenance of buildings, furniture, technical equipment, stationery and literature are in part subject to *Gerichtsverwaltung*. These tasks are generally not perceived as posing a threat to judicial independence. Needless to say, the tasks of the judges in this respect are purely organizational; the executive (*Ministerialverwaltung*) allocates the budgets to the courts. The court president exercises the *Hausrecht* (a somewhat idiosyncratic term meaning the right of the householder to determine who shall be allowed or denied access). This right also includes all sorts of security measures varying in intensity, the admissibility of which is unilaterally agreed upon. Judicial independence is granted only

concerning jurisprudence in its narrow sense. Administration and management of the court as an executive task are not encompassed. Notably, public prosecutors do *not* have a stake in these areas of *Gerichtsverwaltung*.

In Russia, chairpersons carry out staff management. It is not considered interference into judicial independence.

Building maintenance (construction, repair), facilities, provision of equipment, vehicles, computer software and information support are carried out by the Court Department at the Russian Federation Supreme Court through its regional divisions.

The Federal Bailiff Service, a federal body of the executive power, provides security of court buildings and trial order in courtrooms. Generally, bailiffs are not subordinate to judges, and judges do not govern the Service. However, during the trial, the judge, being the main governor of the proceedings, may well give obligatory orders to the bailiff on the discipline of the participants.

Generally, judges are appointed to their positions by the President of the Russian Federation. Justices of the peace and judges of regional constitutional courts and charter courts may be either appointed or elected (it depends on the regional legislation). Judicial officers are appointed to and removed from their positions on the chairperson's orders. They are considered to be employees. The judicial officers under the supervision of chairpersons carry out the interior (within the court system) and exterior (with the mass media) communications. These rules are believed to keep judges independent from any interference. Moreover, there are some restrictions on judges' communications for the purpose of ensuring their independence.

In Singapore, the Chief Justice, the Judges of Appeal and the Judges of the High Court are appointed by the President on the advice of the Prime Minister. The Constitution of Singapore provides that judges have security of tenure. The law determines their remuneration and other terms of office (including any pension or gratuity) will not be altered to their disadvantage after their appointment. Judicial Commissioners of the Supreme Court may be appointed for a specified period and may exercise the powers and perform the functions of a Judge of the High Court. They are independent and impartial, and uphold the rule of law.

## **7.2. Some threat to independence.**

In Argentina, the Magistrate's Council was created through the 1994 Constitutional Reform. It is one of the main expressions of the 'Euro-influenced' 1994 amendments to the 'American style', original Constitution of 1853. The Magistrate's Council, among other powers, manages the resources of the judiciary and executes the budget that the law assigns to the administration of justice. The Supreme Court has repeatedly put limits around the Council's attributions, creating in some cases a public conflict between the two organs. In multiple administrative resolutions (*acordadas*), the Supreme Court has stated that although the 1994 amendments assigned the Magistrate's Council the task of general administration and budget execution, it did not modify the role of the Supreme Court as 'head of the judiciary', responsible for its 'governance'. According to this self-defined understanding of the Supreme Court, that responsibility includes, for example,

the exclusive attribution to issue final decisions in the field of functional reorganizations and remuneration of judges, judicial staff and employees of the judiciary. This means that the Supreme Court remains chiefly responsible in the field of the human resources of the judiciary. For that reason, it is fair to say that the management of the judiciary at the federal level in Argentina has two main referents: the Magistrate's Council (in charge of a sort of general administration) and the Supreme Court (head of the judiciary and chief of its governance). This tension has led to some conflicts between them, in which the Supreme Court has had, almost every time, the last word, suspending or nullifying in some cases administrative decisions of the Council.

In Spain, since it is the Spanish government that determines the regions' budgets each year after negotiations based on political, not clear-cut parameters, all political players normally seek to maintain a certain level of consensus. The new organization has reinforced the roles of both the central and the regional executive powers, and the newly reorganized court secretaries (*Letrados de la Administración de Justicia*). Correlatively, the system has objectively narrowed the judges' scope of authority, as they are now excluded from both the day-to-day procedural handling of cases and most administrative decisions. By losing authority in those realms, the judges' independence has also been indirectly affected.

In England and Wales, a member of staff of Her Majesty's Courts and Tribunals Service (HMCTS) will manage estates, maintenance, new technology (which will be a centralized issue and mainly outsourced to the private sector), security, human resources and communications. The judiciary remains independent within the organization. The Lord Chancellor and the Lord Chief Justice as well as the Senior President of Tribunals do not intervene (whether directly or indirectly) in the day-to-day operations of HMCTS and have placed the responsibility for overseeing the leadership and direction of it in the hands of its board. The Chief Executive is responsible for the day-to-day operations and administration of the agency.

Furthermore, the Framework Agreement between the independent judiciary and HMCTS sets down that the protection of judicial independence is paramount in any activities of HMCTS and the Ministry of Justice.

In Hungary, the professional direction of the judiciary is fundamentally different from the administrative conduct of duties. There is no overlap between them, which protects judicial independence. Judges (and even the court executives as well, who adjudicated before their posting and will adjudicate after it) strongly require and protect this system, which is considered evident.

In Poland, the organization is problematic. The administrative tasks of the courts are: to ensure the proper technical, organizational and property conditions for the functioning of the court and the performance of the court's tasks; to ensure the proper conduct of the internal administration of the court, directly related to the performance of the duties of the court. Those are the responsibilities of the court's director and subordinate clerks. In turn, the administrative supervision over the activities of the courts can be divided into external supervision, administered by the Minister of Justice through the supervisory service, which is composed of judges delegated to the Ministry of Justice, and internal supervision performed by the president of the court. Nowadays, the powers



of the Minister as an executive body are predominant also because most of the administrative functions in the common courts have been entrusted to the presidents of the courts, that is, to the bodies appointed and subordinate to the Minister of Justice. At the same time, the influence of the president of the court on the finances of the court was limited by the introduction of the director or financial manager of the court, who directly submits to the Minister when it comes to the tasks and powers of disposing of the budget of the courts. However, certain administrative functions were left in the hands of collegial bodies, selected in whole (general assembly) or in part (board) by the judges themselves. It must be borne in mind that administrative supervision activities cannot enter the area where the judges and the assessors are independent.

### **7.3. Accountability of judges.**

Bonuses are granted to judges in certain countries — France, Spain and Poland for example. They depend on controls in place in respect of the performance of judges. Management controls exist in certain countries (France, the Netherlands and Argentina). It more often involves the hierarchy in civil law countries. In Argentina, there are jurisdictions in which the concrete experience in management ‘control’ comes from the top and concentrates on supervision aimed at avoiding judicial delay. In other cases, judicial management offices have more comprehensive missions (for example modernization of procedures and justice services) or are complemented by planning departments.<sup>41</sup>

In Hungary, statistical data relating to judges are available to the general public. The amount of work they perform is available too. For measuring and evaluating the quality of the judicial work beyond the statistics, there is a detailed and legally regulated inspection of judges. Its set of predetermined criteria have been renewed, unified and objectified in recent years (they include court session visits and monitoring of files, legal examination of fifty random cases, inspection of statistical data relating to individual judges). Inspections are conducted in a transparent manner at the local level by fellow judges. Some inspectors have a light touch, others go by the book, and the standards are not always equal; nevertheless, inspection outcomes determine the career advancement of the judge. This results in increased conformity by judges with the professional standpoint taken by second instance inspectors and motivates the interest of the judges in maintaining a good relationship with them.

Accountability for the maintenance of the buildings falls to the presidents of the general courts (twenty county-regional courts), the presidents of the courts of appeal (there are five) and the president of the *Kúria* (one). High-budget projects (restorations, the purchase of new buildings) proceed with the approval of the President of the National Court Office so that it can be incorporated into the budget of the judiciary. This is a completely centralized system. Building management is overseen at the national level. Any meaningful local development or modernization can only be achieved with the approval of the National Court Office (otherwise there are no funds available).

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<sup>41</sup> See Argentinian Report.

In Spain, judges retain ample autonomy as regards workload objectives. In 2003, a law was passed which regulated the remuneration regime of judges. That same year, the General Council of the Judiciary drafted a law which would regulate the measurement of the productivity of judges. However, it was annulled by the Supreme Court in 2006 and has not yet been replaced. The measurement system that is currently used — a provisional arrangement accepted by associations of judges and the General Council — is based solely on the number of decisions issued by each judge. In any event, the bonus or a variable part of the judges' salary that mirrors this measurement system is extremely limited (not more than 2 per cent of their total salary).

In France, the organization allows the judge to remain independent up to a certain point. There are indicators and workload defined for each judge by the head of the tribunal (under the pressure of the objective of a certain number of cases each year). It has no immediate impact on the independence of the judges. Nevertheless, under the quantitative pressure, judges may work more quickly than they would like and may leave for their successors the complicated cases at the bottom of the pile (interviews). There is an individual assessment of each judge every two years which determines the future of their careers. Bonuses which exist have been seen as a threat to the independence of the judges, since a judge depends on the head of the court for a part of his salary. A case against bonuses was brought to the Council of State, which decided that the bonus was acceptable. As a result, all judges receive almost the same amount of bonus.

In Brazil, the courts and the National Judiciary Council establish 'metas', objectives, which may vary: they may deal with economy of office paper usage or electric energy, sometimes they deal with certain types of actions related to, for example, corruption or the environment (this programme was launched in 2012 and evaluated in 2015). The New Civil Procedure Code addresses the principle of efficiency (Art. 8); Article 69 allows the joining of cases for efficiency reasons.

## **Chapter 8. Assignment of Judges (professional judges, lay judges, etc.) and Allocation of Cases.**

There are two kinds of countries as far as assignment of judges and allocation of cases is concerned. There are countries where the principle of the natural judge applies and others where it does not apply. At first, the principle was used by the courts of appeal (called 'Parlements' then) to impede the king from interfering in a case. The first set of countries look to the potential complexity of cases and the second set looks to some objective criteria even though not compulsory according to the constitution. The tendency is to render the system more objective and at the same time to take into account the complexity of cases. Traditionally, the principle of the natural (or lawful) judge does not exist in common law countries (or in certain countries somewhat close in legal perspective, such as Norway and France). The issue of allocation of cases involves distinguishing the assignment of judges from the allocation of cases in itself. It is an

irony of history, according to one Italian scholar, that the principle seems to have originated in France during the *Ancien Régime* but does not exist in France anymore.<sup>42</sup>

### **8.1. Assignment of judges.**

The appointment of judges is a question pertaining to judicial management. The assignment of judges in a court is certainly a matter pertaining to court management. The assignment may be decided by the head of the court (France), the general assembly (Benin) or the committee (Germany) depending on which body has the power to decide (see Chapter 4). The divide between common law and civil law does not have an impact on this matter.

In Benin, the general assembly decides the position of judges in the court. In France, each year the head of the tribunal decides on the assignment of judges to the different divisions on the advice of the general assembly. In a similar way, in England and Wales the Presiding Judges are responsible for the overall assignment of the judiciary and the allocation of cases on their circuit. The protocol setting out the Responsibilities of Resident Judges and Designated Civil and Family Judges makes clear that the Resident Judge has the general responsibility, subject to the guidance of the Presiding Judges, within his/her court centre for the allocation of criminal judicial work, to ensure the just and efficient despatch of the business of the court or group of courts. This includes the overseeing of the assignment of judges to the court or group, including the distribution of work among all the judges assigned to that court.<sup>43</sup> In Poland, the assignment of judges to the departments and the scope of their duties fall within the competence of the president of the court (of appeal in courts of appeal, and in the regional and district courts, the president of the regional court), who determines, among other things, the assignment of judges, court assessors and court auditors. The president of the court does so, taking into account the specialization of the judges (as well as that of court assessors and court auditors) in the recognition of different types of cases, the need to ensure the proper placement of judges, court assessors and court auditors in court departments, and even the distribution of their duties and the need to ensure effective court proceedings.

In Germany, both professional judges and lay judges, as far as provided by federal law, are assigned to their respective chambers in the distribution-of-business plan made by the committee. In this regard, no difference is made between professional and lay judges. One exception to the self-given distribution-of-business plan practice concerns the Federal Constitutional Court.

In the federal system of the United States, each federal judge is commissioned to a specific court. Judges have no authority to hear cases in other courts unless they are formally designated to do so. Because of heavy caseloads in certain districts, judges from other courts are often asked to hear cases in these districts.

### **8.2. Allocation of cases among tribunals.**

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<sup>42</sup> P. Alavazi del Frate, *Il giudice naturale. Prassi e dottrina in Francia dall'ancien regime alla Restaurazione*, Viella 1999.

<sup>43</sup> See England and Wales Report.

In the United States federal and state courts, case allocation is based on the respective division: the Civil Justice Division receives civil cases, the Criminal Justice Division receives criminal cases, a Community Justice and Tribunals Division may handle community justice issues such as those relating to the community, harassment and small claims, and additionally there are state court centers for dispute resolution.

Sometimes the allocation of cases seems to be almost a jurisdictional rule. In Argentina, the general rule on allocation of cases is to draw from among the tribunals that may be competent over the case. That mechanism is considered useful to prevent arbitrary appointment of a judge that could lead to a violation of the right to a 'natural judge'. Normally, each jurisdiction has an office that carries out an automatic drawing process to determine the tribunal in which the case will be heard (General File Reception offices).

To prevent 'forum shopping', the system determines the draw and sends the case to that same tribunal. If, for example, this judge considers that the new case has no connection with the previous case, he/she has to send the case file back to be redrawn.

The system serves two main purposes. The first one, as anticipated, is to strengthen the right to a natural judge (Art. 18, National Constitution of the Argentine Republic), preventing arbitrary assignment and forum shopping. The second one is to rationalize the workload. The latter is achieved by instructing the system to send an equal number of cases to the different tribunals that may have jurisdiction over the case.

### **8.3. Allocation of cases inside the court.**

Common law countries do not know the principle of the natural judge as the main civil law countries apply the principle. Countries in between (e.g. Norway) do not have this principle in their tradition, which can lead to domestic controversy. The concept of natural justice which exists in the common law is close to the fair trial and impartiality principles but is not precisely the right to have a judge assigned objectively. This principle requires that the court be constituted prior to the beginning of the trial. In Germany, it is the principle of lawfulness which dates back to the 19th century.<sup>44</sup>

#### **8.3.1. Countries with the natural judge principle.**

In Argentina, when the body is divided into chambers or panels, as it happens, for example, in the courts of appeal, the same court that selects the chamber that will hear the case draws the case. There are also mechanisms of allocation of appellate courts by 'shifts', which means that each case will be delivered to the chamber that is 'on shift' when it arrives. Supreme courts have different mechanisms of case allocation, depending on their structure and organization. There are some provinces in which the supreme court is divided into chambers based on specialization, so the allocation will depend on the matter involved in each case. Other supreme courts are organized in unified bodies with no chambers or panels, such as the Federal Supreme Court or the Supreme Court of Buenos Aires Province. In this hypothesis, allocation by random draw,

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<sup>44</sup> S. Shetreet and C. Forsyth, *The Culture of Judicial Independence*, 2011, Nijhoff, pp. 496-497.

as a general rule, serves the purpose of defining the order in which to study the case and deliver each written vote.

In Germany, the committee (*Präsidium*) of each court basically conducts the allocation of cases. The composition of those committees as well as the appointment of their members and the method of decision-making is regulated under federal law. As a central function of this committee, federal law also governs the allocation of cases in the form of a distribution-of-business plan. The committee has to define the allocation of the chambers and the criteria for distribution of business among them. This plan has to ensure that each case is allocated by objective criteria in advance so that any manipulation is precluded. Possible criteria for the distribution of business and allocation of cases are: time of arrival, subject area, initial letter of the name of a party, in sequence, etc.

In Chile, the reformed courts allocate cases to each courtroom according to general guidelines, approved every year by the Committee of Judges based on the proposal of the Presiding Judge. Specifically, the court manager implements case allocation based on these general guidelines. In these courts a master calendar system operates, not a single calendar. In other words, there is no single judge who takes care of the entire case, from the filing to the disposition. Instead, different judges may intervene in different parts of the proceedings depending on their specialization. In that sense, the reformed courts do not have a proper allocation of 'cases' to particular judges, but the allocation of 'tasks' among them. Furthermore, the Case Management Department (*Unidad de Administración de Causas*) is in charge of the remaining tasks of scheduling of hearings and deadlines for each case. The efficiency of this allocation system depends on grouping cases that have common elements, such as the same parties, similar legal matters or complexity level. Accordingly, a 'typology' of cases is used by court managers to guide the allocation of cases and to estimate the duration of hearings, among other procedural decisions.

In the Netherlands, since the reform of 2013 the inner organization of courts is no longer organized by statute. The courts benefit from a large amount of autonomy. The key words of the reform are concentration and differentiation of the offer of justice. Each unit of the court has several categories of cases. The executive board establishes the criteria upon which to allocate cases; the chief of a unit may adapt the criteria to the local situation. The general objective is to allow the courts to answer to the demands of citizens in terms of cases and volume. The allocation order indicates for each kind of case the location of the hearings, the section in charge and the planning. Usually there are a civil law department, a criminal department and an administrative department. The assignment order is published. The executive board may derogate from the orders in the event of issues relating to the availability of judges or if a specialization is needed. A case or a kind of case may be allocated to another section on a temporary basis. The head of the department may opt for another allocation of a case on account of the complexity of the case or if a special expertise is needed. It is a mixed solution, which is interesting: the principle of the natural judge may have exceptions, in particular for specific expertise in the management model.

In Spain, as regards 'jurisdictional' activity, the allocation of cases (*reparto*) is made by predetermined rules among the several courts having subject matter, territorial and functional jurisdiction. The *Sala de Gobierno* section of the relevant Regional High Court approves and publishes the allocation rules previously proposed by the Meeting of Judges. This section can suggest the modification of the rules when deemed appropriate. The main criteria are (a) the subject matter, as some courts are specialized; and (b) the identification number, i.e. the number given to the file upon the first 'procedural' activity. The actual allocation is carried out under the supervision of the dean judge (*Juez Decano*), who in turn is assisted by the court secretary appointed for that purpose. As regards the 'procedural' activity — i.e. the activity within the *Servicio Común*, the centralized provincial procedural bureaucracy that handles all cases — the allocation rules are far from clear. It seems that the *Letrado Director* — a discretionally appointed civil servant — will be, to a large extent, free to choose the team of *Letrados* and other minor civil servants who will handle each case, having regard for their personal skills and competences. It may be interesting to point out that the shift to the management model seems to go against the principle of the natural judge.

### **8.3.2. Countries without a strict natural judge principle.**

In France, each year the head of the tribunal decides on the assignment of judges to the different sections. Then the cases are allocated to the competent section. If there are two sections having the same competence (in large courts), the rule to dispatch the case is objective (usually one new case out of two for one section and the other case for the other section). The principle of the natural judge (or lawful judge) does not really exist in France, at least not in the Constitution. The head of the tribunal is allowed to assign the judges and allocate the cases as he/she wishes. It is rare for a matter to rise for discussion. The advantage of this system is that the head of the court may allocate a very complex case to a much-experienced judge or specialized judge. The annual distribution-of-business plan made by the head of the court is not a judgment or an administrative document, so there is no recourse against it (except a never used recourse for abuse of power). This document is sent to the general assembly to get its recommendation, but the head of the court has the last word.

In Hungary, every court must establish rules on case allocation and make them accessible to the public. The automatic nature of signalization is expected; however, nowhere is it guaranteed. The system can be manipulated and it will not be traceable afterwards. This has a positive side, notably the specification. The executive who allocates the cases knows the strong and weak sides of each judge (for example, the presence of the press, resilience under heavy workload, knowledge about a specific type of case, personal difficulties such as illness or family matters); but there is a negative side to this which is the unequal distribution of hard and easy cases, the deliberate helping or obstructing of someone. The system can be manipulated such that a certain case may be allocated to a specific judge or a certain individual concerned with a case may be allocated the case, and thereby control the 'luck of the draw' element.

In England and Wales, the allocation of cases is subject to procedural law in both civil and criminal procedure, and is a judicial function. In civil law, they are allocated to specific tracks, and in criminal law to particular courts depending on the seriousness of the crime.

In Poland, the allocation is unilateral and generally unregulated. There is an on-going discussion about changing this procedure. There are no objective criteria. According to the changes planned in the Polish judiciary, the allocation of cases will take place on the basis of the rules specified in the regulations of the functioning of the common courts assigned by the Minister of Justice after consultations with the National Council of the Judiciary. The regulations define, among other things, detailed rules for the allocation of cases, including: how to draw a case, how to divide a case into categories in which a random allocation occurs, how to reduce the assignment of tasks on the basis of functions and justified absences as well as the grounds for temporary suspension of the allocation of cases. From a technical point of view, this process will be supported by a special electronic system (according to its creators — modelled on Germany), which is supposed to properly ‘weigh’ particular issues and theoretically lead to a situation in which none of the judges will be overly burdened in relation to other judges of the same department. The effectiveness of this solution is unknown, because it has not yet been implemented (statutory changes are in the publishing stage). It is also intended to strengthen the principle of constancy of the composition of the adjudicating panel, except for special fortuitous events, such as the chronic illness of a judge.

In Russia, the rules of case allocations between judges depend on the court type. In commercial courts, there has been a computer allocation system in operation since 2005. The courts of general jurisdiction have a different tradition. The chairpersons or heads of the colleges (there are basically three colleges — civil, administrative, criminal) allocate cases to the judges under their supervision. There are several criteria of allocation: for example, the territory which a particular judge is responsible for and subject matter. Lay judges (jurors) are chosen from the electoral register.

In Singapore, to more effectively manage the caseload, the Supreme Court has implemented a modified docket system. This affords the judges a degree of specialization and enhances the court’s ability to cope with the ever-increasing complexity of the law, especially in specialist and technically difficult areas, such as intellectual property, construction, and banking and finance. It also ensures that issues can be anticipated early on in the life cycle of a case and actual hearings can then be more focused on the substantive issues.

In United States state courts, judge assignment methods vary, but all courts use some type of random case allocation procedure and manage caseloads so that each judge in a court receives roughly an equal caseload.

## **Chapter 9. Evaluation, Accountability and Responsibility of Judges and Courts.**

A distinction may be drawn between the responsibility for management tasks and the question of assessments and bonuses of judges.

### **9.1. Responsibility for management tasks.**

The expression ‘responsibility for management tasks’ may be understood as a description relating to the person in charge of management tasks, and as the disciplinary

sanction of judges and staff in case of management mistakes. The judge has a general responsibility which is not limited to management tasks and is usually protected by the constitution.

#### **9.1.1. General responsibility of judges.**

In Algeria, judges are evaluated and may be sanctioned if they commit a fault. In a criminal matter, alternative ways to deal with cases have been put in place. The quality of judgments seems to have increased and the motivation of judges is better than in the past. Information technology has been introduced (videoconference, digitalization of files, a web platform for each court since 2015). As a result, the work methods have been streamlined.

In Argentina, in order to reinforce judicial independence, there is a constitutional principle of stability of tenure, by which judges hold their offices during good behaviour. When magistrates breach that standard of conduct (committing crimes or failing to perform their duties) they can be subjected to different forms of impeachment or disciplinary mechanisms, depending on each jurisdiction.<sup>45</sup>

In France, when a judge commits a serious error a disciplinary procedure is possible in front of the judicial council (there are several findings of fault each year, but the sanctions are rarely severe, the worst may be to be deleted from the rolls of the magistrates body or forced into early retirement). A citizen who proves to have suffered harm because of an error made by a judge may bring an action for liability against the French State (there are several cases a year, especially when the duration of the trial was not reasonable).

#### **9.1.2. Specific responsibility for management tasks.**

In the event a court does not meet objectives, the ramifications may vary: cuts in the allocation of resources for the court (England and Wales), an increase in the allocation of resources (France, if it is justified), education of the chief judge (Russia), positive incentives only for the court that meets the objectives (the Netherlands, Belgium on-going discussions), disciplinary measures against judges or staff (Argentina, Poland). It is difficult to draw a line between civil law countries and common law countries on this matter. It may well be that common law countries rely on case management more than on court management. The careers of judges are especially at stake in the 'hierarchical' system of the civil law. In comparison, there is much less sanctioning of judges in the common law system.

##### **9.1.2.1. Specific responsibility for management tasks in civil law countries.**

Since judges are civil servants in civil law countries, the consequences of bad court management seem to fall mainly on the careers of judges (Germany, France). There is a general tension between (and debate over) the natural judge principle and workload

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<sup>45</sup> See Argentinian Report.



calculations (France, Poland, Switzerland, Germany).<sup>46</sup> In a hierarchical system, sanctions on a judge may be disciplinary. Sometimes the judge may be obliged to take an education course (Russia).

In Germany, the comparison of the number of cases processed is a key factor in the evaluation of judges. As such, it is a viable method by which to prepare staff reports. Due to the different degree of the legal complexity of a given case, however, such a quantitative comparison requires comparability of the cases decided. It appears questionable whether these ideal requirements can really be met; even if they are, there remains a considerable amount of subjectivity. Notwithstanding these hindrances to a level playing field, there is little doubt in academic discussion that there must be at least one type of objective variable for the evaluation process of judges and that these methods do not impose a threat to judicial independence if carefully and correctly applied. Overwhelmingly, a judge's industriousness is only of importance for promotional decisions, as these are made on the basis of staff reports. Thus, with the exception of the entering phase, evaluation bears only indirect consequences.<sup>47</sup>

In France, each year the tax bill imposes new objectives on the judiciary in terms of duration and quality. There are six indicators (number of new cases, number of cases treated, duration by case, caseload, rate of admission at the judicial register of crime, rate of second appeal). The Minister checks the realization of objectives given each year according to these indicators in management dialogue with courts of appeal. Each court of appeal has an informal management dialogue with each tribunal (civil high court, small claims court, labour court, commercial court) in its jurisdiction. In each court, the president tells each judge the number of cases he/she has to write each year. This depends on the subject matter, the types of cases, etc. A working group was set up to fix a method to calculate the weight to be given to cases. This working group composed mainly of judges failed to provide a solution because of disagreement among its members. The consequences for the judges have affect, mainly, on their career advancement.

If a court does not reach the objectives, the dialogue with the court of appeal may lead to an increase in the allocation of resources. A head of a court explained that one year he preferred not to reveal the good results of his court so as not to risk having his resources cut. In France, as in Argentina or Italy, an attempt at mediation before bringing a case to the court is compulsory. The sanction is the non-admissibility of the case, which is rather serious. Again, it could be a matter of court policy to decide whether or not the sanction has to be strictly applied. Sometimes a detail may lighten a question: in many jurisdictions in France external mediators were located outside the court until the heads of the courts realized that it would work better within the symbolic atmosphere of the court.

There may be consequences for the court itself in terms of budget, but this can lead to a paradoxical situation (France, Belgium). The mediation policy may be a matter of court management.

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<sup>46</sup> On the debate between the natural judge versus workload calculus see in Switzerland, A. Lienhard et D. Kettinger, *La justice entre le management et l'Etat de droit*, 2016, pp. 62-79.

<sup>47</sup> See German Report.

In Argentina, each judge is responsible for the office management of the court that he/she runs. In collegial structures (for example courts of appeal), the president mainly exercises this responsibility. Some administrative managerial duties of the judge over 'his/her' court structure are considerable, but the supervision of efficiency goals is, as a matter of fact, very limited. Those objectives are generally limited to checking compliance with time limits provided for the different types of decisions, according to deadlines established in the procedural codes. Argentina has an expanded model of pre-judicial mandatory mediation in force, with some differences, in almost every jurisdiction. This model imposes on the plaintiff, prior to the filing of a suit, the requirement to go through a mediation process before a private or public mediator who, in most of the jurisdictions, is not part of the judicial staff. For the rest of the judicial officials and employees there are different disciplinary regimes for analysing their misconduct. At the federal level, the Supreme Court, the courts of appeal and the first instance judges have a general disciplinary power over officials and employees. For that purpose, there are special offices to conduct investigations, sometimes within the Magistrate's Council.<sup>48</sup>

In Norway, the judge can refer a case to a mediator, but, except in one specific court, he/she usually prefers to mediate himself/herself. It could be said that the general policy of a court with regard to mediation is that it is a matter of court management, especially since mediation could alleviate the number of cases, and so have a positive impact on the court budget.

In Belgium, there is on-going reflection over the sanction to be given to a court that does not reach the objectives. To cut into the allocation of resources could be counterproductive. An alternative idea would be to give incentives to the courts that meet the objectives, such as an additional allocation.

In Chile, each year the Presiding Judge of the Supreme Court gives a public speech in which he/she reports on the functioning of the court system during the previous period, both the jurisdictional and management aspects. Another mechanism of control is the personal inspections (*visitas*) conducted by higher court judges on the premises of the lower courts. Finally, judges and court staff can be held liable as a result of infringement of their legal duties, which implies disciplinary sanctions.

In the Netherlands, each year the executive board meets once or twice to assess the functioning of the court. The national body in charge of supervising the courts stands in a position of authority in relation to the executive board. One scholar considers that this control infringes the constitutional principle of separation of powers.<sup>49</sup>

In Poland, the judge holds disciplinary responsibility. Official offences may also be delinquent actions or omissions related to the excessive length of proceedings conducted by the judge, improper performance of administrative functions and breach of the financial management of the court. In addition, the directors of the courts and other clerks are responsible for their own actions. The main instruments for verifying

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<sup>48</sup> See Argentinian Report.

<sup>49</sup> See Dutch Report.

the implementation of administrative tasks are periodic qualification assessments, which also assess the effectiveness and usefulness of the employee in achieving the objectives related to the management of the courts. A negative result of the assessment may result in the consequences provided in the provisions of the labour law, including loss of employment.

In Russia, there is no evaluation, accountability and responsibility for courts. Only the federal authority decides whether a court should exist or not. All courts are financed and equally provided with all necessary resources according to the court's hierarchy. Statistics reports are important but do not have a significant role in respect of responsibility. A judge's personal responsibility and accountability may lead to various disciplinary sanctions up to his/her removal. In case of bad records or failure to meet objectives, the judge may be obliged to take an education course aimed at correcting these faults. There is mainly a moral aspect as to the impact of bonuses, assessments and statistics for judges.

#### **9.1.2.2. Specific responsibility for management tasks in common law countries.**

It is not clear whether the consequences of bad management are totally different in common law countries. There may be cuts in the budget as well (England and Wales), but no sanctions on the judges themselves, taking into account the authority of judges in the common law system (England and Wales, USA). Certain common law countries stress the importance of case management more than court management (India). When the judge is elected, a record of bad management may be a campaign argument (USA).

In England and Wales, the impact appears to be on the allocation of resources to the courts. There is no disciplinary sanction against judges for failure to meet objectives. The system is undergoing fundamental structural reform at the moment due to severe budget cuts — moving to an IT-based model with less access to traditional court hearings.

In India, pendency and arrears (backlogs) of cases are serious problems for the Indian judicial system. According to the recent estimates of the National Judicial Data Grid, a total of 24,247,103 cases are pending before various courts in India of which 7,815,594 cases are civil in nature and 16,431,509 are criminal cases. It has been estimated that more than 16 per cent of the cases are pending beyond the time frame of five years, of which almost 10 per cent have a pendency period exceeding ten years. In recent years the government has made serious efforts to reduce pendency in the courts. A Vision Statement was adopted in 2009 by the central government setting out the government's focus on two major judicial reforms — increasing access by reducing delay and arrears in the court system, and enhancing accountability through structural changes and setting performance standards and capacities. An Action Plan provided under the Vision Statement identified the following areas as the major areas of reforms: creation of a National Arrears Grid / identification of arrears; identification of bottlenecks in crisis areas; tackling the bottleneck areas; adoption of innovative measures for expeditious case disposal; focussing on the selection, training and performance assessment of judicial personnel and court management executives; effective planning and timely management by increasing the use of technology and modern management methods; procedural changes; management and administration. It was recommended that civil

cases be divided into three or four tracks along the suggested guidelines. Additional recommendations included the appointment of a judge for the purpose of monitoring the entire process, from the allocation of cases to the different tracks, to the taking of appropriate decisions, in order to ensure that the cases are disposed of within the period fixed for each track. The draft rules also granted flexibility to the judges to determine the time frame of individual cases based on the complexity of the case. Almost twenty-one state judiciaries adopted the concept of Case Flow Management and framed their own rules for ensuring timely justice. It seems that case flow management pertains more to case management than to court management.<sup>50</sup>

In Singapore, the Supreme Court sets targets for waiting periods in various court processes as part of its commitment to provide quality public service. These targets are reviewed annually to ensure that they are realistic and aligned with international benchmarks. The Supreme Court endeavours to achieve at least 90 per cent compliance with all targets set. For the past few years, the set targets have all been consistently met.

In the United States federal circuit, federal judicial oversight mechanisms deter and prevent fraud, waste and abuse, and address mistakes should they occur. Oversight mechanisms also promote compliance with ethical, statutory and regulatory standards. By statute, responsibility for administering the third branch of government rests with the Judicial Conference of the United States, regional circuit judicial councils; the individual courts themselves and, in specified areas, the Director of the Administrative Office of the U.S. Courts. Internal safeguards exist at the local, regional and national levels to deter waste and wrongdoing, and enable detailed performance assessments. In state courts, where many judges are elected officials, the sanction for bad management could be not being re-elected. It seems that one of the defects of the American system is that the election of judges is becoming more and more based on the political party to which the judge is attached. As for the court manager, he/she is generally recruited by the chief judge on a contractual basis, so that the court manager may be easily fired in case of bad management performance.

## **9.2. Judges – assessments and bonuses.**

The assessment of judges leads to bonuses in a limited number of countries (France, Benin, Chile, Hungary, Poland and Spain), mainly civil law countries where judges are perceived as civil servants.

Bonuses do not appear to be present in Germany. Swiss scholars do not touch upon bonuses. In Benin, judges claim frequently to get a bonus. There, judges' salaries have doubled in ten years.

In Chile, since 1998 all court personnel have been under a legal scheme of economic incentives known as 'performance bonuses' (*bonos de gestión*), which are awarded based on institutional efficiency and collective goals (*Metas de Eficiencia Institucional* and *Metas de Desempeño Colectivo*). The criteria to award these bonuses include, for example, the reduction of delays in proceedings and waiting times in public attention services, and training, among others. Both judges and court staff propose these goals on

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<sup>50</sup> See Indian Report.

an annual basis. A special committee (*Comision Resolutiva Institucional*) comprised of members of the judiciary and the Ministry of Public Finance (*Ministerio de Hacienda*) approves their proposals. There are several ways to check the accomplishment of these performance goals. If a court does not accomplish the goals, however, the judges and court staff will not suffer any proper sanction other than the loss of the annual bonus.

In France, there is an evaluation of the judge every two years. The bonus for each judge should depend on the court assessment. As a matter of fact, the amount of the bonus is about 10 per cent of the salary of each judge (heads of court do not like to use this tool as a means to attain the objectives) and does not change (although it is less than 10 per cent for the youngest judges and more for the judge in charge of a particular big case). The evaluation will be used when considering whether or not to promote the judge. Among the criteria to evaluate a judge there is managerial competence (especially for intermediary management). Sometimes the head of a court asks a judge to give him/her two judgments so that the president can assess their quality. One judges union brought an action in front of the Council of State against the very idea of the bonus, claiming that it was contrary to the principle of independence. The Council of State considered that the bonus was acceptable since it did not concern the judicial work of the judge.

In Hungary, there is minimal economic incentive and only then in broader programmes, for example in the programme for serviceable court systems, which means that judges get a predetermined bonus for an above-average closing of old cases. Advancement in their judicial career is accompanied by greater bonuses: appointment as a president of chamber increases the salary by 25-35-45% on each level, for life, which is very significant; on each level there is a 20% increase in income; appointment as head of a group/head of a college means an increase in salary by 20-40%, but for only six years.

In Spain, the legal framework for the remuneration of judges is still in the making. Currently, the bonus for over-performing judges is extremely limited, while in practice no sanctions are imposed on underperforming judges other than the missed opportunity of receiving a bonus.

In Poland, the effectiveness of the work and the professional competence of the judge in the methodology of work and the culture of the office, as well as the specialization in the identification of particular types of cases and the fulfilment of particular functions, are subject to assessment (assessment of the judge's work). The judge's work is assessed taking into consideration: the efficiency and effectiveness of the activities undertaken and the organization of work in case recognition or other tasks or functions; culture of the office, including the personnel culture and work organization culture, and respect for the rights of the parties or participants in the proceedings during the recognition of cases or performing other tasks or functions; how the statements are formulated when issuing and justifying judgments; and the process of professional development. When assessing the work of the judge, the type and complexity of the assignments or tasks entrusted to him/her, the workload and the conditions of work throughout the period covered by the assessment are taken into account. It is extremely important that the scope of assessing the judge's work cannot enter into the field in which the judge is independent. This means that when it comes to the judge's decisions only the statistics relating to whether they were upheld or overturned by the superior courts are analysed. The president of the court furnishes the judge with the assessment of his/her work,

including, in particular, performance evaluation and summary, drawing up an individual professional development plan for the judge, which covers a period of not less than four years. The clerks and other court employees and prosecutors are subject to periodic qualification assessments as well. Assessments are made by the director of the court or the prosecutor, taking into account the opinion of the immediate superior and the qualification commission appointed by the director of the court, or the prosecutor.

## **Chapter 10. Economic Budget of the Courts and the Justice System.**

As far as the budget is concerned, it is quite easy to get information on the national budget of the judiciary, but it is much more difficult to obtain a true idea of the budget of one specific court. A comparison between the systems is, consequently, not easy to make, and there are sometimes anomalies. In the future, there should be a specific general research undertaken on the budgets of the judiciary. The framework of this General Report is already too broad to go into great detail about this particular subject. According to the European Commission for the Efficiency of Justice (2016 CEPEJ Report with 2014 statistics), justice costs €64 per inhabitant. What counts in the CEPEJ Report is not the amount but the autonomy of the courts as far as the budget is concerned. It seems that in the civil law system heads of the court do not have a great influence on the court budget and have no margin of manoeuvre to spend this budget. In common law countries, a court often has high fees as one source of revenue.

### **10.1. Budget autonomy in civil law countries.**

The reform of the judiciary in Algeria has led to a constant increase in the budget allocation since 2014. There are more and more beneficiaries of legal aid and the free assistance of lawyers and other legal professionals. The criminal reform of 2015 created alternative measures which reinforce access to justice through pre-court action consultation. Judicial mediation is used more often since it is now more clearly understood. Aid for the victims of terrorist attacks is provided through a national fund. Multi-year planning for reform of the justice system increases the budget so as to provide sums to improve the material and human resources of the judiciary. There are national schools to educate judges and staff at the initial stage of their careers and during their careers. Agreements have been concluded with European countries, especially France, to get experience in the transformation of the judiciary, in particular in the field of the administration of justice.<sup>51</sup>

In Belgium, the College of the Courts discusses the budget with the Ministry of Justice. The budget is €675 million a year. The College distributes the funds to the courts and the tribunals (49 entities) according to the management project plan (the average by entity is €13 million). There are three management contracts (with the Court of Cassation, with the public prosecutors, and with the courts and tribunals). Overall, it is a process of empowerment (autonomization) of the 49 entities, and it is a model of business management in the context of a civil law country. In France, the heads of court were promised that they would be autonomous in managing their budgets. Now, however, the funds allocated are dedicated to such and such expenses. (As a result, there

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<sup>51</sup> See details in the Argentinian Report.

are stories in France of heads of court who could not have a corridor painted (Poitiers), repairs made to restrooms (in a suburb of Paris) or buy a deep fryer for a court in the north of France, near Belgium, where fries are the basic food: to resolve these issues, it is said that a ministerial decision was needed.)

In Benin, the budget is very low (around 1% of the national budget, which for 2017 is CFA2,010 billion, or €3.06 billion; thus 1% of €3.06 billion is around €30 million. But normally the national budget has been around CFA1,500 billion, or €2.29 billion and so about €22 million).

In Chile, the general budget of the judicial branch for 2017 is about US\$800 million. The budget of the judges' training school (*Academia Judicial*) is about US\$5.3 million. The jails — either publicly administered or private concessions — have a budget of US\$770 million. Unfortunately, the statute on the budget of the judiciary does not break down the numbers for each type of particular court.

In France, the budget of the judiciary ranks 37th out of 48 listed by the Council of Europe. There are approximately €3 billion for civil and criminal justice (the budget for administrative justice depends directly on the Ministry of the Economy; a recent study shows that a civil case costs €600 less than an administrative case). All in all, there are about €1 billion for civil justice. There are ten Operational Budget of Programmes (BOP) in the metropole regions, but the size varies a lot and the number of courts differs. In Lyon, for example, there are several courts of appeal and many civil high courts at the first instance. This budget does not cover the salary of the staff and judges, nor the real estate of the tribunals. Thus, the budget for the operation of regional courts is about €150 million (logistics, maintenance, new technology, travelling expenses of judges and staff).

There are 41 BOP, but only 10 large ones covering France (about 10 BOP deal with French territory outside the metropole; one BOP for the Court of Cassation has a budget of about €50 million), so each large BOP has a budget of approximately €10 million. Efforts are being made to save money (stamps, for example, are no longer used, which is forecasted to save more than €2 million in 2017). In interviews, several directors of clerks said that it is difficult to find funding for something necessary or new (example: a wall which needs to be repainted). So as a whole, it is difficult to determine the budget of each tribunal, because its budget is part of a more general budget at the level of a BOP. There is a budget of €400 million for investment (e.g. a new building). In the BOP Centre East (in 2012) there appeared 4 courts of appeal (Lyon, Grenoble, Chambéry, Riom), 21 civil high courts, 33 small claims courts, 27 labour courts, 770 judges (localization 2012), 2,182 clerks and civil servants (localization 2012), a €190,000,000 payroll, €46,000,000 justice-related expenses, and €27,300,000 for current operations.

The budget for each tribunal is allocated according to the number of full time personnel.

There is as well a regional administrative service, which for each court of appeal coordinates human resources, training of the staff, software of accountancy (Chorus) and computer equipment. The civil justice budget increased by 20% between 2007 and 2015 (activity increased 3.2%); at the same time, the budget of administrative courts increased 42% (activity increased 8%). Generally, it could be said that the heads of court have very little autonomy in terms of the budget.

In Germany, the budget for the Federal Justice System (including the five highest courts as well as the Federal Constitutional Court, the Justice Ministry and the Federal Prosecutor's Office) in 2016 was €745,492,000. As a consequence of the federal system in Germany, each federal state has its own economic budget. In the state of Baden-Wuerttemberg, for example, the budget for the justice system in 2016 was €1,651,161,900. From this total amount €791,408,200 were spent on courts and public prosecutors. Baden-Wuerttemberg counts 21 public prosecutor offices and approximately 153 courts, including local, district and higher regional courts as well as various sorts of specialized courts (labour, finance, administration, social/welfare). Some of these have 'outposts' inside the buildings of other courts in other cities, while the prosecutors' offices are usually integrated into a court, and some local courts share buildings with district courts. However, the buildings themselves are the property of the State, and the state-level finance ministry provides for the purchase and major renovations of the court buildings in its budget. The budget of a single court depends heavily on the number of employees. Given that the size of a local court (*Amtsgericht*) can range from family-size staff to hundreds of employees in big cities (Hamburg, for example), the numbers vary accordingly. There is, however, a fair amount of anecdotal evidence stemming particularly from judges that there is an urgent need for more judicial posts. In general, the autonomy of regions seems to be greater in Germany than the autonomy of the courts themselves as far as the budget is concerned.

In Hungary, the basis of any court's internal budget is that it is approximately 90% personnel costs. There is a predetermined number for employees based on the number of cases a court handles. Maintenance costs (cost of overhead, mandatory insurance fees, etc.) and the funds for small-scale information systems development are almost always around 8-9% of the budget. This means that only 1-2% of the budget is available for any local development, event, representation or economic incentive programme. In practice, there is no room for individual planning, the support of the National Court Office is needed for every project (such as conferences, a sporting day, acquisition of new servers or installation of air conditioners). This is also true for technical and other types of equipment. Thus, on the local level the room for spending is tight, while on the national level the budget of the National Court Office shows just the reverse, 10% personnel costs and 90% for investments. Again, the financial autonomy of the courts is limited.

In the Netherlands, in 2016 there were 1.6 million new cases. The budget was about €1 billion and the number of employees was 9,622 of which 2,360 were judges, or 14 judges for every 100,000 inhabitants (there were about 7 judges for every 100,000 inhabitants in France). The executive board of the court draws a provisional budget which has to be approved by a national body (RvdR). The courts may gain financial autonomy if they surpass their objectives. Also, they can keep a cash reserve. What was seen as a good idea before the financial crisis of 2008 now



appears less interesting since there is no evidence that the reserves of the courts are sufficient.

In Poland, in 2017 the state budget relating to the common courts includes 11 courts of appeal, 45 regional courts and 319 district courts. The budget of the Ministry of Justice is €543 million.<sup>52</sup> In Warsaw, the expenditures of the courts are about €196 million (there are €83 million of revenue).

In Russia, all federal courts are financed from the federal budget. The subject courts (justices of the peace, regional constitutional courts and charter courts) are financed from the subject budget according to their location. All judges have the same status and, therefore, are paid from the federal budget. The exact sums of money are not known. There are some criteria in respect of the budgets of the courts: location of the court, the court's level in the court hierarchy, how many judges work there, the number of cases the court hears annually, etc. The budget items for jails, the courts and national schools are different and independent from each other.

In Spain, it is worth bearing in mind that the complex organization of Spanish justice hinders the accounting of expenditures. The public justice budget in Spain is made up of the sum of the budgets of the central administration (including the Ministry of Justice and the General Council of the Judiciary) and the regions with competences in regard to justice. However, there is no single, consolidated national budget covering all administration of justice. A body coordinating budget information regarding justice is missing. There are not even uniform criteria to determine what expenses should be accounted to justice. Regional justice budgets often appear combined with non-justice items. As a consequence of this, it is difficult to know the public expenditure actually incurred in justice matters throughout Spain and, consequently, to compare them with those offered by other countries. The justice budget in Spain ranged from €2,200 million in 2004 to €3,800 million in 2010. Likewise, the percentage representing the total justice budget with overall state and regional expenditures ranged from 0.67% in 2004 to 0.79% in 2010. And as a percentage of GDP per inhabitant, the budget in respect of justice per inhabitant represented 0.26% in 2004 and 0.34% in 2013. Both figures show important increases. The detailed budget by court is more difficult to obtain. There is no directly available information in this regard which should consolidate the many different items of expenditures — judicial salaries, salaries of personnel from different administrations, valuations of real estate in ownership, leases, material means, etc. — that come together in a given court.

## **10.2. Budget autonomy in common law countries.**

In England and Wales, the Ministry of Justice in general will receive £6.9 billion for the current budget year, but this should be reduced down to £6 billion by 2020. The funds are split between the criminal justice system (including prisons, youth justice, prosecution services, etc.) and Her Majesty's Courts and Tribunals Service, among other services. Budgets for the courts, at this time, are being invested in real estate and technology. However, the courts generate an income through court fees based on 'full cost recovery; that is the use of fee income to recover the full cost of the court system

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<sup>52</sup> See Polish Report.

minus the cost of fee remissions (waivers). Fee remissions ensure access to justice for those that cannot afford a fee.’<sup>53</sup>

In Singapore, in 2017 the proposed budget allocated to the judiciary, comprising the Supreme Court, State Courts and Family Justice Courts, is \$376,743,700 (about €227 million). The Singapore Prisons Service is under the purview of the Ministry of Home Affairs, which has a proposed 2017 budget allocation of \$547,262,300.

In United States state courts, in almost two-thirds of the states, the judiciary presents its budget request directly to the legislature. In almost three-quarters of the states, the judiciary has the discretion to manage and administer appropriated funds without restrictions of detailed budget line items. The state general fund is the primary source of court funding in approximately two-thirds of the states. In these states, the level of funding for the trial courts is determined by the state legislatures: the state funds trial court judges, judicial support staff, clerical staff, technology and operating expenses. In some of these states, the probation department is included in the judiciary’s budget. Counties usually provide the courthouses, along with their maintenance.

In the other states, a mix of state and local funding supports the trial courts. In all but a few states, the state funds the salaries of the trial court judges. In most states, the state funds the cost of developing and enhancing technology. The state funds trial court clerk staff and judicial support staff in three-fourths of the states. The counties or municipalities fund the cost of providing and maintaining the courthouses in two-thirds of the states.

In the federal system, Congress has given the judiciary the authority to prepare and execute its own budget. The Administrative Office, in consultation with the courts and with various Judicial Conference committees, prepares a proposed budget for the judiciary each fiscal year. The proposal is reviewed and approved by the Judicial Conference with an accompanying set of detailed justifications. By law, the President must include the judiciary’s proposed budget as a part of the unified federal budget submitted to Congress each year. The President may comment on the judiciary’s budget request, but the proposal must be transmitted to Congress without change. The congressional appropriations committees conduct hearings at which judges and the Director of the Administrative Office frequently present and justify the judiciary’s projected expenditures. After Congress enacts a budget for the judiciary, the Judicial Conference approves a plan to spend the money and the Administrative Office distributes funds directly to each court, operating unit and programme in the judiciary. Individual courts have considerable authority and flexibility to conduct their work, establish budget priorities, make sound business decisions, hire staff and make purchases, consistent with Judicial Conference policies. The budget for Fiscal Year 2016: on 18 December 2015, the President signed into law the Consolidated Appropriations Act of 2016 (Public Law 114-113). The Act provided the Judiciary with \$6.78 billion in discretionary appropriations, a 1.2 per cent increase over the previous fiscal year.

## **Chapter 11. Psychosocial and Security Risks.**

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<sup>53</sup> See England and Wales Report.

Generally speaking, psychosocial risks are not expressly taken into account but are part of the human resources functions. Security is another concern. I have evidence that there are more psychosocial risks for judges and staff in civil law countries than in common law countries. Nevertheless, in this field the impression is more important than the scientific facts.

### **11.1 Psychosocial risks.**

In Chile, among the training programmes for court staff, certain courses are devoted to stress management and the emotional aspects involved in teamwork, public attention services and the resolution of labour disputes. However, the courts do not have a special team of medics or psychologists to handle emotional problems of the court staff. As regards threats and security, the courts for which this matter is a particular concern usually have metal detectors and judicial police (Gendarmes) guarding the entrances, and they provide security and order in the courtrooms.

In France, a young judge at the national school of the judiciary learns that he/she ('she' in more than 60 per cent of the cases) must keep his/her emotions under control. Recently, judges have received a 'green telephone number' which they can call to reach a psychologist in case of need. There are no statistics on the psychosocial risks although the staff (but not the judges or the prosecutors) do receive support from a committee on hygiene and security in dealing with them. The theme of the judge and the emotions is now somewhat in fashion in France since *Justice Poetic*, a book by Martha Nussbaum, was translated into French. The author says that the better training for a judge is to read novels so that she/he is more able to learn the complexity of emotions. The emotions must not be kept at bay, but used reasonably in the appreciation of the facts. It is said sometimes that the judge must manage her/his emotions, but it is not clear whether the emotions are a matter of management for the leaders of the court. There would be a risk for the independence of judges.

In Argentina, aspects related to the physical, mental and emotional health of court staff are analysed by a special health department that reports to the General Administration of the judiciary or the Supreme Court itself, as it happens, for example, at the federal level or in Buenos Aires Province. This department promotes routine controls and makes suggestions on health care issues. It also has an important role in medical, illness or accident leave matters. Additionally, it offers lectures and courses relating to healthcare at work and campaigns against smoking and a sedentary lifestyle, for example.

In Benin, there are no medical staff available in court, but there is a 'social' agent assigned to deal with personnel issues.

In England and Wales, this is not information that is easily obtained from the documents. England and Wales have stringent rules of public health and safety, and these are incorporated into all organizations. Security at courts includes metal detectors and screening of hand-carried items; however, these measures are not in place at the Supreme Court. What is of concern in the documentation available is that of staff development in terms of training and promotion.

In Hungary, there is no one whose task is to monitor the psychological and emotional condition of the employees of the court. On the other hand, there is an occupational doctor who can make referrals to a specialist. There are also local initiatives for recreation, examples of which include: the opportunity to play table tennis, recreation rooms, an occupational physician, the opportunity to get a special discount card for sports equipment shops, and sports days (both national and local).

In Russia, there are a number of legal propositions about security guarantees for judges. In the event a judge is threatened or having other problems in respect of his/her security, the police are called upon to intervene. There is no special staff (psychologists, psychiatrists or other doctors) in courts. If someone experiences emotional problems, the person is expected to solve the problem privately.

In Singapore, court staffs are valued, and there are various staff events throughout the year to give the staff opportunities to get to know their colleagues better. The Staff Welfare Committee and Staff Benefits Committee also oversee the well-being of the court staff. The Singapore Judicial College also runs various training programmes to develop the skills and knowledge of the court staff.

In Spain, in 2015 a plan on risk prevention in the workplace for those engaged in a judicial career was approved. This plan seeks to identify the particular characteristics of judicial activity — the lack of an office timetable, the unlimited number of cases allocated to each judge, the stress caused by potential aggression and harassment, etc. — along with general risks associated with office work and the use of computer equipment. Currently, a new plan is being negotiated. In 2016, a protocol was also issued against discrimination, sexual harassment and in fact all forms of harassment and violence in the judicial career sector. In the implementation guide, the appointment of persons called to exercise the position of ‘confidential advisers’ is recommended and actions are foreseen to advise and support those who have suffered the aforementioned behaviours.

## **11.2. Security risks.**

In Germany, security guards as well as actual police power can be found in many courts. Yet, there are rather big differences between states. In North Rhine-Westphalia, for instance, court entrances are heavily secured. Other states such as Baden-Wuerttemberg still take a rather lax stance. There are, however, units of specially trained police personnel that can be ordered to any court as a preventive measure. It is also on a case-by-case basis that security measures are individually adapted. In many places, judges have been equipped with security buttons on the underside of their desks.

In Poland, there are no organizational structures that deal with issues of emotions, sense of security, etc., of the judges and other court employees. The safety of judges and the courts is subject to judicial police duties, in particular the protection of public safety and order in courts and prosecutors’ offices, and the protection of the life and health of judges, prosecutors and other persons who perform their duties resulting from the implementation of the tasks of the judiciary. Within the scope of their tasks, the judicial

police cooperate with, among others, court employees, prosecutors and the Prison Service.

## **Chapter 12. Court Planning.**

Although national plans abound (Hungary, Singapore), court planning is not found everywhere (Germany); but it does seem to be increasing and can be compulsory (England, Russia, the Netherlands), or not (France, USA). It could be said that the plan is compulsory in hierarchical systems, but the divide between common law countries and civil law countries is not clear on this matter. The example of France is interesting to this extent: there is compulsory planning for the administrative courts but only voluntary planning for the civil and criminal courts (*projet de juridiction* since 2016). Now, the administrative system is much more hierarchical than the civil and criminal systems. The initiative is taken by the head of the court in concert with all judges and staff, it is submitted to the advice of the general assembly and it fixes objectives for several years to improve the service given to the citizen, taking into account the independence of the judges. In the United States, court planning depends on the committees and the tasks they are assigned, whether in the state court system or the federal system. There is usually a non-compulsory business plan covering a three-year period. At first, the American practice was a strategic plan of twenty years; now it is usually three or four years with a specific objective (a new building, acquisition of IT, communications and so on).

However, in England and Wales there is compulsory planning: Her Majesty's Courts and Tribunals Service. They have to produce a business plan once a year. With bi-annual budgets set by the Chancellor of the Exchequer (finance department), the courts need to produce a plan, and several reports are generated by the court system in general. This example shows that the English system is quite hierarchical.

In Belgium, the College of the Courts distributes the amount of the budget to the courts and the tribunals according to the management project (of three years' duration). The contract is concluded with objectives especially in terms of arrears. The management project is compulsory and pertains to the new management model as it is applied in civil law countries.

In Chile, well-defined planning began in 2009 with the new scheme of jurisdictional and administrative roles, together with a more intensive use (and understanding) of management tools. The most important experiences are two. The first is the Five-Year Plan (2011-2015) in which the Supreme Court defined long-term planning for the entire court system. The document of that Plan defined the mission, vision and values of the court system in a participative manner. The Plan required that each court define the concrete objectives, goals and indicators for each single year period. Still, the strategies for the mid- and long-term are yet incipient, with rather limited monitoring and control. The President Judge — based on the proposal of the court manager — approves an Annual Working Plan (*Plan Anual de Trabajo*) (the second experience) which defines a standardized system of workflow. The goal of this Plan is to increase the number of hearings through a distribution of workload that takes advantage of the particular skills of the court staff. The Plan is approved by the Committee of Judges. The management

organs are in charge of monitoring the implementation of the Plans within each court, and these organs can be held responsible for achieving the performance goals. Furthermore, a 'visiting' judge from the local court of appeal may inspect the performance of the lower courts according to these Plans too.

National planning is found in many countries (Benin, Hungary). In Benin, there is a national scheme prepared by the Directorate of Planning at the Ministry of Justice.

In Hungary, the justice system has an obligation with regard to annual monetary planning which is regulated by law. This includes the non-financial titles (education, conferences, professional training abroad, language courses, missions, acquisition of books, magazine subscriptions, etc.). The President of the National Court Office prepares the plan and the Parliament, upon the proposal of the Minister of Finance, votes whether to accept it. The Minister of Finance is not obligated to propose the plan.<sup>54</sup>

In the Netherlands, the executive board establishes an annual plan and a multi-year plan of activity with a provisional budget.

In Russia, there is compulsory planning for the upcoming year for each court separately. However, the planning for several years is voluntary. Chairpersons carry out both types of planning. They appoint people responsible for carrying out the planning: the heads of collegial courts, senior clerks and judicial officers. In the event that objectives are not met, they answer to the chairperson.

In Singapore, the State Courts' Strategic Planning and Technology Division works with the Divisional Planning Units to formulate long-term plans and improve court processes, procedures and services for court users. Scenario planning exercises are also carried out to identify and prepare for possible situations which might arise in the future. The exercises enable gaps in the existing strategies to be identified and improved.

In Germany, on the level of individual lower courts, there is no such planning. Budget plans are usually devised for two-year periods. If anything, long-term planning occurs on the level of appellate courts and in the justice ministries.

In Spain, the administration of justice is currently focused on implementing two profound, systemic reforms: (a) transitioning from the old, unipersonal court model to the new model based on provincially centralized, case-handling bureaucracies; and (b) transitioning from the paper-based litigation to electronic, paperless litigation. This can be seen on the website of the Ministry of Justice. These systemic reforms are led and implemented by a diversity of territorial and corporate powers. Some regions have competences over the 'administration of the administration of justice' and some do not; likewise, the Ministry and the General Council of the Judiciary sometimes have overlapping functions. Each of these entities generates a number of annual, triannual, quinquennial general plans as well as numerous implementation plans, status reports, sectorial plans and plans to reform specific aspects of the system.<sup>55</sup>

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<sup>54</sup> See Hungarian Report.

<sup>55</sup> See Spanish Report.

## CONCLUSION

There is an increasing interest in court management. More and more there is specialized staff in court management. It seems to be needed in order to diminish the backlog of cases and also the duration of cases in many countries. The content of court management (human resources, IT, real estate, communication, objectives and indicators) is universal, but sometimes court management is understood as encompassing the leadership of the court or case management. It does not mean that the courts are autonomous, at least in civil law countries. It is usually difficult to know their specific budgets. Courts are subordinate to superior bodies and more and more under a national independent body specialized in the administration of justice. Nevertheless, there are great differences between countries. Some countries are not developing the new public management in court involving objectives, indicators, assessments, bonuses and budget (Benin, Germany, Russia and India). Other countries are quite advanced in this field (the Netherlands, Belgium, Chile, France, England and Wales, Singapore, Spain, the USA). Lastly a group of countries is developing tools of court management, but may be at an early stage (Algeria, Argentina, Brazil and Poland). There are some concerns in different countries about the tension between court management and the independence of judges, but it cannot be said that there are major problems. It seems that in common law countries judges are independent and have authority, whereas in civil law countries judges are civil servants. The paradox is that in common law countries the management model has been built by the judiciary to get more independence from the executive power; whereas in civil law countries the management model could increase the executive and centralized power and threaten the independence of the judges as civil servants. Therefore, there are two kinds of management model: a civil law management model and a common law management model. However, this distinction does not apply very well to the German system where the management model is not influenced by Anglo-American business management. It does not apply, either, to the English system which is in fact centralized and quite hierarchical. I could be provocative and say that the Dutch system is becoming more common law-like, whereas the English system is becoming more civil law-like. There are so many cross influences that it is difficult to draw the line.

At the end of the day what remains is a conviction. I believe that autonomy is an important value in support of the independence of the judge. The management model does not seem to foster much autonomy except in its intentions (in France, Belgium or the Netherlands). It seems that the management model is favoured by the executive power more than by judges. Autonomy of judges and the court does not mean that the judges should work alone. We need to improve the relationship between judges and the staff and stakeholders in many countries. I would be in favour of a relational model of management fostering the autonomy of judges and staff.

I will conclude with two specific examples. In Chile, the professionalization of the administration of the courts was a central objective in the implementation of different reform processes. In that context, the practical needs associated with oral proceedings — such as scheduling hearings, the uninterrupted presence of the judge, the use of courtrooms, the registry systems and the personnel operating them, plus the parties, lawyers, witnesses and experts that should attend the oral hearings — generated the

necessity (and opportunity) to use management tools. In this way, the concept and operation of court management were received in the system through the reforms to criminal procedure. Professional court administrators have been key to the judicial reforms and instrumental in better case processing and court administration. From now on, court management is in the charge of professional managers, who develop interesting innovations and understanding about case flow management as the essential business of the courts. However, these reforms and the radical separation between jurisdictional and managerial functions discourse, justifying the removal of the old culture of the judges, have created the idea that management is something related only to general court management. In this way, judges do not have an important role due to their lack of managerial training. This idea can now be a problem if the justice system tries to advance to a more sophisticated case management, where the judge must be involved in the progress of the case.

The complexity and deep implications of the implementation of the new court management system and case management in any judicial system seem to lead judicial reforms to recognize it institutionally, and also define and articulate the different spaces that should be regulated by 'legal rules' and those that should be regulated by the judicial system on its own. This is a subject that uncovers crucial questions of policy, principle and theory largely left unaddressed and unanswered, especially in those areas where competing principles, rights, interests or values need to be prioritized or traded off. Likewise, that management system must allow balancing the accuracy of the judicial decisions against the length and the costs, including the workload of the system.

There is no perspective for a specific sort of litigation such as complex litigation. A management system with this feature seems particularly justified in the area of complex litigation for the forthcoming civil procedural reform in Chile where this kind of problem is more frequent than in family or labour matters.

Indeed, it is possible to observe problems regarding the lack of comprehension and experience in using this tool, which tied to a formalistic application of managerial acts facilitates decisions that are not adequate for the particular needs of the cases, which ultimately impacts the quality of the measures and the procedural rights of the parties. In addition, the rules of these acts have been applied as though they were legal rules and not as general criteria of performance. The incentive regime in the lower courts, which depends rather on the quantitative term of the cases, has contributed to this situation. Finally, the organizational criteria are not always known, and in some cases are dissimilar within the same courts.

This development has raised criticism and resistance. An important number of judges, especially lower court judges, have criticized the way these managerial acts have been set down. As mentioned before, the acts set down by the Supreme Court are mandatory for the judges even when those acts are not a law, and for that reason they think that it goes against judicial independence. The lawyers also manifest objections regarding the restrictions that this system imposes over the discretion they have in the litigation of their own cases. Finally, a portion of the community of legal scholars has criticized this from the approach of due process and judicial independence.



A recent law in Chile on electronic proceedings, in practice from last December in the civil courts, also shows this trend to increase judicial control over the pace of litigation with the introduction of principles such as efficiency, multi-functionality of the judicial employees, speediness and opportunity in procedures and judgments.

However, the civil procedure reform is facing important challenges. On the one hand, the culture and practice of the legal actors remain anchored in the mind-set of the written, de-concentrated procedure in which the judge remains passive and delegates to the court staff. On the other hand, the Bill Project does not make a clear divide between jurisdictional and managerial tasks.

In India, the importance of Case Flow Management Rules has been a part of academic discussion for a significant amount of time. It has been more than a decade since the first Case Flow Management Rules were drafted and announced by the High Court of Himachal Pradesh, and since then followed by many others. But there has been a failure in the effective implementation of the case management practices in ensuring timely disposal of cases. The high rate of judicial pendency and arrears clearly raises crucial questions regarding the applicability and adequacy of the case flow management rules in ensuring timely disposal of cases. In this context, it is important to emphasize the need for commitment on the part of the different stakeholders in the justice delivery system to ensure that the cases are handled in a time-bound manner from the stage of filing to final disposal. The state governments and the High Courts need to work in a harmonious manner to ensure that adequate resources are made available for building the necessary court infrastructure and appointment of qualified managerial staff that will assist the judges in monitoring the progress of the cases and review the process of timing. The existing case flow management does not create any special mechanism monitoring system apart from creating a tracking system and time period for tracking cases. All responsibility of monitoring and reviewing has been left to the existing court administration system and places additional burdens on the already over-burdened judges. At present, the responsibility for court administration, which includes data collection and management, lies with the judge, who may not be equipped to perform this task. In the absence of appointment of specific and specialized 'court managers', the proper implementation of the case flow rules will be illusory.<sup>56</sup>

Eventually, the real issue seems to be the impact of the new public management and IT on the motivation of judges and court staff. There are psychosocial risks and sometimes a risk that the efficiency of justice leads to inhuman justice. Court management should not be purely technical and quantitative. But the qualitative approach is not always easy to carry out. Which indicators are the most useful (rate of appeal, rate of second appeal)? In certain countries, the backlog involves a quantitative approach to diminish the arrears and duration (India, maybe Italy). Case management may be more urgent than court management. In the most advanced countries, in terms of new public management, the qualitative approach is needed (the Netherlands, France, the USA, Belgium) but difficult to master (in the USA sixty indicators of quality had been proposed, but only a handful of indicators are used, and those with great caution).

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<sup>56</sup> See Indian Report.

I would personally call for a relational approach to court management.<sup>57</sup> This means that what counts is to improve the network of relationships between judges and staff, judges and citizens, judges and lawyers, etc. Rather than a quantitative approach, interviews with stakeholders may help to assess the quality of relationships inside a court. Efficiency is not a goal in itself and could even be dangerous if it was only a matter of economy. The solution would be to avoid justice as much as possible through mediation. However, litigation is not an illness, it is a crisis which can be useful for society and the law, in particular to improve the law. Unilateral power using IT (email, tele-work, open data, etc.) exercised by the head of the court or quite often by a national body specialized in court administration may put at risk the cordial atmosphere in the court. Even security concerns may lead to inhuman situations; for example, in a new court building in Germany the necessity to have one entrance for the victim, one for the public, one for the judge, one for the perpetrator led the architect to design a courtroom without natural light, which is so important to the creation of a cordial atmosphere.

Relational power (Robert Meste) takes into account the fact that the relationship affects the person who exercises a power as much as the person who receives an order. It is more complicated. It implies time to allow discussion, but at the end of the day it may be more efficient than unilateral power if the quality of justice is higher.

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<sup>57</sup> See in the Bibliography the relational approach of organization and law.

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