Relying on the courts,

about collegiate collaboration in courts as a counterbalance to professional hierarchy and as a necessary precondition for efficiently delivering, timely and consistent justice in Ukraine, Greece and the Netherlands.

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Abstract

A judicial organization ensures that the work that is done – administering justice – is reliable. Citizens must be able to rely on the courts. Justice must be accessible, on time, and fair. In addition, it must be predictable and effective. And, moreover, the organisation of justice must be effective. It may cost a little, but it is predominantly taxpayers' money. There are two organizational principles that contribute to realizing those aims: hierarchy and cohesion. I assume that hierarchy and cohesion in organization must be in balance for the organization to function effectively. All kinds of horizontal and vertical interactions are needed, partly in relation to the societal environment of an organization, for it to flourish. This also applies to judicial organisations. One assumption is that professional judges are substantively inspired – and enjoy doing their job, and another is that people trust each other enough to work together. I illustrate this by the phenomenon of procedural guidelines as a result from judicial cooperation and a comparison of the situation of the judicial organizations of Ukraine, Greece and the Netherlands. I conclude that, when it comes to rule of law reviews of national judiciaries, much more attention should be paid to hierarchy and internal cohesion – cooperation along horizontal lines. Without such horizontal cooperation, judges cannot be adequately autonomous, impartial, and independent, because too much hierarchy enables the exertion of pressures also for other reasons than quality of court work.

1. Introduction

A judicial organization ensures that the work that is done – administering justice – is reliable. Citizens must be able to rely on the courts. Justice must be accessible, on time, and fair. In addition, it must be predictable and effective. And, moreover, the organisation of justice must be effective. It may cost a little, but it is predominantly taxpayers' money. There are two

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organizational principles that contribute to realizing those aims: hierarchy and cohesion. I assume that hierarchy and cohesion in organization must be in balance for the organization to function effectively. All kinds of horizontal and vertical interactions are needed, partly in relation to the societal environment of an organization, for it to flourish. This also applies to judicial organisations. One assumption is that professional judges are substantively inspired – and enjoy doing their job, and another is that people trust each other enough to work together. I illustrate this by the phenomenon of procedural guidelines as a result from judicial cooperation and a comparison of the situation of the judicial organizations of Ukraine, Greece and the Netherlands. I conclude that, when it comes to rule of law reviews of national judiciaries, much more attention should be paid to hierarchy and internal cohesion – cooperation along horizontal lines. Without such horizontal cooperation, judges cannot be adequately autonomous, impartial, and independent, because too much hierarchy enables the exertion of pressures also for other reasons than quality of court work.

2. Hierarchy and collaboration

There is not so much literature on the effects of hierarchy on collaboration in organizations. Intuitively we assume that guidance is needed, it is in the Christian tradition, philosopher Thomas Hobbes conjures hierarchy from his analysis as a solution to our tendency to be selfish[2], and in the Jacobin tradition hierarchy is also a democratic principle: do what the majority indicates. We were raised with it, and we take it for granted.[3] But there is a lot of criticism of hierarchy as an organizational principle. Hierarchy makes cooperation less effective, according to social psychological research, and the more vertical the hierarchy, the worse the cooperation between subordinates. [4] Hierarchy remains mainly because some people benefit from it at the expense of others and do everything to maintain that advantage, while the benefits of hierarchy – cooperation – can also be obtained in other ways.[5] At the same time, crossing borders in hierarchies, especially when it comes to the development of solidarity and cooperation between subordinates, comes at the expense of the authority of the highest in rank, and is therefore threatening to them.[6] For constitutionalists, this knowledge about hierarchy in organizations and societies may be a basis for setting up multidisciplinary research into the internal organizational functioning of institutions in order to explain success or failure of the functioning of checks and balances between institutions under the rule of law.

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[2] Thomas Hobbes, Leviathan, 1651 (Penguin, Middlesex, England, 1984).

[3] Ricardo Blaug (2009) Why is there hierarchy? Democracy and the question of organisational form, Critical Review of International Social and Political Philosophy, 12:1, 85-99, DOI: 10.1080/13698230902738635

[4] Cronin, K., Acheson, D., Hernández, P. et al. Hierarchy is Detrimental for Human Cooperation. Sci Rep 5, 18634 (2016). https://doi.org/10.1038/srep18634; Antonioni, A., Pereda, M., Cronin, K.A. et al. Collaborative hierarchy maintains cooperation in asymmetric games. Sci Rep 8, 5375 (2018). https://doi.org/10.1038/s41598-018-23681-z; Hazelzet, E., Houkes, I., Bosma, H., & de Rijk, A. (2022). How a steeper organisational hierarchy prevents change—adoption and implementation of a sustainable employability intervention for employees in low-skilled jobs: a qualitative study. Bmc Public Health, 22. https://doi.org/10.1186/s12889-022-14754-w

[5] Diefenbach, T. (2013). Hierarchy and organisation: toward a general theory of hierarchical social systems (Ser. Routledge studies in management, organizations, and society, 24). Routledge, p. 43; Slade, S. (2018). Going horizontal : creating a non-hierarchical organization, one practice at a time, Berrett-Koehler.

[6] Diefenbach, p. 166.

3. Procedural guidelines

Procedural arrangements in the judicial system – judges' guidelines – are agreements by judges on how they will use powers granted to them by procedural laws to conduct proceedings in a case. It is a form of collaboration between professionals. But it is a curious phenomenon from a normative point of view because judges make rules, while according to the doctrine of separation of powers they have no regulatory power at all. Are judges allowed to do that?

An important element of these agreements laid down in procedural guidelines is that they are a kind of promise. To promise is to perform a certain language act. It is essential that the person to whom the promise is made benefits from it, that the addressee of the promise would rather the promised be done or given than that it should not be done, and that the person who makes the promise has a serious intention of actually delivering the promised. The audiences of procedural arrangements are parties involved in a case and their representatives. Procedural arrangements promote a certain degree of uniformity in conducting proceedings by judges, thereby making litigation more predictable. However, a lawyer is not necessarily eager for this type of arrangement, because they limit the freedom to represent and defend the interests of their clients in a dispute. Just think of speaking times, length of documents, deadlines, and requests for postponements of the hearing of a case. Lawyers are obliged to represent the interests of their clients as well as possible, including in proceedings. They are partisan on principle.[7] And those procedural guidelines place restrictions on the handling of that duty. Therefore, in the case of procedural guidelines, the performance of the language act "to promise" is not entirely successful.

Procedural guidelines have an external effect. They limit the ability of parties and their representatives to manage the procedure. This is important, because in this way, judges and court organizations keep their time spent on cases in their own hands and thus also prevent the planning of court cases becoming unpredictable. Imagine lawyers repeatedly asking for adjournment of a hearing (which means losing hearing capacity), not sticking to speaking time (which means losing the schedule on a court day) and submitting documents of a size at will without adhering to deadlines (which would require more time from a judge than would be reasonable), and that judges have to read them. In this way, lawyers would be able to effectively take away the judge's capacity for the benefit of their own clients (and perhaps also for their own agenda), while the cases of others would then have to wait longer for treatment. By preventing this by means of the procedural guidelines, judges ensure that they divide their time evenly between the pending cases. In doing so, they also promote the possibility of equal access to more or less timely justice – insofar as judges can control it – for citizens and organisations, and it promotes equal treatment of citizens, by enhancing proportionality in the use of a court's capacity on a case. And while doing so, judicial procedural guidelines also enhance consistency in case management. That is why stating

[7] IBA STANDARDS FOR THE INDEPENDENCE OF THE LEGAL PROFESSION (Adopted 1990) - https://www.ibanet.org/resources (last visit 02-04-2023); https://www.advocatenorde.nl/de-advocaat/kernwaarden/partijdigheid (last visit 02 04 2023).

procedural guidelines by judges are defensible, even if it restricts the freedom of lawyers to protect the interests of their clients in court proceedings, albeit within certain limits.

Wherever judicial administration is mentioned separately as a judicial task in a constitution or in a law on courts and judges, it can be assumed that judges may make such guideline, within the limits set by codes of procedure. The way in which – who determines them, and the way of applying them, are important. It should be judges who make the guidelines and not an administrative body – not even a managing body of the judicial organisation in which judges sit – that is a requirement of internal judicial independence. And in its application, judges in a case should be able to deviate from guidelines, if necessary, because the right to a fair trial should not be affected. The individual judge should remain in control of the management of a case.[8]

In the Netherlands, court guidelines, including those that supplement legal procedural law, have long been commonplace, the development dates to before the turn of the last century, and in academic jurisprudence extensive attention has been paid to this type of judicial cooperation.

I refer to the theses of Ashley Terlouw (2003) [9], of Karlijn Teuben, from 2004[10]; Bregje Dijksterhuis from 2008[11], Paul Bovend'eert has paid attention to it from a constitutional perspective in the magazine Regelmaat of 2010 and in the NJB of 2016.[12] Judicial procedural arrangements are therefore generally accepted in the Netherlands, you may question them, but it is a crystallized judicial practice that is recognized in law. Some lawyers may have difficulty with it, but to the extent that the application of procedural guidelines restricts them too much in the exercise of their duty to defend the interests of their party, they find the Netherlands' Supreme Court on their side.[13]And the interest of equally accessible justice for citizens by assigning court capacity proportionally to cases justifies that lawyers are to follow such judicial guidelines. In criminal cases, this also applies to public prosecutors.

It is important to address the phenomenon of judicial guidelines more than 20 years after their invention, because they are an expression of cooperation of judges. Judges who are individually autonomous professionals, protected with a guarantee of their independence, while their handling of procedural law is monitored in the hierarchical system of appeal and

[8] That is the thrust of a ruling of the Netherlands'Supreme Court dated 3 June 2022 (ECLI:NL:HR:2022:824).
[9]Terlouw Ashley Béatrice. (2003). Judgment and agreement: cooperation between immigration judges in the absence of an appeal. (Uitspraak en afspraak: samenwerking tussen vreemdelingenrechters bij ontbreken van hoger beroep). Boom Juridische uitgevers. (In Dutch)
[10]Teuben, Karlijn, (2004) Judges' regulations in civil (procedural) law, (Rechtersregelingen in het burgerlijk (proces)recht) Kluwer, Deventer. (in Dutch)
[11] Dijksterhuis, B. M. (2008). Judges standardize the level of maintenance: an empirical study of judicial cooperation in the working group on maintenance standards (1975-2007) (Rechters normeren de alimentatiehoogte: een empirisch onderzoek naar rechterlijke samenwerking in de werkgroep alimentatienormen (1975-2007 (dissertation). Leiden University Press. (In Dutch)
[12]P.PT, Bovend'eert, The judge as legislator: uniform application of law in court regulations from a constitutional perspective (De rechter als wetgever: uniforme rechtstoepassing in rechtersregelingen vanuit staatsrechtelijk perspectief), RegelMaat 2010 (25) 1, p. 17-28; P.PT, Bovend'eert, The legal nature of procedural rules and other court regulations, (Het rechtskarakter van procesreglementen en andere rechtersregelingen), Nederlands Juristenblad– 5-2-2016 – AFL. 5 p. 257-326. (Both in Dutch).
[13] The advisory opinion of Advocate-General Ruth de Bock in the aforementioned preliminary ruling procedure on procedural guidelines is by far the most recent and comprehensive, publicly accessible text on procedural guidelines (ECLI:NL:PHR:2021:1228).

cassation. This means that this collaboration between judicial professionals – in Europe- is not at all self-evident. I will illustrate that with two projects offering the development of judicial guidelines and thus judicial cooperation, in Ukraine and in Greece.

4. Two projects

Since 2019 I have been involved in two projects, organized by the Centre for International Legal Cooperation in The Hague (organisation is led by Willem van Nieuwkerk), which aimed, among other things, at introducing the idea of the procedural guidelines as an instrument of case management in Ukraine and in Greece. The Project in Ukraine is a so-called MATRA project (Maatschappelijke Transformatie; 'Social Transformation'), funded by the Netherlands'Ministry of Foreign Affairs, the project in Greece was funded by the European Commission. In terms of content, both projects were led by Senior Judge Esther de Rooij.

4.1 Ukraine

Ukraine is a country with 139[14] (was 225 in 2018) lawyers per 100,000 inhabitants Netherlands 102 per 100,000 inhabitants). The population of Ukraine is declining, from 46 million in 2010 to 41 million today. The number of lawsuits is about 3 million per year in 2010; 1.9 million cases in 2016 and 2.4 million cases in 2020. Independent and impartial justice in Ukraine has long been difficult to achieve. Judges could buy a position (call it goodwill) or an oligarch would get someone a post. That goodwill had to be recouped, think of amounts between 50,000 and 400,000 Euros, and for the oligarch there had to be something in return. Law firms also cooperated as go-betweens. In this sense, a lawsuit of some importance could be bought.

Since December 2015, a National Anti-Corruption Bureau and a High Anti-Corruption Court have been established and are in operation. An electronic system has been set up in which civil servants and office holders must declare their property. This system does automatic checks with registries of real estate, car registries and so on. And the data are accessible to the public and so, this is the most important tool in the fight against corruption.[15]

Judges must be able to declare their property, so if you own three houses, an apartment, a Tesla and a collection of Rolexes, and you cannot prove that you obtained those in a normal way, given, for example, your income history, you can no longer be reappointed as a judge. By the way, finding irregularities in your property is different from a criminal conviction for (embezzlement, fraud, corruption) having obtained your property unfairly. A criminal conviction for embezzlement or fraud is not so easy. More than 6,000 judges and candidates for judges' posts also had to undergo a substantive assessment to requalify. Of the nearly

[14] The figures for Ukraine in the CEPEJ data vary quite a bit: 2010 (225) 2012 (244) 2014 (NA) 2016 (83) 2018 (108) 2020 (135). This probably has to do with changes in the definition of 'lawyer'. source: https://www.coe.int/en/web/cepej/cepej-work/evaluation-of-judicial-systems last visit 13 04 2023.
[15] Nicholas Dam, 1/26/2021, Reform-of-Asset-and-Interest-Disclosure-in-Ukraine. https://thedocs.worldbank.org/en/doc/457791611679267058-0090022021/Reform-of-Asset-and-Interest-Disclosure-in-Ukraine Last visit 30 March 2023.

9,000 judges, 3,000 have resigned or were dismissed. Furthermore, the High Qualification Commission of Judges of Ukraine has initiated a special evaluation ("vetting") and appointment procedure for the members of the Supreme Court and the High Council of Justice. There is cooperation with the Venice Commission and a group of international experts to arrive at a selection of honest judges[16]. NGO's (Non-Governmental Organisations) play a driving role, closely monitoring the steps taken and commenting on the level of transparency – also during the war.[17]

Through the National Anti-Corruption Office and the High Anti-Corruption Court, several judges have been prosecuted, and convictions have since been handed down, including confiscation of allegedly unlawfully acquired property – sometimes in the tons and millions, as in the case of the former president of the Administrative Appeal Court in Kyiv. But opposition to reform is hugely tough.[18] You can set up an anti-corruption section within the Public Prosecution Service, but those people can also be bribed – or a media campaign is set up to make it plausible that effectively operating corruption fighters are themselves corrupt, including anti-corruption NGO's.[19] Much of the media in Ukraine is owned by oligarchs. In the meantime, members of NGO's that fight corruption must also declare their own assets. And the Constitutional Court found in 2020 that the obligation of civil servants to give up their property for public accessibility, etc., was unconstitutional. [20] In this way, some members of the Constitutional Court also tried to avoid prosecution of themselves, trying to make the National Anti-Corruption Bureau powerless. Quite a few of the pending cases at the High Anti-Corruption Court are dragged on by lawyers with deferral requests and even requests already provided for by the court – or they just don't show up. However, the court has no ability to hold lawyers accountable for contempt of court. Also, judgments are sometimes not published, and the Court and the Ukrainian lawyers are hostile to each other.

The public in Ukraine in 2020 found that the courts are among the most corrupt institutions (4.43 on a scale of 1-5), only customs was worse, but also the parliament, the public prosecutor's office, scored higher than 4.[21]

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[16] Stawa, Georg, Wilma Van Benthem, Reda Moliene, Selection and Evaluation of Judges in Ukraine, Pravo Justice, November 2018 (www.pravojustice.eu, last visit 29 Marh 2023).

[17] Bader, Max, Oksana Huss, Andriy Meleshevych, Oksana Nesterenko, Civil Society Against Corruption in Ukraine: Pathways to Impact, Kyiv-Mohyla Law and Politics Journal 5 (2019) p. 2-35; DeJuRe, Judicial reform in Ukraine https://en.dejure.foundation (last visit 29 March 2023); Corruption is a topic on itself, see: Johnston, Michael. Syndromes of Corruption : Wealth, Power, and Democracy, Cambridge University Press, 2005. ProQuest Ebook Central, http://ebookcentral.proquest.com/lib/uunl/detail.action?docID=244063;

[18] See for example Lough, John and Vladimir Dubrovskiy, Are Ukraine's Anti-Corruption Reforms Working? Russia and Eurasia Programme | November 2018 https://euaci.eu/what-we-do/resources/are-ukraines-anti-corruption-reforms-working-research-paper (Last Visit March 30 2023). Transparency International, Report Based on the Monitoring of the High Anti-Corruption Court, April 1 – July 1, 2021. (euaci.eu, last visit 29 March 2023); Reznik, O., Bondarenko, O., Utkina, M., Klypa, O. and Bobrishova, L., 2023. Anti-Corruption Transformation Processes in the Conditions of the Judicial Reform in Ukraine Implementation. International Journal for Court Administration, 14(1), p.2.DOI: https://doi.org/10.36745/ijca.400

[19] https://antac.org.ua/en (last visit 28 March 2023).

[20] https://ti-ukraine.org/en/news/breaking-constitutional-court-effectively-terminates-e-declarations/; https://antac.org.ua/en/news/constitutional-court-destroyed-edeclarations/ (last visit 28 March 2023).

[21] Volosevych, Inna Deputy Director of InfoSapiens Corruption in Ukraine 2020: Understanding, Perceptions, Prevalence https://euaci.eu, p.4 (Last visit March 29, 2023).

In our project in Odesa Oblast, an attempt was made to get the judges of different courts and of the Odesa Court of Appeal to discover whether and how they could get a better grip on their work by developing procedural guidelines for the different jurisdictions. To this end, they worked together with an NGO (Second of May Group), which monitored the project. It was also surprising that the legal profession cooperated with this project in the development of these procedural guidelines. A lawyer and member of parliament convinced the local bar to move along. Andriy Drischlyuk, then President of Odessa Court of Appeal was one of the important persons that pushed the project ahead, despite the covid restrictions. It was noticeable that judges were hardly used to working together but enjoyed discussing cases and possible guidelines with each other. This was also supported by the presidents of the first instance courts in Odesa oblast.

One of the topics that was heavily emphasized in the discussions is the fact that in cases involving a powerful politician or a powerful businessman, judges tend to duck out by recusing themselves. They prefer to throw the hot potato over the wall to a colleague. And then every excuse is valuable. This also applies to the challenging of judges, which also results in delays in a case, and lawyers are often looking to postpone the hearing of a case at all costs. Arguments that are used include: the judge was a fellow student, the judge has previously been in a case in which I was involved, the judge was a colleague in a previous life, or the judge is a customer of the organization that filed a case against me, or is a customer of the organization which was the object of the crime of which I am suspected, etc. So, these arguments are declared invalid in the guidelines. But the guidelines developed by Odesa judges also deal with the role of lawyers in the planning of cases, of postponement. They indicate when postponement requests are not granted. The starting point is that if you cannot be present as a lawyer, you should send a colleague, unless unforeseeable circumstances arise (and then you must prove them). It also deals with the deadlines for the delivery of documents prior to the hearing, evidence, and speaking times. In Odesa, judges are currently working with these guidelines, to their satisfaction.[22] To make this possible, hierarchical security was very important. Before they joined, they wanted to make sure that high council of justice regulators agreed to this experiment – with a letter and a signature and a stamp.

If I qualify the current situation of judges in Ukraine – not to mention the war – a year and three months after the conclusion of the project in Odesa, it is one of uncertainty in the highest institutions. There is still hierarchy, but it has inevitably changed and become uncertain due to the many changes that have been made in recent years and because of the many dismissals of judges in recent years. In these circumstances, collaboration with colleagues in the development and application of procedural guidelines is an attractive perspective. A similar project has started this year in Kyiv Oblast. The extent to which this has a chance of success depends not only on the development of the war, but also on whether the project also succeeds in linking this method to the newly established institutions of the judicial system in Ukraine. This new establishment is now an ongoing concern.

[22] The Odesa guidelines date back to 2019.

4.2 Greece

The project in Greece delivered a completely different experience. The Center for International Legal Cooperation organized a project for the European Commission between 2019 and 2022, at the request of the Greek government. That was about improving the Greek judiciary, meaning organizing statistical data collection, improving the training of judges, and improving cooperation between judges. Unfortunately, the latter part of the project was sabotaged from many quarters in terms of cooperation between judges – from the Athens court and by the judges' association and by the President of the Supreme Court, Maria Georgiou. So it may be that I am biased. Only the family judges of the Piraeus District Court, and the Public Prosecutor's Office of Athens and Piraeus were willing to join us. For the judges in Piraeus, their cooperation soon led to a brief set of procedural rules regarding the scheduling of cases at hearing and regarding parties' limitations regarding case management. Incidentally, I would also like to say that the Greek lawyers we spoke with during the preparation of our project were very much in favor of improving case planning and related communication at the Athens District Court. The Athens Court is the largest court in Greece, where 800 of the 2900[23] Greek judges work and that is the court where most cases are filed, because half of the Greeks live in the Athens region. Cooperation between the Bar Association, the Court, and the Public Prosecution Service to improve planning and lead times in civil and criminal cases is absent. When we asked about this, it turned out that the president of the Athens Bar Association had not spoken to the board of the Athens Court for 5 years, there had been no consultation at all. And, when asked, the court did not want to do it at all.

Anyone who reads the Greek constitution will be impressed by the strong rule of law position of the judges and prosecutors and of the judicial system form an external perspective. But if you then delve deeper into the regulations, you will discover that many competences and therefore also power are concentrated at the Greek Supreme Court[24](*Areios Pagos*). It is not only the Supreme Court, but it also organises the inspection of judges and courts. Presidents and the head of the Public Prosecutor's Office and Advocates-General in the Areios Pagos and the Council of State are nominated and appointed by the government, and their term may not exceed 4 years (Art. 90 Greek Constitution). In practice, Presidents of the Supreme Court are appointed when they are 65 or nearly 66, so their term ends when they are 67 — and retire. The government's influence on the selection of candidates for these posts has since long been criticized by the European Commission and GRECO – but has not been addressed.[25]

As for the inspection, a large part of the judges in the *Areios Pagos* is charged with inspection. They are appointed by lot and are assigned a court or a court of appeal for a year. In the long run, inspection results determine the promotion that judges can make. A body from the same Supreme Court also decides on this in the highest court on appeal. When

[23] In 2016: 2800; in 2020: 3800 with the announcement of a methodology change. Source: https://www.coe.int/en/web/cepej/cepej-work/evaluation-of-judicial-systems last visit 13 04 2023 . So, here probably the definition of: 'judge' had been adapted to the complex Greek judicial organisation.

[24] Code of courts organisation and status of judicial officers.

[25] European Commission COMMISSION STAFF WORKING DOCUMENT, 2020 Rule of Law Report. Country Chapter on the rule of law situation in Greece SWD(2020) 307 final; 2021 Rule of La Report, Country Chapter On the Rule of Law situation in Greece SWD (2021) 709 final; 2022 Rule of La Report, Country Chapter On the Rule of Law situation in Greece SWD (2022) 508 final; GRECO, Fourth EVALUATION ROUND Corruption prevention in respect of members of parliament, judges and prosecutors, ADDENDUM TO THE SECOND COMPLIANCE REPORT GREECE, Strasbourg, 21 – 25 March 2022.p 4, nrs 18-22

discussing this evaluation 'method' with judges they said the evaluations are about the cases and judgements they could select themselves and deliver to an inspector – they thought it no big deal. But the criteria by which individual judges are evaluated are not very clear. Since December 2022, a judicial ethics code has been online on the website of the Areios Pagos, but it emphatically denies any relationship with disciplinary rules.[26] It is unclear what happens to this statement in the Greek judicial system. Inspectors do not cooperate with each other. Attention is paid to the enormous backlogs in Greek courts, but this is not seen as an organizational problem, and primarily as an individual judicial responsibility. At the same time, the Greek legislature believes that traffic violations should be assessed and punished by judges. All kinds of other minor violations (such as exceeding the maximum number of seats on a terrace, or not mentioning a product name in a market stall) must also be dealt with criminally. As a result, the public prosecutor's office and the courts are flooded with criminal cases, while they are not adequately equipped to deal with them. One problem is that Greece has the highest density of lawyers in the EU (nearly 400 per 100,000 inhabitants), while the fee system encourages them to carry out as many actions as possible, including frequent requests for postponements, especially in criminal cases. Judges in Athens are so busy with these postponement requests that they hardly get to deal with the substance of cases. Scheduling hearings usually results in chaos because lawyers don't stick to speaking times. As a result, lawyers whose cases are scheduled later in the day often must wait until the next day. There is no electronic communication about changed hearing schedules, it is all done with paper and that means that many lawyers must wait with their party in the corridor or on the grounds between the former military barracks where the courts are housed until their case is called.

Greece is a country at a disadvantage in terms of court - and judicial administration. Ranking in the World Justice project is the lowest in the EU.[27] Other NGOs also underline the flawed state of the rule of law in Greece.[28] Greece has hardly any statistics on the functioning of civil/criminal courts, the data they provide for CEPEJ and the EU Justice Scoreboard have been absent or very limited for more than a decade, transparency is hard to find, the courthouses in Athens and Piraeus are abominable, IT's of any significance was absent in mid-2022. In the ordinary jurisdiction appointments to managerial positions are for a limited time (2 years) and not based on management talent or organizational experience.

It often happens that if a judge does impose restrictions, a disciplinary complaint is filed by the lawyer, which must then first be assessed by an inspector. The vast majority of these complaints are rejected untreated, but about five judges a year are dismissed for dysfunction. In December 2021, there were seven, following a call from Maria Georgiou, the new president of the *Areios Pagos*, appointed at the end of June 2021, to report the dysfunction of fellow judges through the hierarchy to her. Needless to say, our project – for the improving of the cooperation part - was as good as dead with that call. Also Mr. Tselipos, the friendly, then president of the Court in Piraeus, threw in the towel.

[26] http://www.areiospagos.gr/Magna%20Carta.pdf Last visit 2 April 2023.

[27] https://worldjusticeproject.org/sites/default/files/documents/Greece_2021%20WJP%20Rule%20of%20Law%20Index%20Country%20Press%20Release.pdf

[28] Joint Civil Society Submission to the European Commission on the 2023 Rule of Law Report, January 2023, (Vouliwatch, Greek Council for Refugees (GCR), Refugee Support Aegean (RSA), HIAS Greece, Generation 2.0 – Second Generation / Institute for Rights, Equality and Diversity, Reporters United);

Hierarchy instead of professional autonomy

All in all, it can therefore be said that the external independence of judges is formally well arranged, in Greece, but that they are internally dependent for their assessment and promotion on the not so clearly standardized assessments of inspectors of their Supreme Court about their functioning. Meanwhile, the government has the decisive vote in the selection and appointment of candidates to the highest judicial functions. Judges have little defense against lawyers who ignore case planning. In the disciplinary hierarchy of the judiciary, examples are regularly set by firing dysfunctional judges. The threat of negative sanctions is real and accompanied by uncertainty and also regarding the criteria used by the ECtHR, too many disciplinary powers concentrated in one body like the Areios Pagos violates the judicial independence requirement of article 6 ECHR.[29] No one at court level therefore dares to take an initiative to improve the internal organization, leaving aside the question whether one has the insight to do so. Cooperation between judges at court level – outside the multi-panel chambers – is virtually absent. In brief: the professional autonomy of Greek judges is weak.[30]

Recent examples of hierarchical manipulation in Greece include prosecuting Andreas Georgiou, the former president of the National Statistical Office (ELSTAT), who in 2011 revealed the true extent of Greece's budget deficit, for harming the country's interests. [31]The Chief public prosecutor– a member of the Areios Pagos – has ordered that prosecution three times, even after repeated acquittals. His former colleagues have also filed defamation lawsuits against them. His case was heard with the ECHR in Strasbourg last January. The persecution for human trafficking that has been instituted against volunteers who receive migrants washed ashore on Lesvos[32] and Kos is undoubtedly also well known.[33] How can that be when prosecutors are as independent as judges in Greece? Such trials take years: in Greece you file proceedings, not to win your case, but to harass your enemies hard for a long time, and somehow the prosecutions office is instrumental to that if it comes to protecting political interests.

Greece is an unattractive country in terms of protecting investment and property by law. Lawsuits take a very long time, on average 640 days for a civil case. The reasons for this are the lack of internal functioning of the judicial system, the harsh internal judicial hierarchy, the inability to cooperate between the essential institutions in the Greek justice system, and the misconception that such problems can be solved by increasingly detailing regulations – draft regulations that stakeholders co-write, so that their interests are properly safeguarded.[34] It is

[29] On internal judicial independence: Jos Sillen, The concept of 'internal judicial independence' in the case law of the European Court of Human Rights, European Constitutional Law Review, 15: 104–133, 2019.
[30] Michael Ioannidis: The Judiciary. In: The Oxford Handbook of Modern Greek Politics, Kevin Featherstone, Dimitri A. Sotiropoulos (eds.). Oxford University Press, Oxford 2020, p. 127
[31]Miranda Xafa, 26 August 2021 https://www.world-economics-journal.com/Papers/The-Case-of-Andreas-Georgiou-A-Travesty-of-Justice.aspx (28 March 2023).
[32] https://www.hrw.org/news/2018/11/05/greece-rescuers-sea-face-baseless-accusations. (Last visit April 2 2023).
[33] https://www.hrw.org/news/2023/01/16/sea-rescuers-still-waiting-justice-greece; https://www.hrw.org/news/2023/01/26/greece-migrant-rights-defenders-face-charges (last visit 4 April 2023)
[34] Luxembourg, 13.7.2022 SWD(2022) 508 final COMMISSION STAFF WORKING DOCUMENT 2022 Rule of Law Report Country Chapter on the rule of law situation in Greece, p. 9; Aristides N. Hatzis. Greece's institutional trap. Managerial and Decision Economics, 2018; 39: p. 840. Elias Papaioannou and Stavroula Karatza THE GREEK JUSTICE SYSTEM: COLLAPSE AND REFORM, Discussion Paper DP12731, 17 February 2018, Centre for Economic Policy Research, London, p. 39. This analysis is not new, see: Mitsopoulos,

not, that Greek policymakers do not know what should be done to improve the functioning of the judiciary.[35] And in the 2022 Rule of Law Report Country Chapter on Greece, the European Commission has described a number of reforms with approval – especially legislation and the creation of a justice statistics office – that are underway, but it is not clear to what extent they benefit the functioning of judges and court organisations. The Country chapters on Greece refer to changes in the law on the judicial organization, the law on judicial officers and procedural rules, but they are so detailed that they are difficult to handle. Perhaps the most effective reform is that of the National Judges School. The 2020 European Commission Rule of Law report wrote about the quality of Greek legislation as 'polynomia' and 'kakanomy.'[36] The strong position of pressure groups in the legislative process has been described by others[37] and I don't believe that all those new rules miraculously make the judiciary function well. The Greek judiciary lacks internal cooperation and is therefore not able to withstand pressure from lawyers, political pressure, and internal hierarchical pressure. This is not about Poland or Hungary, but about a member of the Eurogroup in the European Union!

5. Netherlands.

The judicial system in the Netherlands is innovative and socially oriented. Since the current law on the judicial system was introduced, not only is there systematic attention to substantive legal and judicial skill related qualities, but also to efficiency. In addition to the effort that is being made to maintain the – more than decent – trust of the public in case law, the Dutch judicial organization is also internationally oriented. This is evident not only from participation in the European Judicial Networks, such as the European National Councils for the Judiciary or in the European Judicial Training Network, and in councils for Europe for a, such as the Consultative Council of European Judges and the Venice Commission. It is also evident from the participation of Dutch judges in programs to promote the functioning of judges and courts elsewhere.

The Netherlands has traditionally been a high trust society. People trust each other (60-66%) but they don't trust institutions that much. Judges can boast a lot of trust (70%), as well as the police, and the army (60%+), but the trust in the House of Representatives is only about 40%, and politicians score even worse:

Michael, Theodore Pelagidis (2010) Greek appeals courts' quality analysis and performance, European Journal of Law and Economics, p. 17-39.

[35] Η Δικαιοσύνη Στην Ελλάδα, Προτάσεις για ένα σύγχρονο, δικαστικό σύστημα, Κατερίνα Ν. Σακελλαροπούλου, Μιχάλης Ν. Πικραμένος, Ιωάννης Συμεωνίδης. Βασίλειος Π. Ανδρουλάκης, Θεοκτή Νικολαΐδου, Λάμπρος Τσόγκας, Πέτρος Αλικάκος, Φεβρουάριος 2019 (Sakellaropoulou, Katerina N., Michalis N. Pikramenis, Ioannis Symeonidis, Vasilios P. Androullakis, Theokidis Nikolaidis, Lamto Tsogas, Petros Alikakos, Justice In Greece Proposals for a modern judicial system, Dianeosis Research and Policy Institute, February 2019.)

[36] European Commission COMMISSION STAFF WORKING DOCUMENT, 2020 Rule of Law Report. Country Chapter on the rule of law situation in Greece SWD(2020) 307 final, p. 10.

[37] Papaioannou and Karatza, supra, note 34.

Trust in institutions[38]			
	2019 (%)	**2020 (%)**	**2021 (%)**
Judges	73,6	77,3	79,2
Police	75,3	78,1	79,3
Army	66,9	71,8	72
Officials	46,3	49,7	46,2
Press	36,1	39,3	45,9
House of Representatives	40	53,2	42,3
Political	30	39,7	33,3
European Union	45,7	48,1	53,4

In today's social turbulence, there is a numerical lack of recourse to justice. The judicial system has about the same amount of manpower in FTEs as a large academic hospital, i.e., 12,000, of which 2600 are judges. There is one judicial organisation in the Netherlands and there are seven University Medical Centers (UMC). This organization handles 1.4 million cases, most of which are small crimes/small claims/family cases (850,000, of which about 500,000 are family cases -supervision, 57,000 criminal cases and 250,000 commercial cases), 177,000 family cases, 53,000 commercial cases and 169,000 criminal cases, and 33,000 administrative cases at the district court level. Numerically, the appeals are small beer. The Dutch are certainly not aggressive when it comes to litigation. There are also not very many lawyers (102/100,000 inhabitants - compare Greece: 416,[39] Ukraine: 139, Spain: 303, Germany: 199, England: 256, Scandinavia: predominantly less than 100. [40] But there are also many obstacles to litigation. Think of legal expenses insurers, lawyer's fees, and court fees, but also lack of knowledge and lack of ability to act for about 2 million inhabitants.[41]

There is a functional structure in the Netherlands for the management of the judicial organization. It provides for a Council for the Judiciary, Court Administrations, a financing system based on output, a quality system that at least originally intended to be a counterweight to the pursuit of efficiency, and which focuses on the substantive quality of justice and on the uniform application of law and a lot of statistical management information. In that sense, there is already quite a lot of top-down cooperation, which is carried out with a lot of horizontal consultation, just think of the presidents' meeting (an institute without a legal basis), and the various National Consultations on Professional Content, between team leaders and department chairs of different courts. In addition, Netherlands' judges have collectively

[38]Hans Schmeets, Jeanet Exel, Vertrouwen in medemens en instituties voor en tijdens de pandemie (Trust in fellow human beings and institutions before and during the pandemic), Central Bureau of Statistics, 31-03-2022, chapter 4. https://www.cbs.nl/nl-nl/longread/statistische-trends/2022/vertrouwen-in-medemens-en-instituties-voor-en-tijdens-de-pandemie/4-vertrouwen-in-instituties (last visit 10 04-2023). In (Dutch)

[39]Arnt Mein & Freek de Meere, Motives of citizens to (not) go to court (Motieven van burgers om (niet) naar de rechter te gaan), Research report / Research Memoranda Number 3 / 2018. (in Dutch)

[40]These are data derived from CEPEJ data (https://www.coe.int/en/web/cepej/cepej-work/evaluation-of-judicial-systems (last Visit 28 March 2023), Case Law data (Annual Reports 2020 and 2021).

[41] K.G,F. van der Kraats, Civil procedural law as a stumbling block, on the legal protection of people without legal knowledge, (Het civiele procesrecht als struikelblok, over de rechtsbescherming van mensen zonder juridische kennis), BoomJuridisch, The Hague 2022. (in Dutch)

shaped their autonomy in the professional standards – the quality requirements that the judge's work should meet (cf. the expertise, the time spent, the planning of the handling of cases, the support, the way in which judgments are designed). As a result, there is a lot of coherence in the Dutch judicial organisation, they are anything but 'loose sand' nowadays. The development of the procedural guidelines has contributed significantly to this. Predictable and reliable case law is a top priority and the annual reports of the Council for the Judiciary bear witness to this. This means that the equality of the inhabitants of the Netherlands before the law is a much more important starting point for the judiciary than all those 'gaps' in society announced by politicians and citizens. That is why judges and courts are an important institution in Dutch society, and I can claim, certainly in comparison with Ukraine and Greece, that the judicial system is one of the better functioning institutions in the Netherlands. Furthermore, the Netherlands' judiciary wants to connect with society to maintain public trust (socially effective justice), to deliver justice closer to the people, and has organized and evaluations several projects during the past five years. It is wonderful that personal administrators have been screened in recent years, that a debt officer has been introduced. But the results of the 'local' judge, 'neighborhood' judge or 'arranging' judge are not yet impressive.[42] However that may be, also those initiatives show that there is ample room for innovation and experiments and for thoughtful action on developments in law and society.in the Netherlands judiciary.

The explanation for this presumably is that in the Netherlands a good balance has developed between hierarchy, insofar as it is unavoidable, and the professional interrelationships, which have made the judicial system robust in relation to existing social pressures. The Netherlands' judiciary can afford taking a few risks here and there. Cooperation with the Ministry of Justice and Security on regulations and budgeting is also part of that repertoire. That is worthy of a compliment, even although, also here tensions do exist. Much could be done better, starting with improving the accessibility of justice[43] or repressing organized crime.[44] And then the question rises whose responsibility that is, the judicial organization's, or of the policymakers in government and parliament? [45] The answer lays in the judicial organization's autonomous position and in the actual independence of the Netherlands' judiciary.

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[42]Hilke Grootelaar, David Schelfhout & Ivo van Duijneveldt, Evaluation Rotterdam local Rule Judge and the Hague local quarter judge (Evaluatie Rotterdamse Regelrechter en Haagse Wijkrechter), research report, Research Memoranda Number 1 / 2020 Volume 15; Nienke Doornbos and Romy Hanoeman, Working method and results of the Eindhoven District Court, The person behind the file (werkwijze en resultaten van de Wijkrechtbank Eindhoven, De persoon achter het dossier), Research Memoranda Number 3 / 2021 (all in Dutch).

[43]Maurits Barendrecht, Making conflicts manageable, Strengthening the role of law (Conflicten hanteerbaar maken, De rol van het recht versterken), Nederlands Juristenblad, 2022, p.2238 - 2572. (in Dutch)

[44] Nelen, J. M., & Siegel, D. (Eds.). (2021). Contemporary organized crime : developments, challenges and responses (2nd ed., Ser. Studies of organized crime, 18). Springer. https://doi.org/10.1007/978-3-030-56592-3; Tops, P. W., & Tromp, J. (2020). The Netherlands drug country: the call of the money, the power of criminals, the need to break it (and how to do that) (.Nederland drugsland : de lokroep van het geld, de macht van criminelen, de noodzaak die te breken (en hoe dat dan te doen). Uitgeverij Balans; Abraham, Manja and Toine Spapens, Keeping drug crime under control. The efforts of 25 years (Drugscriminaliteit beheersbaar houden. De inspanningen van25 jaar). Justitiële Verkenningen 2021, nr, 6 p. 85-100

[45]Mr. dr. Kim van der Kraats, 'Experiments in civil justice: a solution to which problem?' ('Experimenten in de civiele rechtspraak: een oplossing voor welk probleem?) , Justitiële Verkenningen 2019-1, p. 82-96; (in Dutch)

6. Conclusion: judicial cooperation as a counterbalance to hierarchy

The fact that citizens can rely on the courts is not at all self-evident when I look at my experiences with two projects in Ukraine and Greece and at the organisational development of the judiciary in the Netherlands. What does this experience of organizing justice by judges mean for jurisprudence?

I would venture the hypothesis that for effective adjudication, in terms of, among other things, timeliness, dispute resolution capacity, predictability and legal certainty, there must be a certain balance between the internal hierarchy in judicial organisations and social cohesion, which allows mutual cooperation between professional colleagues. Such cooperation makes judges more resistant to external and internal pressures.[46] Maybe where hierarchy is the dominant organisation principle in judiciaries, this is an indication for vulnerability of judges for manipulation, either via corruption or abuse of (disciplinary) powers or both, and a primary sign of this is that judicial initiatives for improvement of the functioning of the courts are hard to find.

This hypothesis deserves research that goes beyond the monitors organised by the Council of Europe, the European Commission, and multinational NGOs such as Human Rights Watch and Transparency International. If the internal organisation and, in particular, the cooperation of judges within judicial organisations is essential for the functioning of the rule of law, traditional rule of law tests are no longer sufficient. A multidisciplinary legal science can take the lead here in developing a test of organization characteristics based on which citizens can rely on their judicial organisation and their case law.

As far as developments in Greece are concerned, I expect little of that. I suspect that the political elites and interest groups in the justice system there are not eager for the development of a robust judicial system and will therefore de facto oppose steps in that direction. I predict that in interactions with the Council of Europe and the European Commission they will say 'yes' and do 'no'. Just like the political elites of most other Balkan countries.[47] For the inhabitants of Greece, I hope I am wrong.

For Ukraine, I hope that the current window of opportunity for organizational development in the judicial system will lead to similar results in about 10 or 15 years as in the Netherlands. That is why the judicial guidelines project in Ukraine deserves broad support, and in the not-too-distant future, an embedding in permanent Ukrainian justice policies. This means that local cooperation between judges of the same court and of different courts will eventually have to be embedded in a cooperation to be formalized between the Supreme Court of Justice, the Ministry of Justice and Parliament. Political support is therefore very important. It can

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Prof. Maurits Barendrecht, 'The best possible adjudication (de best mogelijke rechtspraak), Justitiële Verkenningen 2019-1, p. 97-114. (in Dutch)

[46] Here I pay tribute to J.B.J.M. ten Berge, Contouren van een kwaliteitsbeleid voor de rechtspraak, in: P.M.Langbroek en K.Lahuis, Kwaliteit van Rechtspraak op de Weegschaal, Tjeenk Willink, Deventer, 1998, p.29, who mentions the necessity of professional fraternity in judiciaries, with reference to A.T. Kronman, The Lost Lawyer, Failing Ideals of the Legal Profession, Cambrigde, Massachusetts, London, 1993.

[47] European Court of Auditors, Special Report 01/2022: EU support to the rule of law in the Western Balkans

help if these steps in organization development are monitored by NGOs – but first that rotten war must be won.

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