



Strasbourg, 28 May 2003
[cepej/2003 e12]

CEPEJ(2003) 12

EUROPEAN COMMISSION FOR THE EFFICIENCY OF JUSTICE
(CEPEJ)

EVALUATING JUDICIAL SYSTEMS
'A balance between variety and generalisation'

prepared by

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Evaluating judicial systems¹

'A BALANCE BETWEEN VARIETY AND GENERALISATION'

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1 INTRODUCTION

The central aim of this project is to define 'common tools of evaluation of the judicial systems'. In this paper an approach for evaluating judicial systems is defined. By using different sources (scientific literature, research reports and the Internet) I have tried to identify the main indicators, which can be used for a comparative evaluation of judicial systems.

A comparative evaluation of the judicial systems in the Member States is not an easy task. The variety of systems and practices make it hard to define 'common' indicators. 'Simple' indicators such as the number of lawyers and judges for example, are more complicated to define, than one would probably expect. In paragraph two of this paper examples of the use of different definitions for legal professionals, courts and the judiciary are presented. Another problem that needs to be 'tackled' is related to the perspective of the evaluator on evaluating judicial systems and the definition of 'system boundaries'. The boundary of judicial systems can be 'broadly' defined or in a 'narrow' manner. In the first situation judicial systems include not only legal professionals, the public prosecution and the judiciary, but also the police and the penitentiary. The main focus of the evaluator in the 'narrow' definition of the judicial systems, is the judiciary. Actors as the police and the penitentiary are not included in this definition. The third problem is related to the degree of 'complexity' of the evaluation scheme of judicial systems. There is a tension between the need for a 'simple' and practical evaluation scheme and the necessity of an 'all-inclusive' list of indicators for the main influential factors of justice systems. More indicators mean – mostly – a more reliable image of the functioning of judicial systems in Member States. However, more indicators means also more definition and registration problems and problems in comparing Member-States. A balance must be found between 'variety and generalisation'. How this balance can be realised is described in paragraph four of this paper. In this paragraph the main elements of the evaluation scheme (judiciary, legal professionals, public prosecution, society and legislation) are presented. In addition to the evaluation scheme, relevant variables for the main elements of evaluation are also displayed.

The evaluation of judicial systems and the collection of (statistical) data do not have to be started from 'scratch'. Statistical data are already being collected and comparative studies have been conducted in the past. This information can be helpful in the search to identify the variables or indicators to evaluate judicial systems in the Member States of the Council of Europe. Examples of what already is being collected are described in paragraph three of this paper. In paragraph five the connection is made between quantitative and qualitative evaluation tools. Although the focus in this paper is on quantitative evaluation tools, some attention is being given to the need for qualitative comparative evaluation studies as well. The possibilities of the use of the Internet and the website of the CEPEJ may provide useful tools in collecting and presenting comparative data. Some possible directions in the use of the Internet for the evaluation activities of the CEPEJ are displayed in paragraph six.

¹ The author thanks Mr. Roland Eshuis, researcher of the Scientific Research and Documentation Center of the Ministry of Justice (WODC) for his comments and input.

During the process of writing this paper (in the period April and May 2003) I have used the expertise of the Research and Documentation Centre (WODC) of the Dutch ministry of Justice. In different sessions with Mr. Roland Eshuis of the WODC several topics and problems were discussed with respect to the evaluation of judicial systems. Most topics of debate were related to the balance between ‘detail and variety’ and the need for a ‘simple and practical’ evaluation tool. Elements of this discussion can be found in the paper.

2 HOW ‘COMMON’ ARE ‘COMMON (STATISTICAL) INDICATORS’?

For the collection of comparative data it is essential that there are common definitions for the most relevant indicators to measure the functioning of a judicial system. However, when we take a closer look at the definitions of legal professionals, courts, cases and length of proceedings there is a great variety among the Member States. In this paragraph the variety in definitions regarding legal professions and the judiciary is illustrated with examples. Where possible, uniform definitions for these professions will also be described.

Legal professionals (lawyers, judges, public prosecutors, mediators and enforcement agents)

Blankenburg (2001) describes in his comparative study on ‘indicators of growth of the systems of justice in Europe of the 1990s’ the diversity in defining *lawyers* (Blankenburg, 2001: 4-5). He shows that there is a difference in definition when you compare the UK ‘solicitors and barristers’ with ‘lawyers’. Solicitors (UK) are entitled to appear only before the lower courts and are active in many legal activities, whilst barristers are mainly involved in court advocacy. The Spanish ‘abogado’ are legal professionals outside the judiciary with a law degree. This group is counted as a lawyer, despite the fact that the most ‘abogado’ are active outside the court (banking, government, etc.). In the comparative study of Blankenburg he uses the common definition of an attorney for ‘those lawyers who are entitled to represent parties in court – independent of whether they are actually working forensically or not’².

The meaning of what a *judge* is varies also per country. Generally speaking, there exist three different types of judges in the Member-States. First of all there are the professional judges, who’s main task is to handle cases in a court and are nominated for life (or for a long and extended period). The second group is the ‘substitute-judge’. The main profession of a substitute judge is concentrated in another legal profession, such as the profession of a lawyer, legal professor at a university or legal administrator at a legal department of a ministry. In the Netherlands the courts (on a case-by-case basis) hire substitute-judges in times of shortage of sufficient (fulltime) professional judges or in cases where a specific expert knowledge is required. The third group is the ‘lay-judges’. For example in Germany the handling of certain cases are passed by lay-judges. For the counting of the total number of judges and for an effective international comparison it is necessary to take these differences in definitions into account³.

A precise definition of what a *public prosecutor* is can be found in Recommendation 2000(19) of the Council of Europe⁴. In this recommendation public prosecutors are defined as ‘public authorities who, on behalf of society and in the public interest, ensure the application of the law where the breach of the law carries a criminal sanction, taking into account both the rights of the individual and the necessary effectiveness of the criminal justice system’. This definition is useful for the evaluation of judicial systems.⁵

² A clear definition of a lawyer could not be found in Recommendation (2000) 21 on the freedom of exercise of the profession of lawyer (Council of Europe). The same definition can be found in the IRSIG –CNR report (2000), *European Database on judicial systems*, p. 12.

³ In the CoE-recommendation No. R. (94) 12 on the independence, efficiency and the role of judges, lay judges (or other persons exercise judicial functions) fall under the application of this recommendation. The scope of the recommendation is enlarged to ‘all persons exercising judicial functions, including those dealing with constitutional, criminal, civil, commercial and administrative matters’.

⁴ Recommendation Rec. (2000) 19, on the role of the public prosecution in the criminal justice system.

⁵ In the IRSIG-CNR-report (2000) the public prosecutor is defined as “professionals entitled to initiate and conduct criminal proceedings and to deliver addresses to the court in the name of the society” (p. 29).

The definition of a *mediator* is, compared with the definitions of lawyers, judges and public prosecutors, the least precise one. In the literature and in the CoE-Recommendations the most attention is given to a description of what a mediation proceeding should be and what the necessary skills of mediators are. For example in Recommendation 98(1) with respect of family mediation only a description is given how a family mediation proceeding should be organized. In Recommendation 99(19) certain competencies of mediators are displayed. 'Mediators should be recruited from all sections of society and should generally possess good understanding of local cultures and communities. Mediators should be able to demonstrate sound judgement and interpersonal skills necessary to mediation. Mediators should receive initial training before taking up mediation duties as well as in-service training'. What actually mediation is can be found in another Recommendation of the council of Europe. In recommendation (2002) 10 on mediation in civil matters mediation is defined as 'a dispute resolution process whereby parties negotiate over issues in dispute in order to reach an agreement with the assistance of one or more mediators'. Even in the last mentioned Recommendation no formal definition is given of what a mediator is. In practice mediators are 'independent third parties, which assists parties in their search to identify the cause(s) of their conflict and to settle the dispute'⁶. For the purpose of measurement, it may be practical to add to this definition a (formal) recognition such as a certificate or the membership of an association. Mediators can work in the private sector, as well in the public sector (in the courts).

As well as mediators, enforcement agents can operate in the private or the public sector (a mixed system is another possibility). In contrast with the Recommendations in the area of mediation, in the Recommendation of the Council of Europe a more precise definition of what an enforcement agent is is given. An enforcement agent is 'a person authorised by the State to carry out the enforcement process irrespective of whether that person is employed by the State or not'⁷⁸.

The definition of courts

The counting of the numbers of courts seems 'at first glance' to be simple. However, for this indicator there are also various options to define what a court is. Courts can be defined as 'a meeting room' in an office to settle a dispute between parties or on the other hand as a full equipped office with a court staff and a court administration. In the first situation the court operates as a sub office from the main court office. The courts described in the second situation can be seen as a more proper definition. However, even with the use of this definition other problems can arise. For example in certain Member-States the structure of the judicial organisation is based on the idea of creating courts with general competencies. For example in the Netherlands district courts, as first instance courts, are responsible for the handling of administrative cases, civil cases and criminal cases. In other Member-States there is a tradition of creating specialised courts (criminal courts, police courts, labour courts, fiscal courts, etc.) or handling of certain cases or judicial activities outside the courts (in governmental or private agencies)⁹. These differences must be taken into account when the structure of the judiciary (and the number of courts) of one Member-State is compared with the situation of another Member-State.

⁶ See: Kleiboer, Huls, de Kluiver (ed.), *Alternatieve wegen naar het recht? (Alternative ways to the law)*, p. 34.

⁷ Recommendation Rec (2002) ... On enforcement.

⁸ The IRSIG-CNR report (2000) is speaking of 'money collection professionals' (professionals, private or civil servant, entitled to collect money on the basis of a legal title: p. 16).

⁹ In the IRSIG-CNR report (2000) a clear distinction is made between courts and organisation that are also performing judicial tasks. The researchers conclude that administrative agencies or private entities performing certain judicial functions (for example imposing fines or deciding upon disciplinary cases) should not be seen as a court (p. 22).

The length of court proceedings

The length of court proceedings is one of the most essential indicators to evaluate the performance of the judiciary. On the other hand, it is also the most complicated indicator to define and to measure. For example in the recent past it was in the Netherlands very complicated to measure the length of the civil court proceedings. Different registration methods in the courts, definitions, 'out-dated' court management information systems and 'strategic behaviour' of court presidents, made it for a long time impossible to present reliable figures (at a national level) regarding the length of civil proceedings. The only option to measure the length of civil court proceedings, was the use of a 'file research approach'. In a file research, a random group of civil court files is selected, and the length of the various procedural steps during a court proceeding is measured. The advantage of this approach is, despite the lack of a database with relevant data regarding the length of proceedings, reliable figures can be presented. The disadvantage is, however, that it is costly to implement and labour-intensive¹⁰.

The measurement of the length of criminal court proceedings is – at first sight - less problematic. However, on the other hand, even for these types of cases different definitions can be used. For policy reasons it is essential to present different data regarding the length of criminal proceedings. Information must be presented with respect to the length of criminal proceedings *before* the court (the process of persecution by the public prosecutor) and *during* the court proceeding. The second option is to include also a differentiation between the categories of criminal cases. It is expected that small criminal cases (such as shoplifting or small driving offences) are handled by the judges in a shorter period, compared with the time that is needed to handle complex criminal cases. A simple count and presentation of the length of criminal cases, without taking into account the differences between the criminal cases, could lead to wrong conclusions.

Another element in defining the length of court proceedings is not related to the different actors at a *horizontal level* (for example in the 'criminal justice chain' (from policing, persecution, court proceedings till execution of judgements)). Information regarding the length of proceedings at a *vertical level* can also be useful for policy reasons. With this respect data should be collected, which can be used to give an impression of the length of court proceedings at the level of first instance courts, appeal courts and High courts (Supreme Courts).

The last point that has to be mentioned is the method of calculating the length of proceedings. The most easy solution is to present the data of the average length of court proceedings. In situations where there is no (or little) variety between the length of the proceedings of individual cases and the average score presented, there is no problem. However if the distribution of length over all the individual cases is skewed (a common problem in courtprocedures), a presentation of an average score will give the wrong impression. A better solution is the use of the 'median'-score for presenting data regarding the length of proceedings.

Differences in legal traditions of Member States and structuring of States

The comparison of Member-States can be complicated by the fact that States can have a different legal tradition. The most common known difference is the difference between civil law countries and common law countries. Another difference, which can complicate a reliable comparison between Member-States, is related to the difference between unitary States and States with a federal structure. For example in Germany the structure of the judiciary is based on federalist principles. At the level of the Länder 'Landgerichte' are competent. In addition to these type of courts, Germany has also 'Bundesgerichte' at the State-level. The performance of the German courts can, due to the different State-structure, not easily be compared with the courts of unitary states¹¹.

¹⁰ See: Eshuis (1998), *A matter a time: throughput time in non-family civil dispute*, The Hague.

¹¹ Inter Nationes (1996), *Das Rechtssystem der Bundesrepublik Deutschland* (Basis-info 29-1996), Bonn.

3 WHAT IS ALREADY COLLECTED?

General international social and economic statistics

Several international institutions, collect general social (including demographic) and economic information. For example EUROSTAT (an agency of the European Commission) collects and presents data related to the economic and demographic development of the member States of the EU (internal and external trade, demographic figures of the citizens of the member States, employment figures, etc.)¹². The main focus of the OECD is also concentrated on the collection and presentation of economical statistics. In contrast to the information from EUROSTAT the OECD collects information regarding the functioning of the public sector (for example the OECD measures the mean salary of a civil servant)¹³. These international statistical agencies do not gather specific information on the topic of judicial systems.

The judicial database of the Worldbank

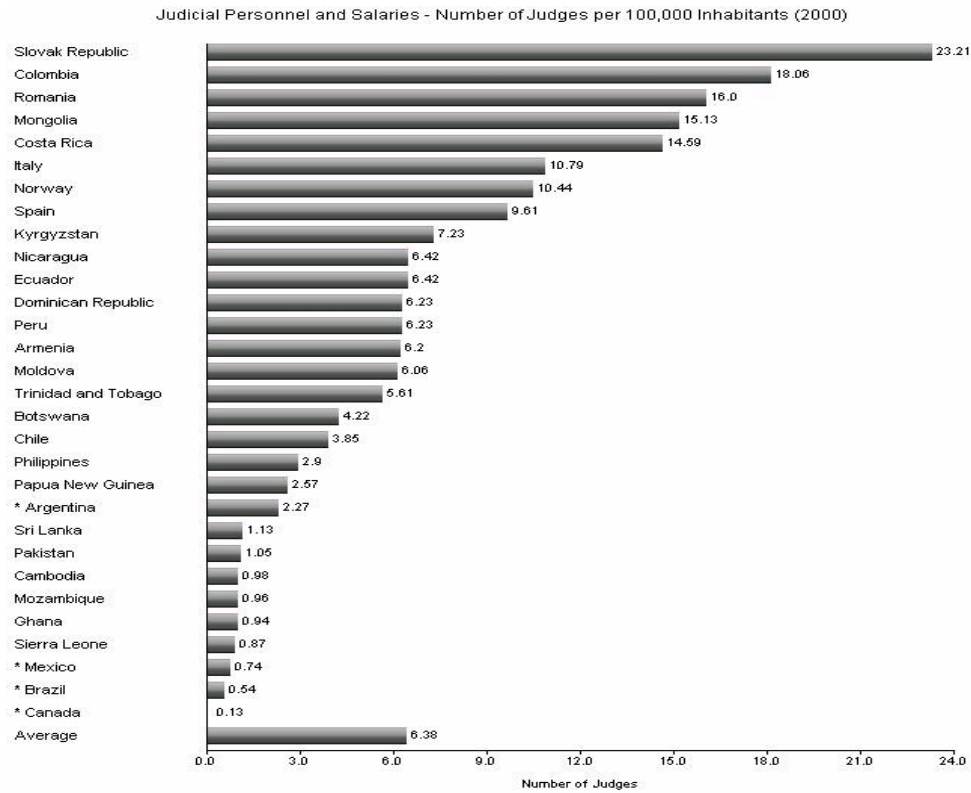
More detailed comparative statistics regarding the functioning of justice can be found on the database of the Worldbank (Justice sector at a glance)¹⁴. In this database general country information is displayed (size of the population, local currency, Capital City, urban population, etc.). In addition to this information specific quantitative and qualitative information is presented with respect to legal and judicial organizations and institution. For each country a brief qualitative description is given on the organization of the court system, the ministry of Justice, the General Prosecutors office, the Attorney General's Office, ADR and legal education and profession. Comparative information regarding the justice sector budget (compared with the State budget) can also be found in the database of the Worldbank. Another strong element of the database of the Worldbank is that the user can compare countries on the basis of one or two variables. As an example, in chart 1 the number of judges per 100.000 inhabitants for several countries is displayed.

¹² See: www.europa.eu.int/comm/eurostat.

¹³ See: www.oecd.org.

¹⁴ See: www.worldbank.org/legal/database/justice.

Chart 1 Example of comparative data (Source: Worldbank: 2003)



The appendix shows the most relevant variables of the judicial database of the Worldbank. Despite the fact that the database of the Worldbank presents specific information in the justice area, there are also some questions to be answered. For example at the website of the Worldbank no information is presented on how the data is collected and which common definitions are used. Another disadvantage of the database is the lack of information of the Western European countries. For only a few of these countries information is presented.

The European Research Network on Judicial Systems

The European Research Network on Judicial Systems published an interesting report in 2000¹⁵. This report gives a good description of the problems in defining international indicators and collecting data. It presents also (comparative) data regarding: attorneys, non-attorney legal professionals, legal aid, judges, public prosecutors, lay-judges, administrative staff, the performance of courts and criminal statistics (including information of the prison population)¹⁶. Elements of the report can be helpful to define legal professionals, judges, public prosecutors and court cases¹⁷.

¹⁵ IRSIG-CNR (2000), *European database of judicial systems*, Bologna.

¹⁶ Information can be found from: England and Wales, France, Germany, Italy, Netherlands, Spain, Austria and Portugal

¹⁷ There are also some points of criticisms. First of all is the data presented in the report not easy accessible and readable. A second point of critics is related to the choice to present data on the basis of different courts (civil courts, labour courts, social insurance courts, administrative courts and constitutional courts). Due to the fact that there exist a large variety in competencies of courts (and specialisation of courts) in the Member-States, it should be advisable to present data on a case-basis and presenting data regarding incoming, pending en handled cases in terms of first instance cases, appeal cases and High court cases, without taking into account of a uniform 'organisation-scheme' for all the different courts in the Member-States. Only for criminal cases the report present data on the basis of the differentiation between first instance criminal cases, appeal cases and High Court cases.

The United Nations Survey of Crime Trends and Operations of Criminal Justice Systems

In addition to the statistics in the justice area collected by the Worldbank or University research networks, there is a long tradition of collecting international criminal statistics. An example is the 'United Nations Surveys of Crime Trends and Operations of Criminal Justice Systems'. In this survey information is presented on the following topics: country information, financial information regarding police, public prosecution, judiciary, detention institutions, crime rate, suspects, crime figures of cities, sanctions, probation and detention capacity. The survey also presents information regarding the courts is collected (total court budget, court salaries, court fixed assets, total number of professional judges/magistrates (male, female and fulltime judges/magistrates)).

Statistics of ministries of Justice

Next to the collection of international statistics, various ministries of Justice of the Member States have their own statistical agencies. Some of these agencies present their data on a public website, which is accessible for citizens. A good example of this situation is formed by the statistical website of the Home Office of the United Kingdom. At this website detailed information regarding the functioning of justice is presented. One of the topics that can be found on the website is information regarding the length of criminal court proceedings¹⁸. In appendix C an example of this information is described. For our purpose the use of this information is limited. Most of the information is collected in different ways and each country is using their own definitions and standards to present quantitative information. For real comparative statistical information it is necessary to have common definitions and statistical indicators.

Examples of qualitative comparative studies

Qualitative information concerning the structure and the functioning of the legal structure of each member State is, in addition to the collection of statistical data, also necessary to interpret international statistical data. For example the functioning of the judiciary in the UK can not simply be compared with the French judicial system. The first is based on the common law system, the second on the civil law. Qualitative description on the legal base of judicial systems in member States and the structure of the judicial organization (absolute and territorial competence, special courts, etc.) can be found in several legal comparative studies. A good example of a qualitative description of justice systems is the World fact book of Criminal Justice Systems of the Bureau of Justice Statistics of the US. This fact book presents qualitative information of different States on the structure and criminal court proceedings¹⁹. Another example is the Phare-report 'reinforcement of the Rule of Law'. In this report a qualitative description is given of the legal basis, the organization of the judiciary, the status and role of the public prosecutor, court procedures and the execution of court decision of a group of (former) EU-candidate Member States (Bulgaria, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Romania, Slovak Republic and Slovenia)²⁰.

¹⁸ See: www.statistics.gov.uk/CCI/nscl.asp?ID=5004.

¹⁹ The CIA in the Worldfactbook presents Very detailed quantitative and qualitative data. For reference see: www.cia.gov/CIA/publications/factbook.

²⁰ Another good example of a qualitative comparative study on judicial systems is Zuckerman (ed.) (1999), *Civil justice in crisis*, Oxford.

4 COMMON (STATISTICAL) INDICATORS AND QUALITATIVE EVALUATION STUDIES: A PROPOSAL

4.1 INTRODUCTION²¹

Taking into account all the problems mentioned with differences in definitions, legal cultures, State structures, registration methods, etc. in this paragraph an evaluation scheme will be presented to evaluate the judicial systems in the Member-States. This scheme is based on two principles. First, the principle of a clear ‘system-boundary’ and second the principle of ‘practical use’.

The principle of a clear ‘system-boundary’

In most comparative (quantitative and qualitative) studies a broad definition is used to evaluate *justice systems*. In most cases justice-systems, include the police, the public prosecution, legal professionals, judiciary and detention. The focus on the evaluation scheme of the CEPEJ is however ‘common tools of evaluation of *the judicial systems*’. Strictly speaking this means that the ‘core’ of the evaluation scheme is the judiciary. This ‘core’ is surrounded by legal professionals and the public prosecution, which can influence directly or indirectly the (quality and) work delivered by the judges. For this reason it is necessary to collect (general) information (quantitative and qualitative) of these actors.²² Another important element of the judicial systems are the citizens (and the society in general). It is essential to determine indicators for the evaluation scheme taking into account the expectations and the perceptions of the users of the system. In other words, the evaluation scheme should also include information of citizens regarding their opinion and experiences with the judiciary. The last element of the evaluation scheme refers to the quality of the legislation and procedural laws. To analyze and interpret quantitative information regarding the performance of courts (and compare it with the performance of courts in other Member-States) it is necessary to have country-information with respect to legislation and procedural codes.

By using the terminology of *judicial systems* a choice is made, *not* to include the police organizations, criminal statistics and detention figures into the evaluation scheme²³. Private organizations, administrative bodies and other officials (such as public notary) are also not a part of the evaluation scheme. The main argument for this choice is that the principal focus lies on the functioning of the judiciary. Including other bodies, such as administrative institutions, would make the scheme too complicated.

The principle of ‘practical use’

A second important element is the ‘practical use’ of the evaluation scheme and the results of different evaluation studies in the judicial area. From a scientific point of view it is necessary to collect detailed information of the functioning of the different judicial systems. The more detail, the more it is possible to identify the similarities and differences between the (performance of) various judicial systems. There are two arguments for reducing the ‘degree’ of details in the evaluation scheme (and the total number of indicators to be measured). The first argument is related to the problem of data-collection. To avoid too much registration work for the governmental agencies, a simple and distinguishing registration list of (quantitative) indicators must be developed. The second argument is linked with definition-problems. By introducing more and new

²¹ The complete list of indicators can be found in appendix d.

²² See also the conclusions of the Multilateral meeting of the Council of Europe on “which evaluation to reach a high quality justice system?” in Urbino 2002 (Italy). In the list of conclusion some ‘directions’ for the evaluation of judicial systems are given. For example on page 3 the following conclusion regarding evaluation is stated: the evaluation system “could be composed of, *inter alia*, (i) the evaluation of the work of a judge, (ii) the evaluation of the operation of the jurisdiction and (iii) an audit of the jurisdiction”. The evaluation of the work of the judge should cover his impartiality, his competence, his responsibility and his efficiency. The audit of the jurisdiction constitutes a snapshot of the operation of the jurisdiction using, statistics, analysis of human and technical means leading to propose improvements basis on Recommendations.

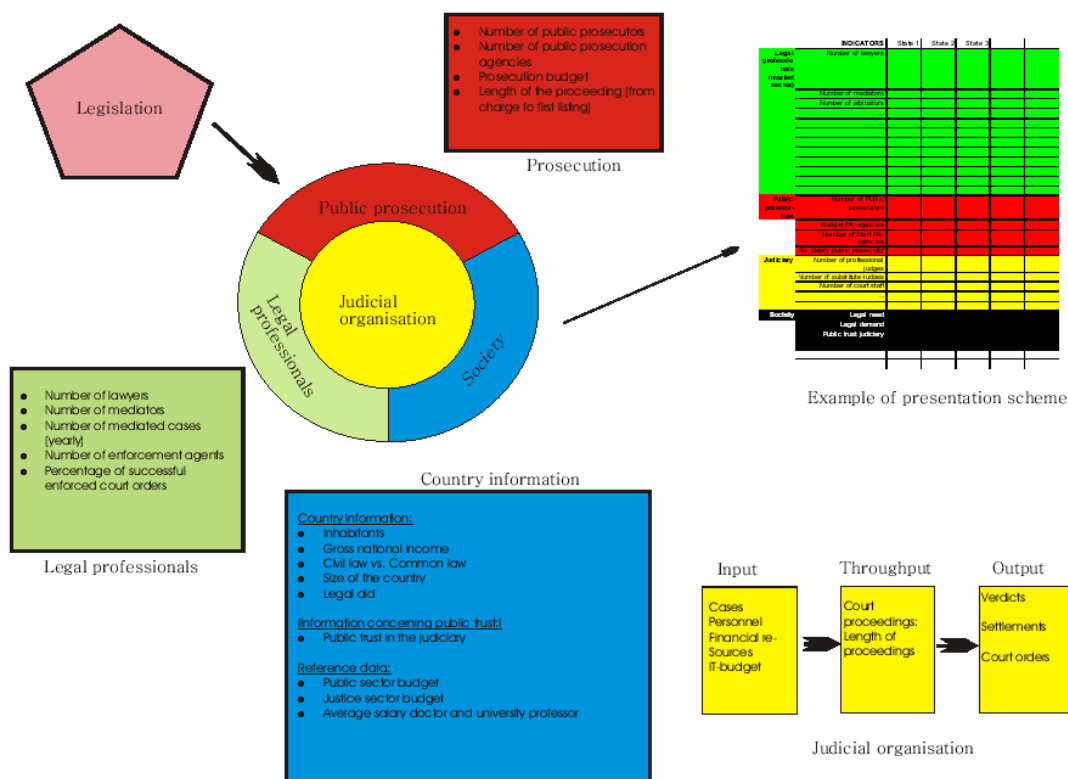
²³ This implies that only general criminal case information will be collected. The area of ‘crime-fighting’, prevention of criminal acts, including detail information regarding crime-rated and the problems with ‘dark-numbers’ (unregistered crimes) will not be included in the evaluation scheme.

international indicators, the problems with defining and interpreting international statistical indicators will increase. To reduce this problem, a careful selection of the number of indicators must be made.

The evaluation scheme of judicial systems

By taking into account the principles of a clear ‘system boundary’ and ‘practical use’ an evaluation scheme can be formulated, which is build on five elements: judicial organization, legal professionals, public prosecution, legislation and society. These elements play also an important role in the principles on ‘efficiency of justice’²⁴. The main elements of the evaluation scheme are presented in figure 1.

Figure 1 Evaluation scheme



4.2 THE JUDICIAL ORGANIZATION

The judicial organization can be described in a system-theoretical manner, by using a simple system model: input, throughput and output.

Input

In the evaluation-scheme there are four groups of variables: personnel resources, financial resources, information technology budget and incoming cases.

Judges (professional, lay-judges and substitute judges), rechtspfleger (if available) and non-judge-personnel (court clerks, judicial trained court staff, etc.) form the main variables of the group personnel resources. The

²⁴ See CoE Resolution (2002) 12, *European Commission for the Efficiency of Justice*.

choice to count and to differentiate between the various types of judges is based on the idea that Member-States are using various ‘mixes’ of professional judges, lay-judges and substitute judges. For a reliable view it is advisable to count the number of judges and other professionals working in the courts by using the definition of ‘full time equivalent’. This is the percentage of time that an exception employee regularly works within his/her assignment. Forty hours per week would reflect a 1.0 FTE, while 20 hours per week reflects a .5 FTE. Non-judge personnel are professionals other than judges, *rechtspfleger* and prosecutors. Professionals (non-judge) who perform work in the areas of civil law, bankruptcy and seizure matters, probate matters, guardianship and trustee matters, matters related to the payment of court fees, the registration of land and shipping, company registration, settlement of legal matters and request for legal assistance from foreign courts are defined as ‘*rechtspfleger*’²⁵.

The financial resources can be differentiated between two variables: court budget and IT-budget. The court budget is the total budget that is allocated to the judiciary yearly. To have also an indication of the degree of automatisisation it is necessary to collect information regarding the IT-budget of courts (the yearly budget for the judiciary allocated to information technology).

Incoming cases are the main input for the judicial organization. The incoming cases can be addressed to three legal areas: criminal law, civil law and administrative law. For counting criminal law cases there are two options. The first option is to discriminate between ‘small criminal cases’ and ‘complex and large criminal cases’. Problematic is that each Member-State has another definition of what a small criminal case and a complex criminal case is. The ‘second best’ solution is to count all the criminal incoming cases, with no differentiation between small en complex criminal cases²⁶.

In the civil law the most important categories of cases are: commercial cases, divorce cases and labour cases. The commercial cases include also landlord-tenant cases, traffic tort and for example intellectual property rights cases. Divorce cases are all cases, which are related to divorce and post-divorce activities. Disputes between employer and employee (for example dismissal) fall under the category of labour cases. Disputes between civil servants and their employee (the government) should not be counted as a labour case²⁷.

Unclear is the question regarding the counting of non-judicial tasks in the courts and including this group of activities also into the evaluation scheme. For example in certain Member States landregistry is a major task of municipal courts. The advantage of including these tasks in the evaluation scheme is that it gives a more precise image of the different activities of the courts in the Member States. The disadvantage is that more data have to be collected.

In the European Database on judicial systems the data of incoming cases is collected and presented at the level of different specialized courts. I would like to propose another working method, because the degree of specialization of courts varies in every Member State. Advisable is to count the number of incoming cases and differentiate between the vertical levels of the judicial organization (first instance, appeal and High Court/Supreme Court (cassation or revision)).

- Number of (full equipped) courts²⁸
- Court budget
- IT-court budget
- Number of professional judges

²⁵ European Union of *Rechtspfleger* (2001), *Rechtspfleger: statute and duties*, Vorstand.

²⁶ The level of counting criminal cases can also be problematic, because a case can be connected with one (or more) criminal charges and with one or more criminal offenders.

²⁷ This is an administrative case.

²⁸ An option is to make differentiation between small-sized courts (three judges or less), medium-sized courts (between four judges and twenty judges working at the court) and large courts (more than twenty judges working at the court). The advantage of this differentiation is that it gives information with respect to number of courts in relation to their size. A disadvantage is that Member States must also collect information regarding the size of the courts.

- Number of lay-judges
- Number of substitute judges
- Number of rechtspfleger
- Number of non-judge court personnel
- Median salary of a judge
- Median salary of a rechtspfleger
- Number of incoming criminal cases (first instance, appeal and second appeal)
- Number of incoming commercial cases
- Number of incoming divorce cases
- Number of incoming social security cases
- Number of incoming immigration law cases
- Number of incoming fiscal cases
- Number of incoming labour cases

Throughput

The main indicators regarding the throughput of the judicial organisation focus on the length of court proceedings. In this respect, a choice has to be made between ‘collecting detailed’ quantitative information at the different levels of the judicial system (and taking into account the various procedural steps) or collecting general information (for example collecting the average length of court proceedings of first instance courts). An advantage of the first option is that it gives insight into the various procedural steps (from first instance to appeal and (possible) second appeal/cassation). The disadvantage is that the collection of statistical information by the Member-states could be ‘time-consuming’. Another problem is that the category of cases (criminal cases, divorce cases, administrative cases, etc.) in the Member-states is addressed to different types of courts. A comparison of data would be problematic in this situation. Taking into account all these problems I would advise to collect information regarding the length of proceedings, by using a differentiation between the first instance, appeal and second appeal level. The length of proceedings itself can be defined as the ‘median number of days starting from registration of a case at the registry of a court till the final completion of a case (judicial decision, settlement, withdrawal)²⁹.

An option is to include also the number of ‘pending’ cases in the evaluation scheme. This gives an impression of the stock of cases. However, in the balance between ‘variety and generalisation’ it is advisable not to include this information in the evaluation scheme, because more extra detailed information has to be collected by the Member States.

For a proper understanding of the length of proceedings and the problems related to the length it is necessary to have qualitative descriptions of the different procedural laws of the Member States. Much information is already available in different legal comparative studies and documents. In-depth studies regarding the length of proceedings should be part of the evaluation scheme of judicial systems. Qualitative information related to the (formal) organisation of the judiciary in the Member States (and their practical functioning) could (or should) also be taken into account when comparing judicial systems.

- Median length of criminal cases (first instance, appeal and second appeal)
- Median length of commercial cases
- Median length of divorce cases
- Median length of social security cases
- Median length of immigration law cases
- Median length of fiscal cases
- Median length of labour cases

²⁹ There are three ways to specify a ‘good bet’ about the length of proceedings. The first is to count the (most probable) measurement class (mode). The second is to search the point exactly midway between the top and bottom halves of the distribution of the scores related to the length of proceedings (median). The median is defined as the point at or below which exactly 50 percent of all cases fall. The last is to identify the arithmetic average of the distribution of scores related to the length of proceedings (mean). See also: Hays (1981), *Statistics*, New York.

Output:

The registration of the output of courts must differentiate between the three major areas of law (civil law, criminal law and administrative law). For these areas information has to be collected with respect to the number of judicial decisions (on a yearly basis) or friendly settlements (for commercial (civil) cases: mostly registered as withdrawals) for the following categories: criminal law cases, commercial cases, divorce cases, labour cases, fiscal cases, social security cases, immigration law cases.

- Number of handled criminal cases
- Number of handled commercial cases: verdicts
- Number of handled commercial cases: settlements (withdrawals)
- Number of handled divorce cases
- Number of handled social security cases
- Number of handled immigration law cases
- Number of handled fiscal cases
- Number of handled labour cases

4.3 LEGAL PROFESSIONALS³⁰

I would like to suggest to include three different types of legal professionals in the evaluation scheme, namely: attorneys, mediators and enforcement agents. Attorneys are defined as professionals entitled to assist and to appear for clients in any courts³¹. Mediators are ‘independent third parties, which assists parties in their search to identify the cause(s) of their conflict and to settle their dispute’³². Enforcement agents are defined as ‘a person authorized by the State to carry out the enforcement process irrespective of whether that person is employed by the State or not’³³. To compare the relative level of the salary of a judge with the salary of a lawyer I would like to suggest to include data regarding the median salary of a lawyer in the evaluation scheme. With respect to the comparison of incoming and handled cases by the mediators with the caseload of the judiciary it is advisable to register the number of settlements (commercial and divorce cases) of the mediators. The number of successful enforced court orders is another important aspect to see if a judicial system is effective. This is one of the reasons to advice to include this variable in the evaluation scheme.

- Number of attorneys
- Median salary of an attorney
- Number of (certified) mediators
- Number of mediated divorce cases³⁴
- Number of mediated commercial cases
- Number of enforcement agents
- Percentage of successful enforced court orders

³⁰ The collection of information of legal professionals in this category is restricted to attorneys, mediators and enforcement agents. This means that other legal professionals, such as arbitrators, are not included in the evaluation scheme. The main argument for this choice is to make the evaluation scheme not too complicated.

³¹ IRSIG-CNR (2000), p. 12.

³² Kleiboer, Huls, de Kluiver, *Alternatieve wegen naar het recht?*, p. 35.

³³ The tasks of the enforcement agents here are related to activities of the courts (for example: a police officer, should in this context not be defined as an enforcement agent).

³⁴ An option is to include also the number of incoming mediation cases (commercial and divorce) in the list of indicators.

4.4 THE PUBLIC PROSECUTION

By taking into account the fact that we are concentrating on ‘the judiciary’, only a small group of variables regarding the public prosecution will be used in the evaluation scheme. These variables are related to the resources of the public prosecution (personnel and finance), the length of prosecution proceedings and the outcome of prosecution activities. The variables related to the personnel resources are: the number of public prosecutors, the median salary of the public prosecutor and the number of staff of public prosecution agencies. Performance indicators of the public prosecution that should be included in the evaluation schema are: the number of cases dropped by the public prosecutor, the number of cases sanctioned directly, the number of cases charged before courts and the median length of the prosecution proceeding.

- Number of public prosecutors
- Number of staff public prosecution
- Median salary of a prosecutor
- Prosecution budget
- Number of prosecuted cases: cases dropped
- Number of prosecuted cases: cases sanctioned directly
- Number of prosecuted cases: cases charged before courts
- Median length of a prosecution proceeding (from charge till drop, sanctioning or listing to the court)

4.5 THE SOCIETY

The variables concerning the larger society can be divided into three groups, related to: citizens and access to justice, general country information and reference data. The general country information of Member States and reference data is necessary for analyzing and comparing the different ‘scores’ between Member States on the basis of a uniform denominator. For example to compare the relative size of the judiciary, the following indicator can be used: number of professional judges per 100.000 inhabitants.

I would propose to include the following indicators in the evaluation scheme: number of inhabitants of a Member State, the public sector budget, the gross national income and reference data regarding the salary of other ‘high level’ professionals in society (doctors and university professors).

Variables with respect to citizens can be categorized in variables connected with ‘access to justice’, the perceptions of citizens with respect to the public trust of the judiciary and the satisfaction with the services delivered by the judiciary. The most ‘simple’ indicators to identify the degree of access to justice are: counting the number of legal aid cases and the total public budget spend on legal aid per Member State.

A more detailed understanding of ‘access to justice’ can be realized if also the legal needs and demands in the society is measured. To identify the legal needs of the society it is necessary to recognize the problem situation, which could potentially, leading to a court proceeding³⁵. Of course, not all the legal needs does not automatically result in court cases. Depending on the availability of alternative forms of dispute resolution, citizens can decide to settle disputes outside the courts or to decide on the basis of a ‘cost benefit analysis’ not the start a (court) proceeding. An option is to include an international ‘replication study’ of the research of Genn in the evaluation scheme of judicial systems³⁶. In this study approximately 4.000 adults in England and Wales were interviewed. These interviews were held to find out how often citizens experience problems for which there might be a civil law solution. Within the group of 4.000 citizens a smaller group was interviewed, who had experiences with courts, tribunals and alternative dispute resolution. By replicating this study an international view can be presented with respect to the legal needs and demands in the society. An international replication of this study is however ‘time consuming’. This is the reason I advise not (in first instance) to include this study in the evaluation scheme.

³⁵ Blankenburg (2000), *Indicators of growth of the systems of justice in Europe of the 1990s*.

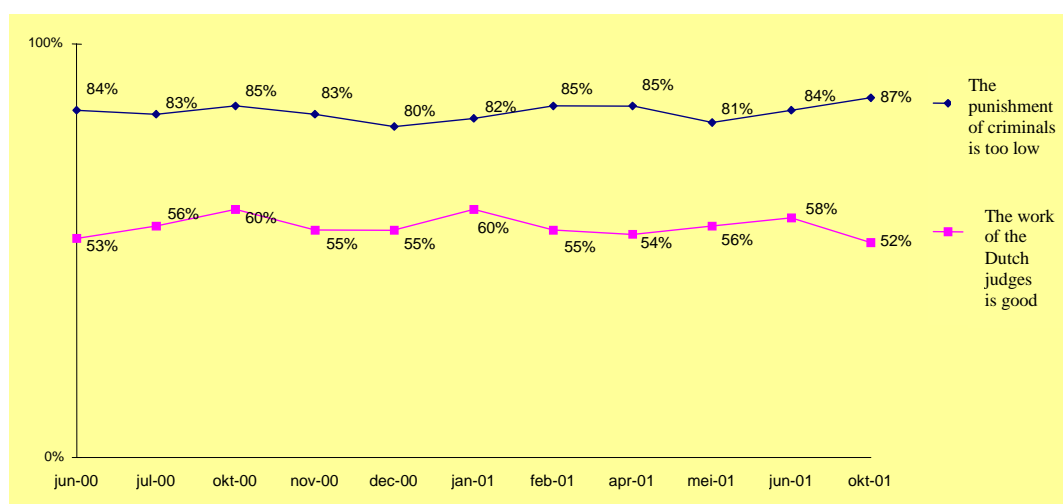
³⁶ Genn (1999), *Paths to justice*, Oxford.

The public trust of the society and the satisfaction of the services delivered by the judiciary can be measured by using two types of evaluation-instruments. The first are the ‘image polls’ and the second is the use of ‘court surveys’ or client-appreciation surveys.

Image polls

The measurement of the public trust is an essential element in the evaluation of judicial systems. By using general image-polls the public trust in the judiciary can be compared with the public trust in other public sector areas. In the Netherlands the Justice Issue Monitor is used to evaluate the public opinion regarding actual topics in the justice area³⁷. In the monitor, a representative telephone survey, standard questions are formulated regarding the ‘satisfaction’ of the work delivered by the judges (and the opinion of citizens regarding the level of punishment of the Dutch judges). In chart 1 results of these two questions are displayed.

Chart 1 Justice Issue Monitor (Ministry of Justice, the Netherlands).



Another example of an international image-poll instrument is the Eurobarometer of the European Union. Since 1973, the European Commission has been monitoring the evolution of public opinion in Member States. The surveys are concentrated on the following topics: enlargement, social situation, health, culture, information technology, the Euro, etc. There are two types of Eurobarometer: the Standard Eurobarometer and the Special Eurobarometer. In the Standard Eurobarometer 1000 face-to-face interviews are held in each Member State. The surveys are conducted between 2 and 4/5 times per year, with reports published twice yearly. In-depth thematically studies carried out on behalf of the EC or other EU institutions are presented in the Special Eurobarometer³⁸. An example of an in-depth thematically study is the research on the legitimacy of the European Court of Justice compared with the High Courts (or Supreme Courts in the EU-Member States). In table 1 a part of the results of the in-depth study is presented³⁹. This table represents the scores for the following questions: “returning to the European Court of Justice for a moment, in general would you say you are very satisfied, somewhat satisfied, not very satisfied, or not satisfied at all with the way the Court of Justice has been working? Now, returning to the highest court of your country, in general would you say you are very satisfied, somewhat satisfied, not very satisfied, or not satisfied at all with the way the highest court of your country has been working?” (Gibson and Caldeira, 1994: 35).

³⁷ The issue monitor is a telephone survey of a group a representative Dutch citizens.

³⁸ See for more information: www.europa.eu.int/comm/public_opinion.

³⁹ See: Gibson and Caldeira (1994), *changes in the legitimacy of the European Court of Justice: a post-Maastricht analysis (Eurobarometer No. 38 and 40)*, Houston/Columbus, Brussels.

Table 1 Source: Gibson and Caldeira (1994).

	Level of Satisfaction					N	Mean	Std. Dev
	Not at all	Not very	Undecided	Somewhat	Very			
Belgium								
Court of Justice	8.1	13.5	39.8	36.2	2.4	250	3.11	.95
National High Court	4.0	14.3	34.5	42.0	5.2	250	3.30	.92
Denmark								
Court of Justice	3.3	15.5	28.6	48.7	3.9	300	3.35	.90
National High Court	1.9	5.0	15.9	51.3	25.9	299	3.94	.89
Germany (West)								
Court of Justice	3.5	15.6	39.7	38.0	3.2	191	3.22	.87
National High Court	1.6	13.5	11.8	54.6	18.4	191	3.75	.96
Greece								
Court of Justice	4.3	12.7	56.8	24.2	1.9	312	3.07	.78
National High Court	8.5	17.2	24.2	42.6	7.4	312	3.23	1.09
Italy								
Court of Justice	1.6	11.1	55.7	30.5	1.2	312	3.19	.70
National High Court	4.1	31.4	22.2	39.8	2.4	312	3.05	.99
Spain								
Court of Justice	3.4	9.4	58.1	25.8	3.3	299	3.16	.77
National High Court	8.9	13.7	31.9	38.7	6.7	299	3.21	1.05
France								
Court of Justice	3.5	11.9	60.8	23.0	.8	298	3.06	.72
National High Court	1.4	10.7	47.7	38.8	1.4	298	3.28	.73
Ireland								
Court of Justice	.6	4.9	33.2	48.0	13.4	322	3.69	.79
National High Court	3.0	10.6	28.5	45.1	12.7	322	3.54	.95
Luxembourg								
Court of Justice	1.2	7.1	36.2	40.4	15.2	197	3.61	.87
National High Court	2.8	8.6	31.0	38.5	19.1	197	3.63	.98
The Netherlands								
Court of Justice	3.3	9.0	33.3	52.3	2.1	283	3.41	.82
National High Court	1.1	5.6	14.8	66.4	12.1	283	3.83	.75

I suggest to insert data related to the public trust of the society in the judiciary in the evaluation. To collect these data there are various options. The first is to include in national image polls (conducted by the Government) standard questions with a reference to the 'satisfaction and trust in the judiciary'. A second option is to include standard questions in international image polls like the Eurobarometer. The third option is the creation of an image poll of the Council of Europe, which includes questions regarding the public trust in the judiciary of the Member States.

- Number of inhabitants
- Public sector budget
- Gross national income
- Median salary of a doctor
- Median salary of a university professor
- Number of legal aid cases
- Total budget spend on legal aid
- Public trust in the judiciary

Court surveys

The problem with image polls is that it only covers a small group of citizens who have real court experience. It is expected that there can be a difference in the level of satisfaction between citizens with or without court experiences⁴⁰. To overcome this problem it is advisable to conduct court surveys at a national level. For example in the Netherlands and Switzerland client court surveys are conducted to receive an impression of the

⁴⁰ This correlation had not been proven when you read the study of Rottman. He concludes that (in his research project) that there was no correlation between citizens with court experience and without experience and their level of satisfaction. See Rottman (1998), *On public trust and confidence: does experience with the courts promote or diminish it?* In: court review, pp. 14-22.

level of satisfaction of the court users⁴¹⁴². Adopting results of national court surveys in the evaluation scheme will however lead – at an international level – to problems in comparing the results. This is one of the reasons that I advice to promote court surveys at a national level, but not to create international client court surveys.

4.6 LEGISLATION

As mentioned earlier the quality of the legislation and legal procedures is one of the factors that can influence the functioning of judicial systems. One of the factors, which can influence the efficiency of justice, is the different use of ‘open norms’ in legislation vs. ‘detailed’ legislation. Another influential factor is the difference between Member-States with respect to the legislation (‘what is not allowed by the law’), cultural norms and the degree of enforcement of the law (see the debate regarding the tolerance or prohibition of the use of ‘soft drugs’, the acceptance of ‘euthanasia’ and the different punishment of driving offences). The third factor is the variety in ‘criminalization’ or ‘decriminalization’ of the law. For example in the Netherlands small driving offences are sanctioned by using administrative law. However, in other Member-States the sanctioning of small driving offences is (in most cases) a part of the criminal law.

A comparative description for the three areas of law, including differences in legal traditions and cultures must be included in the evaluation scheme if you want to generate a complete picture on the functioning of judicial systems in the Member-States and to identify the factors which can influence their functioning.

5 EVALUATION INSTRUMENTS: QUANTITATIVE AND QUALITATIVE INSTRUMENTS

For an adequate interpretation of quantitative data of the Member-States it is essential that also qualitative information is available for the different topics related to the structure and functioning of judicial systems. A qualitative description of the structure, competencies of the public prosecutor, the structure and the competencies of the courts and the availability of alternative forms of dispute resolution (supply of mediators, arbitrators, description of mediation proceedings, etc.), combined with the legal traditions (common law system of civil law) should be an integral part of the evaluation process of judicial systems. To collect qualitative information effectively a comparative research project on the basis of a secondary research approach should be implemented. This project should concentrate on the collection of qualitative data on the basis of the international literature on the structure and functioning of judicial systems.⁴³ In addition to the secondary research approach also *new* qualitative information for the CEPEJ should be collected. For this reason the activities of other working groups of the CEPEJ must be ‘linked’ with the first working group of the CEPEJ (evaluation). For the year 2003 problems and solutions regarding the length of court proceedings are identified and described by the second working group of the CEPEJ. Results of this group can be input for the qualitative evaluation of judicial systems. In the near future of the CEPEJ a research agenda for qualitative studies must be determined on the basis of relevant recommendations of the Council of Europe in the justice-area (based on the seven principles mentioned in Resolution (2002) 12 CEPEJ regarding: access to justice, efficiency of judicial proceedings, execution of court decisions, the status and role of judges, public prosecutors and lawyers, training, administration of justice and management of courts and the use of information and communication technologies). In appendix E the list of proposed indicators of the evaluation scheme regarding judicial systems is linked to these principles.

There are several topics which can be interesting to evaluate through the use of qualitative research methods (or a combination with quantitative methods). For example one of the research topics for the future is the description of enforcement procedures and the functioning of enforcement agents in the Member States of

⁴¹ PRISMA agency (2002), *Open for the public (open voor het publiek)*, Amersfoort.

⁴² See for example the activities of the Direction General of the Administration of the judiciary of Geneva in the area of conducting surveys on the satisfaction of users of the Court of Geneva.

⁴³ An example of an international qualitative study on judicial systems is the report of Fabri and Langbroek (ed.) (2000), *The challenge of change for judicial systems*, Bologna/Utrecht.

the Council of Europe. Other topics can be derived from the conclusion of the multilateral meeting of the Council of Europe in Urbino (2002) on “which evaluation to reach a high quality justice system”. For example qualitative comparative studies can be conducted on “the nature and the limits of the responsibility of judges” and on the use of “human, technical and budgetary means of the jurisdictions”.

Another interesting topic is the quality of the work delivered by the judges. Experience with the measurement of the quality can be found in the US (Trial Court Performance Standards) and the Netherlands. In the Netherlands judicial *quality* is ‘operationalized’ in five areas of measurement (independence and integrity, expertise of judges, unity of law, length of proceedings and treatment of parties). By using a combination of quantitative (databases of the courts and court surveys) and qualitative (audit) evaluation instruments several aspects of quality can be measured and visualised (see appendix F for a complete list of quality-indicators, used by the Dutch Council for the Judiciary).

6 THE COLLECTION OF STATISTICAL DATA AND USE OF THE INTERNET

For the collection of statistical data there are various options. The first option is that the Council of Europe will collect the information. The organisation of this process can be automated by using the possibilities of the Internet to publish electronic (data)forms⁴⁴. These forms (with a complete list of indicators) must be published at the secured website of the CEPEJ. The users of this website (the Member-States) can ‘download’ the (data)forms or register the relevant data at the website and send the information back to the Council of Europe. The advantage of this approach is that the collection and registration of relevant data is relatively easy (compared with ‘traditional’ ways of registration of data through the use of written forms). Also, the presentation of comparative data can be done quickly, by using the strong features of the Internet⁴⁵. After the collection of the data (planned for 2004) relevant facts and figures regarding the functioning of judicial systems can be displayed at the website of the CEPEJ⁴⁶.

The second option is a ‘joint-venture’ between the Council of Europe and the European Commission. The advantage of this option is that the Council of Europe can use the facilities of the European Commission with regard of the collection of statistical data (EUROSTAT) and the measurement of the public opinion of citizens (see the use of the Eurobarometer). The third option is to connect the information need of the Council of Europe and the CEPEJ to the data-collection activities of the Worldbank. The advantage of this approach is that ‘double’ work of certain Member States can be avoided and that a standard-format of indicators is already available. However, we lack information on how the Worldbank is collecting data and what definitions are used.

The final choice between the three options has to be made bearing in mind the budget available for creating data collection and evaluation activities at the level of the Council of Europe. If there are sufficient financial resources at the Council of Europe, these activities could be carried out by the Council itself. However, if the resources are limited the alternative option would be to create a ‘joint-venture’ project between the Council of Europe and the European Commission or to search for other strategic partners.

7 CONCLUSIONS

In this paper a simple scheme and a select group of indicators is being proposed, by which the functioning of judicial systems of the Member States of the Council of Europe can be compared. Within the limited time available, only a general approach for the evaluation of judicial systems could be presented. However for the steps and decisions that have to be made in the CEPEJ the paper give ‘directions’ what indicators should be

⁴⁴ Special software is available at the market to create electronic forms (for example based on XML-standards). This software can be used to create an electronic (data)form and present it at the secured website of the CEPEJ.

⁴⁵ The data can also be presented in a Council of Europe factbook judicial systems in Europe

⁴⁶ By using the same approach of the Worldbank. Quantitative (and qualitative) data is presented in various ways at the website of the Worldbank.

used and how to collect the relevant data by using different evaluation methods. In the 'search' for a comprehensive overview of the functioning of judicial systems it is advisable to utilise a 'pragmatic' approach and not make the evaluation scheme itself too complicated. As has been said in this paper, the more variables included in the evaluation scheme, the more problems the evaluators will face. Also to avoid too much workload (in terms of 'registration-activities' and data-collection) of the Member-States and to realise a maximum acceptance of the evaluation scheme (and the list of indicators) it is advisable to start the evaluation activities with only the *most relevant* – and not *the* complete - list of indicators, which can be used to compare Member-States with each other. As a final remark, it is advisable to make a maximum use of the possibilities of the Internet. By using electronic (data)forms and the (secured) website of the CEPEJ, the registration process and the presentation of relevant information can be – compared with more 'traditional' ways of collecting information (e.g. the use of written questionnaires) - facilitated.

APPENDIX A JUDICIAL INDICATORS OF THE WORLDBANK

- Budget
- Budget - Public Sector Budget (millions PPPD) per 100,000 Inhabitants
- Budget - Justice Sector Budget (millions PPPD) per 100,000 Inhabitants
- Budget - Ratio (%) Justice Sector Budget as Part of Public Sector Budget
- Budget - Ratio (%) Estimated Personnel Expenditures as Part of Justice Sector Budget
- Demand and Caseload - Civil
- Demand and Caseload - Civil - Clearance Rate
- Demand and Caseload - Civil - Congestion Rate
- Demand and Caseload - Family

- Demand and Caseload - Family - Clearance Rate
- Demand and Caseload - Family - Congestion Rate
- Judicial Personnel and Salaries

- Judicial Personnel and Salaries - Number of Judges per 100,000 Inhabitants
- Judicial Personnel and Salaries - Total Judicial Personnel per 100,000 Inhabitants
- Judicial Personnel and Salaries - Number of Non-Judge Judicial Personnel per 100,000 Inhabitants
- Judicial Personnel and Salaries - Number of Judges / Total Judicial Personnel
- Judicial Personnel and Salaries - Estimated Annual Salary (PPPD) of Supreme Court Judges
- Judicial Personnel and Salaries - Estimated Annual Salary (PPPD) of Second Instance Judges
- Judicial Personnel and Salaries - Estimated Annual Salary (PPPD) of First Instance Judges
- Judicial Personnel and Salaries - Judges Compression Rate
- Judicial Personnel and Salaries - Judicial Personnel Compression Rate

- Public Sector Budget (millions PPPD) per 100,000 Inhabitants v/s Justice Sector Budget (millions PPPD) per 100,000 Inhabitants
- Public Sector Budget (millions PPPD) per 100,000 Inhabitants v/s Justice Sector Budget as a % of Public Sector Budget
- Justice Sector Budget (millions PPPD) per 100,000 Inhabitants v/s Civil - Clearance Rate
- Justice Sector Budget (millions PPPD) per 100,000 Inhabitants v/s Family - Clearance Rate
- Estimated Personnel Expenditures (%) v/s Justice Sector Budget (millions PPPD) per 100,000 Inhabitants
- Number of Judges per 100,000 Inhabitants v/s Number of Judicial Officers per 100,000 Inhabitants
- Number of Judges per 100,000 Inhabitants v/s Number of Legal Professionals per 100,000 Inhabitants
- Salary of Supreme Court Judges (PPPD) v/s Salary of First Instance Judges (PPPD)
- Civil - Clearance Rate v/s Congestion Rate
- Civil - Number of Judges v/s Clearance Rate
- Civil - Number of Judges v/s Congestion Rate
- Civil - Total Judicial Personnel v/s Clearance Rate
- Civil - Total Judicial Personnel v/s Congestion Rate
- Family - Clearance Rate v/s Congestion Rate
- Family - Number of Judges v/s Clearance Rate
- Family - Number of Judges v/s Congestion Rate
- Family - Total Judicial Personnel v/s Clearance Rate
- Family - Total Judicial Personnel v/s Congestion Rate

APPENDIX B RELEVANT INDICATORS OF THE UNITED NATIONS SURVEYS OF CRIME TRENDS AND OPERATIONS OF CRIMINAL JUSTICE SYSTEMS

- total population in country
- UNDP income aggregates
- UNDP human development aggregates
- Total prosecution budget
- Prosecution salaries
- Prosecution fixed assets
- Total court budget
- Court salaries
- Court fixed assets
- Grand total of prosecuted cases
- Total number of professional judges/magistrate
- Number of male professional judges/magistrate
- Number of female professional judges/magistrate
- Number of fulltime professional judges/magistrate

APPENDIX C EXAMPLE OF PRESENTATION OF LENGTH OF COURT PROCEEDINGS (SOURCE HOME OFFICE UNITED KINGDOM)

Dataset LCDTIS01
 Name:
 Title: Magistrates courts: average time taken for defendants in indictable cases by stage of proceedings, 1999-2001
 Description: The table shows the average time taken for defendants in indictable cases in magistrates' courts by stage of proceedings, 1999-2001. It covers England and Wales and can be broken down into smaller geographical areas.

The table was produced from the Lord Chancellor's Department Time Intervals Survey, which collects information on lengths of proceedings in the magistrates' courts. In 1999 and earlier years the survey covered all defendants in indictable (including triable either way) cases against whom proceedings were completed in sample weeks during February, June and October. The June survey also collected information on defendants in summary cases. From the February 2000 survey onwards there is now one survey in each quarter with the additional information on summary offences collected in the first and third quarters.

From the February 1999 survey onwards the rules which previously excluded cases lasting over a year between either charge or laying of information and first listing or first li

Source: Lord Chancellor's Department
 Time Frame: 1999-2001
 Geographic: England and Wales
 Coverage:
 Universe: Time intervals for proceedings in magistrates' courts
 Measure: Average time intervals for defendants in indictable cases
 Units: See Table

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Table

	Average number of days from offence to charge or laying of information	Average number of days from charge or laying of information to first listing	Average number of days from first listing to completion	Average number of days from offence to completion	Number of defendants (sample size)
1999 England and Wales	46	21	56	124	23451
Avon and Somerset	55	22	56	133	537
Bedfordshire	53	15	48	116	170
Cambridgeshire	45	27	45	117	186
Cheshire	40	25	51	116	417
Cleveland	46	18	56	119	394
Cumbria	41	22	59	122	287
Derbyshire	48	28	57	132	390
Devon and Cornwall	34	24	40	98	405
Dorset	44	18	33	95	237
Durham	41	17	41	99	289
Dyfed Powys	68	31	53	153	323
Essex	51	32	46	129	547
Gloucestershire	35	27	52	114	228
Greater Manchester	45	22	54	121	1418
Gwent	47	30	47	124	298
Hampshire	49	19	60	127	779
Hertfordshire	63	29	56	148	314
Humberside	38	19	55	112	391
Kent	24	20	48	91	557
Lancashire	30	14	54	98	823
Leicestershire	48	26	50	125	376

Lincolnshire	56	25	59	140	246
London	45	20	49	114	3292
Merseyside	69	24	67	160	1163
Norfolk	36	13	46	95	281
North Wales	38	16	48	102	289
North Yorkshire	50	22	40	112	427
Northamptonshire	50	21	57	127	227
Northumbria	42	16	59	116	1022
Nottinghamshire	36	27	61	124	586
South Wales	50	23	59	132	618
South Yorkshire	40	18	56	113	786
Staffordshire	44	12	77	133	298
Suffolk	53	23	59	135	238
Surrey	95	21	45	162	123
Sussex	63	21	60	144	379
Thames Valley	50	22	55	126	573
Warwickshire	80	21	37	139	230
West Mercia	42	21	58	122	427
West Midlands	48	18	90	157	1446
West Yorkshire	43	22	59	124	1247
Wiltshire	41	20	38	99	187

APPENDIX D LIST OF INDICATORS

Country name:
Registration year:

		Indicators	data
Judiciary		Number of (full equipped) courts	
		Court budget (in euro)	
		IT-court budget (in euro)	
		Number of professional judges (fte)	
		Number of substitute judges	
		Number of lay-judges	
		Number of rechtspfleger	
		Number of non-judge personnel (fte)	
		Average or median salary of a judge (in euro)	
		Average or median salary of a rechtspfleger (in euro)	
	First instance courts	Number of incoming criminal cases (yearly)	
		Number of incoming commercial cases (yearly)	
		Number of incoming divorce cases (yearly)	
		Number of incoming social security cases (yearly)	
		Number of incoming immigration law cases (yearly)	
		Number of incoming fiscal cases (yearly)	
		Number of incoming labour cases (yearly)	
	Appeal courts	Number of incoming criminal cases (yearly)	
		Number of incoming commercial cases (yearly)	
		Number of incoming divorce cases (yearly)	
		Number of incoming social security cases (yearly)	
		Number of incoming immigration law cases (yearly)	
		Number of incoming fiscal cases (yearly)	
		Number of incoming labour cases (yearly)	
	High Court or Supreme Court	Number of incoming criminal cases (yearly)	
		Number of incoming commercial cases (yearly)	
		Number of incoming divorce cases (yearly)	
		Number of incoming social security cases (yearly)	
		Number of incoming immigration law cases (yearly)	
		Number of incoming labour cases (yearly)	
	First instance courts	Average or median length of criminal cases (days)	
		Average or median length of commercial cases (days)	
		Average or median length of divorce cases (days)	
Average or median length of social security cases (days)			
Average or median length of immigration law cases (days)			
Average or median length of fiscal cases (days)			
Av. Length of labour cases (days)			

Judiciary	Appeal courts	Average or median length of criminal cases (days) Average or median length of commercial cases (days) Average or median length of divorce cases (days) Average or median length of social security cases (days) Average or median length of immigration law cases (days) Average or median length of fiscal cases (days) Av. Length of labour cases (days)	
	High Courts or Supreme Courts	Average or median length of criminal cases (days) Average or median length of commercial cases (days) Average or median length of divorce cases (days) Average or median length of social security cases (days) Average or median length of immigration law cases (days) Average or median length of fiscal cases (days) Av. Length of labour cases (days)	
	First instance courts	Number of handled criminal cases (yearly) Number of handled commercial cases: judicial decisions (yearly) Number of handled commercial cases: settlements/withdrawals Number of handled divorce cases (yearly) Number of handled social security cases (yearly) Number of handled immigration law cases (yearly) Number of handled fiscal cases (yearly) Number of handled labour cases (yearly)	
	Appeal courts	Number of handled criminal cases (yearly) Number of handled commercial cases: judicial decisions (yearly) Number of handled commercial cases: settlements/withdrawals Number of handled divorce cases (yearly) Number of handled social security cases (yearly) Number of handled immigration law cases (yearly) Number of handled fiscal cases (yearly) Number of handled labour cases (yearly)	
	High Courts or Supreme Courts	Number of handled criminal cases (yearly) Number of handled commercial cases: judicial decisions (yearly) Number of handled commercial cases: settlements/withdrawals Number of handled divorce cases (yearly) Number of handled social security cases (yearly) Number of handled immigration law cases (yearly) Number of handled fiscal cases (yearly) Number of handled labour cases (yearly)	
	Public prosecution	Number of public prosecutors Number of staff public prosecution agencies Average or median salary of a prosecutor (in euro) Prosecution budget (in euro) Number of prosecuted cases: cases dropped (yearly) Number of prosecuted cases: cases sanctioned directly (yearly) Number of prosecuted cases: cases charged before courts (yearly) Average or median length of prosecution proceeding	

Legal professionals	Number of attorneys	
	Average or median salary of an attorney	
	Number of (certified) mediators	
	Number of mediated divorce cases (yearly)	
	Number of mediated commercial cases (yearly)	
	Number of enforcement agents	
	Percentage of successful enforced court orders	
Society	Number of inhabitants	
	Public sector budget (in euro)	
	Gross national income (in euro)	
	Average or median salary of a doctor	
	Average or median salary of a university professor	
	Number of legal aid cases	
	Total public budget spend on legal aid	
	Indicators related to the public trust in judiciary	

APPENDIX E PRINCIPLES OF THE COUNCIL OF EUROPE ON 'EFFICIENCY OF JUSTICE' CONNECTED WITH INDICATORS OF THE EVALUATION SCHEME

The Committee of Experts on Efficiency of Justice (CJ-EJ) identified 7 principles to be applied in the field of justice. These principles have played an important role in our choice of indicators. In this appendix, the proposed indicators are being linked to the seven principles.

1. Access to Justice and to the courts

proposed indicators:

- number of legal aid cases (yearly)
- public budget spent on legal aid (yearly)
- number of certified mediators
- number of mediated cases (divorce and commercial, yearly)
- number of courts (first instance) per 1.000.000 inhabitants
- number of judges per 100.000 inhabitants

2. Efficiency of Justice

proposed indicators:

- median duration of procedures
- annual budget for the courts and the judiciary
- court budget as a percentage of the public sector budget and gross national income
- annual number of cases (input and output)
- number of judges (in fte), substitute and lay-judges, rechtspfleger, non-judge court personnel

3. Independence, impartiality, efficiency, competence and the role of judges

- salary of a judge (to be compared to salary of attorney, public prosecutor, college professor, doctor); indicates status as well as financial independence
- amount of 'trust' measures in public surveys

4. The status and role of the public prosecution

- number of public prosecutors
- number of staff public prosecuting agencies
- average or median salary of a prosecutor
- prosecution budget
- number of case dropped, sanctioned directly, charged before courts (yearly)
- average or median length of prosecution proceeding

5. Status and role of lawyers

- number of attorneys
- average or mean salary of an attorney

6. Execution of court decisions

- number of enforcement agents
- percentage of successfully enforced court orders

7. Administration of justice

- IT budget

APPENDIX F TABLE OF PERFORMANCE INDICATORS MEASURING PROFESSIONAL QUALITY OF THE JUDICIARY IN THE NETHERLANDS⁴⁷

Measurement area I: impartiality and integrity of judges

1. Registering secondary occupations of judges
2. Successful challenges of the impartiality of a judge
3. Voluntary withdrawals after a challenge is submitted
4. Procedure for allocating cases
5. Complaints procedure
6. Policy for deployment of honorary substitute judges
7. Deployment of honorary substitute judges compared to the total number of judges
8. Perceived impartiality (satisfaction of the litigants⁴⁸)
9. Perceived impartiality (satisfaction of the professionals)

Measurement area II: expertise of judges

1. Perceived expertise (satisfaction of the litigants)
2. Perceived expertise (satisfaction of professionals)
3. Preparation by the judge (satisfaction of the litigants)
4. Preparation by the judge (satisfaction of the professionals)
5. Percentage of appeals compared to the total number of final judgements against which appeal is possible (administrative section; commercial law unit; family law unit; sub-district sector, criminal law sector)
6. Percentage inexcusable annulments
7. Policy regarding cases to be heard by a single judge or by a panel of judges
8. Ratio between cases decided by a panel judge and a single judge (administrative section, commercial law unit, family law unit and criminal law section)
9. Policy regarding the expertise and experience of judges who preside alone
10. Applying a method of peer review or intervision

Measurement area III: treatment and attitude of the judges

1. Various aspects of judicial functioning (satisfaction of the litigants)
2. Judicial functioning (satisfaction of the professionals)
3. The judge allows litigants to have their say during a court session (satisfaction of the litigants)
4. The judge listens to the various points of view during a court session (satisfaction of the litigants)
5. The judge listens to the various points of view during a court session (satisfaction of the professionals)
6. The judge imagines himself in the situation of the litigants (satisfaction of the litigants)
7. The judge imagines himself in the situation of the litigants (satisfaction of the professionals)
8. Explaining the case during the court session (satisfaction of the litigants)
9. Providing insight into the case (satisfaction of the professionals)
10. Explaining how the session proceeds (satisfaction of the litigants)
11. Explaining how the case will be dealt with further (satisfaction of the litigants)
12. Explaining how the case will be dealt with further (satisfaction of the professionals)
13. Various aspects of the decision (satisfaction of the professionals)
14. Explaining the decision by the court (satisfaction of the litigants)
15. Founding the decision by the court (satisfaction of the professionals)
16. Comprehensibility of the decision (satisfaction of the litigants)
17. Legibility of the decision (satisfaction of the professionals)

Measurement area IV: unity and equality of law

1. Unity of law experienced by professionals (parties experienced in proceedings)

⁴⁷ Instruments to measure the scores on the performance indicators are: registration systems of the courts, audits and client assessment surveys.

⁴⁸ The satisfaction is measured on a five point scale from: 'very satisfied' till 'very unsatisfied'.

2. The use of instruments to promote unity of law
3. Implementing policies to promote unity of law

Measurement area V: speed and proceeding on time

1. Average time between request for a judgement and the judgement in commercial cases in a defended action
2. Average time between the decision a session is needed with both parties present and the session taking place in commercial cases
3. Average time between session and judgement in principal administrative cases
4. Average time between a case being ready for a session and being on the court's agenda in administrative cases
5. Average time between the moment of appeal and sending the file to the court of appeal (three judge section criminal cases)
6. Percentage of adjourned proceedings (three judge section criminal cases)
7. Average time between the date on which it is determined judgement will follow and the judgement (civil sub-district defended cases)
8. Average time between first cause-list session and the final judgement (civil sub-district defended cases)
9. Average time between the planned judgement date and the judgement (divorce cases family law unit)
10. Average time between a case being ready for a session and the first planned session (divorce cases family law unit)
11. Productivity of the judges per sector
12. Starting cases on time (percentage of cases that start more than 10 minutes too late)
13. Starting cases on time (satisfaction of the litigants)
14. Starting cases on time (satisfaction of the professionals)