CHAPTER 28

Court Management: A Young Field of Public Management

Permanent Study Group 18: Justice and Court Administration

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28.1 The Development of Court Management in Europe

Courts and other authorities of the judiciary—like other public administration institutions—always had to be administered. As a result, court administration is as old as public administration. But somehow for decades—longer in Europe than in the USA—this form of administration was not visible and not the subject of political and scientific discussion. One reason might be that court administration was not the responsibility of the courts but was a task for the justice ministry in central government, as is still the case in many European countries. In addition, courts were

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subject to research but not under the heading of "court management". For example, in Germany at the beginning of the 1970s under the title "Richterzeitstudien" (surveys of judges' workloads), sociologists carried out large caseload studies related to the civil courts of first and second instance that were categorized under the disciplines of sociology of law and industrial sociology.[1] More recent research reveals that the first attempts at court management in Switzerland date back to the nineteenth century when statistics were first used in public administration.[2]

Court management as a field of research was the result of three separate factors. The first was ideational: the general debate on management in public administration in the 1990s in the context of the New Public Management (NPM) movements in several countries. Around the same time as this debate on management models for public administration, a discussion also arose about management in the judiciary. In Germany, this debate, which covered a broad academic spectrum and was at times rather heated, originated in part from a book written by a former judge in the German Federal Constitutional Court, Wolfgang Hoffmann-Riem.[3] In Switzerland, the discussion on court management was conducted primarily in the context of NPM projects in the cantons, but was often limited to the question of whether the judiciary should be included in the new NPM model concerned. It can be shown that in cantons that

[1] See Bundesrechtsanwaltskammer (Hrsg.), *Tatsachen zur Reform der Zivilgerichtsbarkeit*, Band II, Tübingen, 1974, p. 60 ff.; Bundesrechtsanwaltskammer (Hrsg.), *Tatsachen zur Reform der Zivilgerichtsbarkeit*, Band I, Tübingen, 1974, p. 182 ff.; Gert Griebeling, Die Arbeitszeit des Richters, DRiZ 71, p. 228 ff.

[2] See Stephan Aerschmann, Christof Schwenkel, Stefan Rieder, and Michele Luminati, in: Andreas Lienhard and Daniel Kettiger (eds.), *The Judiciary between Management and the Rule of Law*, Bern 2016, p. 36 ff.

[3] Wolfgang Hoffmann-Riem, *Modernisierung von Recht und Justiz*. Frankfurt a.M.: Suhrkamp.

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implemented NPM models for general administration, court management today is more developed than in other cantons.[4]

The second factor was institutional: the activities of the European Commission for the Efficiency of Justice (CEPEJ).[5] This commission of the Council of Europe was established on 18 September 2002 with the aim of improving the efficiency and functioning of justice systems in member states, and developing the instruments adopted by the Council of Europe to this end. The activities of the CEPEJ focus on judicial time management,[6] quality of justice, enforcement and mediation. The CEPEJ has published numerous studies on its field of activity and also runs a permanent system for monitoring the courts in member countries.

The third factor at the origin of court management was an "objective" *need for management in courts*. The judiciary—like all state organs and public administrations—has come under increasing pressure to reform: on the one hand the workload, complexity of the material and the procedural requirements are steadily increasing, while on the other hardly any additional resources are being made available.[7] This puts pressure on the judiciary to raise its efficiency levels, and this can ultimately only be achieved through smoothly functioning court management. Mere "administration" of the courts no longer suffices. Wolfgang Hoffmann-Riem talks of truth, justice, independence and efficiency as the "magic square of the third power".[8] One of the difficulties that compromises due access to justice is that it often takes too long for the courts to reach a final decision in a given case.

Nowadays the need for and the importance of court management are no longer contested, while the organization of the judicial authorities and the performance of the judiciary and the courts are subject to research and reforms.

[4] See Andreas Lienhard, Daniel Kettiger, and Daniela Winkler, Status of Court Management in Switzerland, in *International Journal for Court Administration*; *IJCA* 2012 Special Issue, December 2012, p. 14.

[5] http://www.coe.int/T/dghl/cooperation/cepej/default_en.asp.

[6] The so-called SATURN Centre.

[7] See Daniel Kettiger, Wirkungsorientierte Verwaltungsführung in der Justiz: Ausgangslage—Entwicklungen—Thesen, in: Daniel Kettiger (ed.), *Wirkungsorientierte Verwaltungsführung in der Justiz—ein Balanceakt zwischen Effizienz und Rechtsstaatlichkeit*, Bern, 2003, p. 9; *Andreas Lienhard, Staats- und verwaltungsrechtliche Grundlagen fur das New Public Management in der Schweiz—Analyse, Anforderungen, Impulse*, Bern 2005, p. 461 f.

[8] Hofmann-Riem (footnote 3), p. 211 f.

28.2 Origin and Activities of a Young Permanent Study Group: Links with the Study Group 10 "Law and PA"

In certain respects, the Permanent Study Group (PSG) 18 justice and court administration was derived from the PSG 10 law and public administration. The chairs of the PSG 10 noted that an increasing number of papers presented dealt with the organization of courts and not with the relationship between public law and public administration. It was Philip Langbroek who launched the idea of founding a new PSG justice and court administration. With the co-chairs of PSG 18 at the time, he found followers and colleagues to help to run the activities of the PSG. There was a close relationship between the inauguration of the PSG 18 and the start of the research project "Basic Research into Court Management in Switzerland",[9] because the latter had until then provided secretarial services to the PSG.

The PSG 18 began its activities in 2012 with the European Group of Public Administration (EGPA) Annual Conference in Bergen (Norway). The start was a success: 20 papers and 1 research project were presented during the sessions. Sessions were dedicated to specialist subjects such as "Legal Perspectives", "Justice Administration and Politics", "Justice Administration and Society" or "Management of Courts in the Justice System". The sessions of the PSG 18 led to a special issue of the *International Journal for Court Administration* (*IJCA*).[10] At the EGPA Annual Conference 2013 in Edinburgh (Scotland), there were 16 papers presented and discussed, and two special sessions on "Caseload and caseflow management" and "Courts in the age of information". Since 2013, the PSG 18 has stopped accepting papers and discussions with a strictly legal content so as not to compete with the PSG 10. In 2014 in Speyer (Germany) the sessions contained 22 papers; one session was especially dedicated to "Alternative dispute resolution (ADR)". For the EGPA Annual Conference 2015 in Toulouse (France), there was an open call without specialist subjects, which led to an input of 20 papers. The incoming papers were afterwards grouped into thematic sessions—a procedure that proved to be successful.

[9] For this project see Andreas Lienhard and Daniel Kettiger (eds.), *The Judiciary between Management and the Rule of Law, Results of the Research Project "Basic Research into Court Management in Switzerland"*, Stämpfli Publishers, Bern, 2016.

[10] *International Journal for Court Administration (IJCA)*, 4(3).

The participants in PSG 18 have so far been researchers and practitioners from courts and from judicial administrations. This mix has proved to be extremely interesting and there was a lot of successful knowledge sharing. The range of participants has been pan-European, from Spain to Norway and from the Netherlands to Ukraine.[11] From the beginning there have regularly been participants from other continents as well[12]—the PSG 18 has had an international outreach.

In its short existence, the PSG 18 has also been able to give several young researchers the opportunity to present their findings, thus giving them a platform and the chance to make contact with practitioners from other countries. The PSG 18 and its network function as a meeting place and as an incubator for international cooperation in research.

28.3 Outlook: The Judiciary Face Up to New Challenges[13]

Justice organizations and their contexts develop only gradually. In 1999, EGPA established the paradigm for judicial independence versus judicial accountability (in the context of the administration of justice at national level and within a hierarchy of court organizations). This essential constitutional safeguard for an independent judiciary competes with themes such as access to justice, efficiency and logistics, media and information and communication technology (ICT). Many judiciaries are constantly in transition, because of technological and societal developments that continuously challenge the credibility and the authority of the judiciaries and the courts. Some of these topics deserve a closer look because of their topicality:

Media and court communication: The trust of citizens in the courts can differ quite considerably from country to country, while the public have an alarming lack of general knowledge of how the judiciary works. Nevertheless, courts increasingly find themselves in the media spotlight

[11] Belgium, Czech Republic, Finland, France, Germany, Greece, Hungary, Italy, the Netherlands, Norway, Poland, Portugal, Switzerland, Ukraine and the UK.

[12] There were participants from Australia, Brazil, Israel and the USA; others with accepted papers from Canada and China could not come to the conferences because they could not obtain funding for their travelling expenses.

[13] This section is partly based on the application for continuing PSG 18 submitted to the EGPA Board in December 2015.

and are sometimes heavily criticized. So there certainly is a need for communication by the courts—but how should it to be done? Studies and experience of the relationship between courts and the media, and of the influence of court communication on the trust of citizens in courts are scarce. Austrian lawyers are currently discussing whether courts need specific legal protection against improper criticism.[14]

Information and communication technology for judicial systems: The use of ICT is a key success factor for an efficient judiciary (civil, criminal and administrative). Italy has successfully introduced a country-wide system of electronic civil procedure.[15] However, several projects around Europe have failed[16] and there is still a lack of detailed information on the success or otherwise of these projects, and on the projects that have clearly brought some added value to the functioning of the justice system. One of the most interesting developments is certainly the systematic use of electronic-filing of documents in the courts and the interoperability of different applications (e.g. those used by the public prosecutor's office, courts, prisons, financial agencies, land registries, banks etc.). This development has to be studied within each country and also internationally, as there is a desperate need to share information in pan-European proceedings (e.g. e-CODEX).

The responsive judge: A responsive judge is a future-oriented conflict resolver, in contrast to the judge as a decision-maker in legal relations based on past events. This form of judicial activity is often organized in interdisciplinary networks, for example in family cases, where judges can work with counselling services or social workers, or in criminal law, with the prosecution service, the police, victim support agencies and so on. There also is a link with ADR. Questions here are how to organize those specific court procedures, how to preserve judicial independence when the court becomes a participant in the problem-solving process and how to relate this to the right to a fair trial, especially when a suspect is directed into a personal support programme (e.g. a drug-rehabilitation programme) without judicial intervention.

[14] See Michael Reiter, Das Justizschutz-Gesetz, in: *Die Medienlandschaft 2015—Herausforderungen an die Justiz, Schriftenreihe des Bundesmimnisterium für Justiz Band 162*, Wien, 2016, p. 157 ff.

[15] See, for example, Filippo Novario, *Prosesso Civile Telematico*, Torino, 2014.

[16] See, for example, Marco Fabri and Francesco Contini, *Justice and Technology in Europe: How ICT is Changing the Judicial Business*, Kluwer Law, The Hague, 2001.

Whilst the PSG 18 will continue to take an interest in institutional developments within court and justice administration from national, European and United Nations' perspectives, in the future it also plans to focus on projects concerning service provision by justice organizations:

- (Equal) Access to justice (also in relation to ICT and the need for legal representation)
- Operations management in and between justice organizations (logistics and organization development in relation to speed of proceedings and reliability of data exchange)
- Consistency in judging (also in relation to knowledge management)
- Transnational justice cooperation (in Europe)
- Responsive justice (problem-solving justice—subthemes include victims of crime, court-related mediation, neighbourhood justice, family issues etc.)
- Procedural justice and outcome justice
- Performance measurement and management
- Development of professional standards within the legal professions

The strategy for PSG 18 will be to continue to combine forces with established groups and networks in Europe. The Montaigne Centre at Utrecht University has justice administration alongside conflict resolution as a core topic in its official assignment, and fosters multidimensional perspectives. The Center of Competence for Public Management at the University of Bern has a wealth of experience of reform projects in Swiss court administration in a multidisciplinary context and has participated in previous projects of the network. The Research Institute on Judicial Systems in Bologna, Italy (IRSIG-CNR), specializes in court administration and has especially advanced knowledge of the development of e-justice. The International Association for Court Administration[17] continues to be a partner in the development and distribution of our knowledge.

[17] www.iaca.ws.