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From the Managing Editor:

Measuring Judicial Performance, Independence and Accountability

By Philip Langbroek, Managing Editor

On April 12-13, 2018, The European Network for Councils of the Judiciary, together with the Montaigne Center of Utrecht School of Law organized a seminar to discuss and validate a report on a major research project conducted by Frans van Dijk, Kees Sterk, Alain Lacabarats, and Guillaume Tusseaud of the Netherlands and the French Councils for the Judiciary respectively, on the measurement of Judicial Independence and Accountability. The reports on this project can be found at the website of the ENCJ. This Special Issue is dedicated to that report and to that seminar, and guest editor Frans van Dijk and I acted as editors for this special issue.

There are all kinds of methodological issues when trying to measure qualitative aspects of professional work. Measuring the Quality of Court Performance has been an exercise of the International Consortium for Court Excellence for about a decade. The Commission for the efficiency of justice (CEPEJ) of the Council of Europe, has been working for a decade on the measuring of the Quality of Judicial Systems. The Justice department of the European Commission publishes the Justice Scoreboard, with a set of indicators to enable an overview of the conditions of justice systems in EU –member states. And recently, a collection appeared on Measuring the quality of judicial reasoning, edited by Mátyás Bencze (Debrecen University, Hungary) and Gar Yein Ng (University of Buckingham), Springer, 2018. A year ago, a study appeared: Handle with Care, Assessing and designing methods for evaluation and development of the quality of justice, edited by Francesco Contini of the Research Institute of Judicial systems in Bologna, Italy.

Apparently, policymakers, court administrators and international institutions in the justice field, feel the need to show how they perform. In a world where politics has become budget centered, driven by financial policies, central banks and increasingly severe accounting policies, courts experience the increased focus on the results of their work, in their roles as part of the state, as provider of a public service, as wielder of state power and as countervailing power in relation to government and legislator. For scholars, developing adequate tools to measure judicial performances is a challenge and also part of an intellectual game they can take part in. For policymakers it seems also to be a tool to somehow get some control over the courts. Of course, as far as delivering justice by the courts is concerned, there is a very thin line between demanding improved service provision and pushing judgements in a specific direction. This may also be a threat in established rule of law democracies like the USA, France or the Netherlands. Organizing public accountability for courts and judicial performances in quantitative form seems to be the least harmful option from an independence and impartiality perspective. Representative democracies demand that also judiciaries account for how they perform, that is most reasonable. But independence and impartiality demand that political accounting mechanisms show respect for the constitutional positions of courts and judges, and their obligations to provide for fair trials. And although measuring performances within the court organisation may be helpful for court managers, it is in no way self-evident that the entirety of this information should be made public or shared with policymakers.

In the European civil law tradition, judges are civil servants, holding a professional public office. They fulfill their constitutional and trial function as a part of a profession, that takes as a point of departure that it should not matter who the judge in a case is. Judges are supposed not to participate in political debates and speak only through their judgements. In plural panel cases, a legal obligation to maintain the secrecy of chambers applies. The echo still resounds that judges are nothing than the mouth of the law. This makes European judiciaries vulnerable, and their impartiality and independence can only be realized adequately when the constitutional and societal functions of courts and judges are respected by the public, the media and furthered by politicians and court administrators. Of course, such a position comes with the

responsibility of courts and judges to provide the best possible services, living up to societal needs by timely quality work. Being open to criticisms by scholars and public debates is part of that responsibility. That is also why measuring court and judicial performances, and sharing the outcomes with the public and policymakers (at an aggregate level) makes sense. That enhances the public and political legitimacy of court- and judicial work.

This special issue shows some pioneering work in developing indicators of such indicators. This pioneering work comes with many remarks and criticism. Stefan Voigt, Ingo Keilitz, Marco Fabri, David Kosař, Samuel Spáč and Elaine Mak react on and criticize the paper of Frans van Dijk and Geoffrey Vos: "A Method for Assessment of the Independence and Accountability of the Judiciary". As Editors of this Special Issue, Frans van Dijk and I have commented upon the criticisms in the final contribution

That is how our knowledge and experience grow.

Who is next in continuing those efforts?

