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THE WORLD PRACTICES AND THE PERSPECTIVES OF INTRODUCTION OF THE SYSTEM OF EFFECTIVENESS ASSESSMENT OF THE COURT PERFORMANCE IN UKRAINE

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Introduction

In foreign countries the interest to the problem of effectiveness assessment of a public institution performance arose as early as in the 1950s of the XX century, when Japanese companies approved the first principle of quality surveillance. Subsequently the USA supported this initiative, having established Malcom Baldrige National Quality Award (MBNQA) (1987), which they began to award to the companies and the organizations of the public sector for high achievements in the area of quality and the court was not an exception in this respect. Later the idea of assessment of court quality aroused interest in the European countries, as well. A number of questions – from defining the concept of quality of legal proceedings itself to the development of tools and methods of assessment, the criteria of quality – were discussed (Total Quality Management).

Currently in most European countries various projects aimed at the development of national programs to assess quality of the court performance have been initiated; however the methodology, the system of rates, which are used as a toolkit for the assessment differ greatly.

For example, the number of cases decided by the courts is one of the main factors of the effective performance of the court in Bosnia and Herzegovina, Cyprus, Denmark, Finland, France, Greece, Latvia, Lithuania, Montenegro, Slovenia and Turkey. The quality of a judicial decision and the organization of a legal procedure is a subject of assessment in Albania, Cyprus, France, Georgia, Greece, Latvia, Montenegro, the Netherlands, Sweden and Macedonia; the satisfaction by the quality of judicial services delivered to the court users is a subject of assessment in Denmark, Spain, Switzerland, Ireland and Scotland, the size of court fees is a subject of assessment in Estonia and Switzerland; the satisfaction of the executives in the judicial system is a subject of assessment in Scotland etc. However, in spite of the fact that the models of assessment of court quality differ, on the whole the main components, which are uniform for each model, can be allocated:

a) the assessment is made by means of comparison of a real parameter and a specified absolute term, which has been formulated preliminarily and determined in some certain 'Standards of Court Quality';

b) the judicial system performance domains that influence primarily the degree of achievement of the purpose by the court, for which it has been established, are allocated;

c) the system of the criteria, indicators, rates, methods, as a toolkit for the measurement of the level of the judicial system effectiveness in one or another domain, is determined;

d) the circles of parties, who are appropriate to be involved to the assessment of the determined domain, are defined.

The most successful, from the standpoint of the world community, are the projects of effectiveness assessment of the court performance, which have been developed in USA, Finland, Sweden, Netherlands and Singapore. Let us consider them in detail.

The American model of the assessment of court quality. In August 1987 due to the increase of time limits for legal proceedings of the cases in the courts of the USA the National Center for State Courts (NCSC) and the Bureau of Justice Assistance (BJA) of the Department of Justice in USA initiated the Project to assess quality of the performance in the trial courts (the courts of primary jurisdiction), the purpose of which was development of the Trial Courts

Performance Standards and Measurement System. The standards for the performance and the monitoring system of the performance of the trial courts (The Trial Courts Performance Standards and Measurement System) were first presented in 1995. Since then, their introduction as a compulsory component of the monitoring system and evaluations has begun (Nancy E. Gist).

In the focus of standards there is a separate trial court of law in the State which is assessed as an organization, the main purpose of which is to meet the needs of those clients who go to the law for judicial protection. The experts developed 68 indicators on 22 standards connected with 5 domains of measurement: (a) public justice access; (b) efficiency and timeliness; (c) equality, objectivity and honesty; (d) independence and accountability; (e) public trust and confidence (NCSC: Research: Trial Court Performance Standards and Measurement System).

The developers of the system of standards did not consider their use as strict rules; the standards should rather be of a recommendatory character to promote excellence of the court performance. The assessment of court effectiveness was planned to implement on the grounds of the analysis of the information obtained by means of supervision, simulation, survey, evaluation, analysis of the documents and expert judgement.

The proposed system of standards was tested in 12 courts, but then because of its complexity, too many factors for assessment, the practitioners had to reject it. After that, having analyzed practical problems of realization of the proposed model of assessment, the National Center for State Courts (NCSC) in the USA in the beginning of 2000 initiated the development of a new improved complex model of the assessment of court quality, which was given the title – CourTools.

It possessed 10 factors and methods of measurement of the court performance quality as its content:

(a) access and objectivity;

(b) correlation of the amount of the decided legal cases and the general amount of legal cases having been delivered to the court;

(c) duration of a legal proceeding;

(d) duration of the expectation of a legal proceeding;

(e) reliability of the announced date of hearing;

(f) reliability and data integrity of a legal case materials;

(g) effective involvement of jurymen;

(h) satisfaction by the legal staff;

(i) cost of a legal proceeding (CourTools Performance Measures).

However this model testing also revealed a series of its deficiencies, namely: the weak interrelation turned out between the proposed 10 measurements and the ambiguity of value of each of them to the quality increase and the court performance improvement. Therefore in 2007 the National Center for State Courts (NCSC) in the USA anew began the development of the following model of the measurement of court quality that was presented to the judicial magistracy in the spring of 2008 and at present exactly this version of the assessment of court quality is used in the USA.

The Singapore model of the assessment of court quality. As in the case with the courts in the USA, particularly long duration of legal proceedings and accumulation of a large amount of undecided cases became the main reason for initiation of judicial reforms in Singapore in 1990. The introduction of a so-called Charter of Justice was one of the first elements of this reforming. It was aimed at raising the level of benevolence of the courts towards the subjects who go to law, in particular, by means of taking the steps directed to reduce the duration of legal proceedings and to maintain correct attitude to the parties.

In addition to this document, a series of key points affecting the quality of judicial service was formulated:

a) effective leadership, which is based on the ability to predict;

b) application of the methodologies of strategic planning;

c) skilful information use;

d) development of the policies in the sphere of human resource management;

e) providing legal proceedings with Information and Communications Technologies;

f) regular research in order to find out the level of satisfaction of the judicial service delivered to the court users.

At the end of the 1990s the Minor Courts of Singapore introduced the system of justice rates (justice scorecard) as a measurement tool for court quality, where the legal purposes, the court management system and use of strategic rates for court quality measurement were integrated. In September of 2000 this system of justice rates was replaced by its electronic version – "eJustice Scorecard System", where the information about the court performance and the quality of the court performance is recorded and is grouped according to 4 measurements:

(a) public relations,

(b) internal processes,

(c) training and

(d) financing. (Wong Peck)

Taking into account the active role of the judiciary of the country in improvement of the quality of their work the abovementioned Minor Courts were awarded with "The Singapore Quality Award (SQA)" in 2006. This award is presented in honour of acknowledgement of the recognition to conform to the high quality standards determined by the Malcom Baldrige National Quality Award (MBNQA) of the USA, the European Foundation for Quality Management (EFQM) and the Australia Awards for the professional excellence.

The Swedish model of the assessment of court quality. The broad discussion of the question of the necessity to conduct the assessment of court quality began in Sweden in 1997. The Swedish National Courts Administration (Domstolsverket) organized 2 seminars devoted to this problem, the judges – representatives of the Supreme Court of Sweden, Supreme administrative court, appeal courts, administrative courts of appeal, district courts and county administrative courts, as well as the representatives of other legal occupations – prosecutors, attorneys, auditors, and, as well as, the representatives of the parliament (the Riksdag) took part in the work of the seminars.

As a result of their fruitful work a complex document (the Resolution) was developed, where the main aspects of court quality were divided into 4 categories: (a) judgement, (b) time limits of legal proceedings, (c) relationships with court users and (d) high

professional skills and competence of judges and other court staff. (*Domstolsverket,* 1997)

The attention was focused on the effectiveness of the monitoring system and the level of competence of the chairmen of the courts responsible for administration of the establishments and their influence on the quality of legal proceedings.

For the assessment of court quality are used: (1) the statistical method (the total amount of legal proceedings, the amount of the cases having been decided juridically, the amount of appeals to the courts, the percentage of the legal judgements cancelled in the course of a procedure in appeal), (2) the method of self-assessment (for example, the time spent on the legal proceeding), (3) the opinion poll of the participants of a lawsuit concerning their satisfaction by the court services, etc.

In 2004 the project for the beginning of systematic work on the improvement of court quality was initiated.(Domkretsen, 2004). In September 2005 the working group presented the Resolution (Att Arbeta med Kvalitet I Domstolsväsendet), (24-timmarsstrategi för Sveriges Domstolar), where the concept "quality of justice in the courts", the reasons causing the necessity of taking measures as to the improvement of this factor, and the definite proposals for quality improvement of the judicial system on the whole were determined.

By the given document the main executives of the program for systematic improvement of quality were determined, it should be the courts themselves at support and control on the part of the central administration of the judicial system. Each court should on their own organize a working group and define priority guidelines to improve the performance. In the opinion of the authors of the Resolution, the important outcome of such work should be the system of the quality criteria for the court performance and the scale of their assessment that in the future will become a basis for developing a methodology of the judicial system assessment at large.

The Dutch model of the assessment of court quality. In the Netherlands the subject matter of quality performance of the judiciary appeared under vivid discussion in the political arena as a part of a complex programme of the judicial system reforming "The Judiciary in the XXI century" (1998 – 2002). A few pioneer projects were elaborated and implemented at the court level; one of the projects concerned the quality of the judicial system in particular (1999). The main target of this project was to work out a measurement system to control court quality, and on the basis of the

assessment of the results having been obtained – to propose certain steps aimed at improving of the judicial system performance.

A small project group, where judges, court staff, counsellors of the Ministry of Security and Justice and experts of a quality agency for the judiciary (PRISMA) were enrolled, for 3 years had developed the system which consisted of 5 measurement aspects: (a) independence and honesty, (b) timeliness of legal proceedings, (c) uniformity in legislation administration, (d) competence and, (e) proper treatment of the parties. On each of these aspects of measurement a few rates, as well as the particular tools (judicial statistics, court users and court staff surveys, revisions) for the collection and presentation of the appropriate data were developed.

The specified measurement system was tested in 2000 - 2001 in 3 pilot country courts, after that its advanced version became a part of the complex system of the assessment of the quality performance of the judiciary of the Netherlands "RechtspraaQ". It consists of 9 elements grouped on the following 3 categories: the regulatory framework, the tools for measurement, and other elements.

The regulatory framework consists of the quality standards presented as a quality checklist which can be used by the head staff of the courts to improve court quality. They cover many aspects, which courts and the Council for the Judiciary consider to be important for the assessment of the judicial system performance and necessary for the requirements satisfaction of the parties, personally interested at court quality. As well, it comprises a certain measurement system to measure court quality.

Measurement tools provide the ways of getting information, necessary for the assessment of court quality, in particular: (1) research of the matters of the court performance (on a 2 year cycle each court conducts independent assessment of court quality on the basis of the standardized analysis procedure); (2) application of court user and court staff surveys in order to define the level of their satisfaction with the service provided by the court (on a 4 year cycle each court conducts such a survey); (3) independent visitation committees (on a 4 year cycle each court is inspected by an independent visitation committee, which consists of people whose professional duties go beyond the courts (for example, a university professor, an attorney and a public prosecutor) that prepare a general report regarding quality of the judicial system performance in the Netherlands); (4) auditing procedures (during which the court authorities assess court services pursuant to the criteria provided by the statutory measurement system of quality for court performance).

To other elements the system of analysis of the court staff performance, made by the colleagues and the complaint procedures are referred. The analysis of the court staff performance made by their colleagues takes place in the form of professional consultations among the judges predominantly to improve the quality performance of separate judges. During this procedure significant attention is paid to the judge's interaction with parties during the hearings, as well as to the quality of personal performance of the judge.(Rechtspraa Q. A.)

The comprehensive model of the assessment of court quality in Finland. In Finland the beginning of the project implementation for the assessment of court quality was caused by the Resolution of the Working group on efficient management, where 4 components of court quality were allocated: (a) judicial proceeding, (b) legal judgement, (c) court service and (d) court management. As a result the independent work of the courts to develop the criteria of quality and the techniques for the assessment of the effectiveness of their work was initiated. The statistical criteria and rates formulated by the courts for monitoring: (a) cases delivered to the court; (b) cases in legal proceedings, and (в) time limits of legal proceedings, were the outcome of this initiative.

The project of legal proceeding improvement (The Quality Project) developed the Courts of Jurisdiction of the Rovaniemi Court of Appeal was recognized as the most successful one and in 2003 the List of the Quality Benchmarks for Legal Proceeding was presented in its framework.(Evaluation of the Quality Adjudication in the Courts of Law. The Quality Benchmarks and the suggested criteria of quality, 2006).

The proposed Quality Project suggested measurement of various spheres of the court performance and consisted of 6 aspects and 40 criteria of quality: (1) procedure (9 criteria), (2) judgement (7 criteria), (3) treatment of the parties and other participants in the proceedings (6 criteria), (4) promptness of the proceedings (4 criteria), (5) professional skill and competence of the judge (6 criteria), (6) organization and management of adjudication (8 criteria). All the criteria are assessed according to the six-point scale, and the overall result gives an opportunity to assess to what extent the court corresponds the maximum possible result of 210 points. Various methods of analysis from self-assessment, surveys and expert assessments to statistical analysis are applied to collect all the information, which is necessary for the assessment. The regularity of examination to assess the criteria is 3 – 5 years. In the period between the main procedures, the interim assessment also takes

place, for example, on the criterion of promptness of legal proceeding the monitoring is conducted annually.

In April 2005 the project of the system of the criteria of court quality performance was sent to the courts to get their feedback in the form of commentaries and remarks. On the basis of the received remarks a general review was worked up, which was published on the site of the District Court of Oulu, (NCSC: Research: Trial Court Performance Standards and Measurement System) and since then the Quality Project has been realized in Finland. It has gained recognition of both Finnish, and the world legal community. In particular, in 2005 the quality-enhancing Project became the contest winner of the Council of Europe and the European Commission for the Efficiency of Justice, in which 22 projects from 15 countries took part and won the Crystal Scales of Justice Award. (Competition entry "The Crystal Scales of Justice" the European Prize for good practice in civil justice organization and procedure , 2004).

At present the quality performance of the Finnish courts is assessed in the context of the system of the effective management. Annually the Ministry of Justice of Finland provides consulting to each court relating to the quality performance. In the course of these interactions the total number of cases delivering to the court and the number of cases considered during the legal proceedings are assessed, the size of tangible assets and the number of professional staff necessary for the proper court performance is agreed. Moreover, within these meetings court excellence (or not excellence) in the current year is discussed, the average duration of legal proceedings, effectiveness and the total court performance are defined. As well the practice of self-monitoring by the courts of their performance and the assessment of their effectiveness is introduced. Besides that, the interim inspections concerning the performance of the minor courts are considered to be the credentials of the Court Appeal.

Rather a great attention during the assessment of general effectiveness of court performance is given to the research of public trust and confidence to the courts. Since the survey is conducted among the general public, i.e. it is supposed that the respondents themselves were not obligatory a party of legal relationships during legal proceedings, then it is possible to note that such a kind of research is actually aimed at defining the general public attitude to the courts, than at defining the analytical rates of quality for judicial system.

The initiatives of the European Union aimed at the assessment of the effectiveness of judicial systems. Along with the initiatives of the separate states as to the development of the measurement systems of court quality at the European level, the tendency of the process promotion is also observed. For example, in 2004 the Committee of the European Parliament pointed out the necessity to create a Quality Charter for criminal justice, at the level of the European Council a special working group on quality of the European Commission for the Efficiency of Justice (CEPEJ) started their functioning, and a working group on Quality Management was created within the framework of the European Network of Councils for the Judiciary (ENCJ). Let us comment on these 3 European initiatives in more detail.

In 2004 the Committee on Civil Liberties, Justice and Home Affairs of the European Parliament published a working document on the quality of criminal justice and the harmonization of criminal legislation in the Member States (Working Document on the Quality of Criminal Justice and the Harmonisation of Criminal Legislation in the Member States. – European Parliament, Brussels, 2004). The main idea is that the domain of freedom, safety and justice in Europe is based on culture of the variety of legal systems and provides an introduction of the general system of guidelines and a mechanism for mutual assessment. In the opinion of project initiators, the Quality Charter for criminal justice should contain a set of criteria for the performance assessment of the judicial systems. In particular, such domains of the assessment as: a) the level of observance of the principles of independence of the judiciary, b) the correspondence to the standards of the fair law proceeding, c) the procedure of the implementation of criminal prosecution, including the serving of a sentence, are allocated. Besides that, the Committee proposed to include to the Charter a mechanism of mutual assessment, which should consist of (a) a comparative statistic basis, (b) 'benchmark' information, (c) the mechanisms of dissemination of positive practices and (d) an assessment report on compliance with the Quality Charter.

After the presentation of the working document to the European Parliament, unfortunately, a unanimous attitude regarding the way of the specified idea realization was not reached. Therefore, the European commission created a forum in the Internet for stimulation of a scientific and practical discussion for the occasion of expediency of the creation of such a Charter and for the assessment of the legal documents, accepted by the European Parliament (Structuring Dialogue with Stakeholders: the European Commission Launches the Justice).

The European Commission for the Efficiency of Justice (CEPEJ) was created in 2002. During the 5-year period it was mainly concerned with the problems of the quality of justice, it analyzed the reasons for delays of legal proceedings of the cases delivered to the court and searched for the ways of the legal proceedings effectiveness increase. The working group (SATURN) specially formed for this purpose prepared enough reports and documents concerning the programme based on the results of their research and, in particular, the Time Management Checklist, (CEPEJ: Time Management Checklist: a Checklist of Indicators for the Analysis of Length of Proceedings in the Justice System, 2005) which, as a matter of fact, became a methodical guideline in the reduction of the duration of legal proceedings.

In 2002 – 2010 CEPEJ on the basis of the collected statistical information and quality indicators published 4 comparative reports on judicial systems in the Member States of the Council of Europe, in which the following items were covered: a) the (financial and material) means of justice, b) access to justice, c) the effectiveness of legal proceedings and court quality, d) the status and the role of various professional groups involved into the judicial system performance, e) the execution of judgements, etc. In the report of the Commission published in 2010, particular attention was paid namely to the problems of judicial systems quality performance. For example, in the conclusion the dominant European tendencies regarding the effectiveness and court quality performance were characterized.

In 2007 CEPEJ initiated a new project aimed at the assessment of quality of the judicial system, in particular, a special working group on quality was created – CEPEJ-GT-QUAL, the aims of this working group were determined as: a) to collect information concerning initiatives, taken by the Member States to promote and increase the quality in the courts b) to develop concrete tools for the member States in the area of court quality (CEPEJ: Terms of Reference the Working Group on Quality of Justice, 2007). Fruitful work of the working group resulted in the 'checklist for quality of the judiciary and courts', which, as a matter of fact, was a proposal of a practical toolkit to the Member States of EU in order to collect necessary information and analyze the corresponding aspects concerning the quality of the judiciary. The distinctive character of the 'checklist' is that the quality is considered from 3 different aspects – national (the judiciary, on the whole), particular courts and particular judges. The experts of the working group allocated 5 domains of measurement: (a) strategy and policy, (b) operational processes of legal proceedings, (c) access to justice, (d) human resources and the

status of the judges and the staff, and (e) the financial and material means of the justice (Granovetter, 1995: 128–165)

Furthermore, CEPEJ-GT-QUAL initiated comparative research in order to collect necessary information regarding the practices of quality assessment of court performance in member States according to three factors – the quality of legal services, offered by the courts, the quality of judicial management and the quality of public attitude to the court in the society and in the system of state authority. In other words, the working group considered quality performance of the judiciary as an organizational matter, taking into account all the relevant aspects, related to the quality of services, offered by the courts. At the same time, the quality of judgements was not an object of analysis of the given working group. Another body of the Council of Europe, the Consultative Council of European Judges (CCJE) is of immediate concern with the problem of the assessment of the quality of judgments. Moreover, in 2008 the Council sent a questionnaire consisting of 17 points directly related to the preparation and assessment of judicial decisions to the Member States. The results of the analysis of the responses were posted on the website of the Consultative Council of European Judges (Evaluation report of European judicial systems/European Commission for the Efficiency of Justice, 2010).

Besides, CEPEJ-GT-QUAL also deals with the development of a practical toolkit for court user surveys in order to find out the level of their satisfaction by the court services.

A working group on quality management was created by the European Network on Councils for the Judiciary (ENCJ) in June 2007. The main purpose of this working group was the exchange of practical experience among the EU Member States concerning the assessment of quality of the judicial systems, the overview of the role of judicial councils in such projects and the working out of the list of the specified initiatives. An analytical report with the title 'Quality Management' was published by the working group, which contains the overall review of the existing practices in the area of quality assessment. The document included a wide scope of the approaches to the assessment of court quality, and the assessment of the court performance in correspondence with expectations and wishes of the court users.

In particular, the interstate initiative on creation of a global Framework for Court Excellence should be singled out. The project was initiated by the senior district judge Magnus of the Singapore

Subordinate Courts, who the experts from the USA, Europe and Australia joined. Inspired by the initiatives on quality realized in their own countries, the experts took aim at the development of the framework system of values, concepts and tools, due to which the courts all over the world will be able to assess and to improve quality of the court performance and court management themselves. In 2008 the above-named programme document was published by the experts, it represents the resource for quality assessment of the court performance on 7 detailed and the most important from the standpoint of its authors domains of judicial system performance: (a) court management and leadership, (b) court policies, (c) human, material and financial court resources, (d) legal proceedings, (e) user needs and user satisfaction, (f) affordable and accessible court services, (g) public trust and confidence (Final Report of the Special Commission of Inquiry, 2008).

As it can be seen, the concept "quality of performance" of (activities, functioning) of the court, used in the framework, is rather general, as it also includes quality of the court management, and the level of the management effectiveness (the structure of the court, court services, court policies), and the degree of satisfaction of the needs in public justice (the external environment and the court users). In the opinion of the experts, the proposed framework should help the courts on the different continents to realize measures aimed at the improvement of the quality performance of the judiciary.

It is evident that some foreign countries and supranational institutions have already rather an interesting experience in the assessment of the court quality performance. At all the diversity of the approaches to the methodology and the criteria of such assessment, nevertheless, the certain uniformity exists, namely regarding the question as to the relevance of the system of the assessment of court quality, the implementation of which into practice, firstly, will allow to make objective conclusions as to effectiveness or non-effectiveness of one or another judicial institution, and, secondly, will allow to formulate purpose-oriented measures directed to the increase of effectiveness of a particular judicial system. And though, mainly, the object of research in the most of the considered above projects is a particular court (but not a judicial system) and the court quality performance, it is supposed that certain approaches can be taken into account at the development of a national system of the assessment of the effectiveness of a judicial system, on the whole.

The Ukrainian model of the assessment of the court performance effectiveness

It should be noted that in Ukraine so far, in a public and political discourse the questions of the structure and the mechanisms of the judiciary performance predominate, the problem of the outcomes of the court performance remains to be researched but very little. However, the growing anxiety of the society and the judges themselves by the state of affairs in the judicial system (in particular, the decrease of the level of public trust to the courts) causes the tendency to decide on the realistic and practically useful results of the functioning of this branch of authority.

The world experience shows that the interest to the problem of determination of the standards of the effectiveness of a judicial system becomes the subject-matter of social discussion, when the awareness of unproductiveness of simple focusing the attention on crisis phenomena arises without search of the answer to the question of what the court represents and in what way it should function. At the same time there is no single or universal method for the determination of the standards of such a kind – in each country they are worked out, taking into account certain specific features. Therefore, namely the standards of effectiveness of the judicial system should be a strategic foundation for planning of a judicial reforming. The development of a programme document of such a kind, firstly, will facilitate a certain definition of the main purpose, values and functions of the courts in the modern society , secondly, will help to assess the quality of the performance of a separate court and the effectiveness of the judicial system, on the whole, by comparison of its ideal (perfect) model and an actual result of the court performance, thirdly, will stimulate improvement of the organizational, procedural, professional, managerial and monitoring components of the judicial system, fourthly, will become a basis for preparation and justification of budgeting enquiries of the courts and for management of the budgetary funds that will reasonably allow to direct resources, where they are necessary; fifthly, will orient educational programmes for judges and court staff, allocating the areas of the first priority, where it is necessary to raise their competence; sixthly, will create conditions for receiving objective information as to the effectiveness of the judiciary that will help to realize particular measures to increase its authority, legitimacy and public trust.

According to one of the definitions presented in the explanatory dictionaries of the English language, a ‘standard’ is a characteristic of a particular phenomenon established by a competent authority, a

custom or by a general consensus as a model or a pattern. This term is a close synonym to the word 'criterion', which is used concerning any features (characteristics) that can be used for quality control of a particular object irrespective of the fact if the following characteristics, having been formulated as a rule or a principle, or not. In other words, a standard is a certain pattern (a benchmark, a model) which is accepted as a baseline criterion to compare other similar objects or phenomena with it.

As the standards are a consolidation of the most important values in the certain legal domain and an instrument of their standard expression, it is necessary to distinguish them as an idea (a value) and as a complex of the determined specific requirements. Differentiation of the standards-ideas and the standards-rules reflects the degree of their perception, delineating their possible use in the appropriate practical activities. The activities of the European Court of Human Rights can be an example, which proves the gradual transformation of such basic values of legal proceedings, as impartiality and equality, into a system of definite criteria, which are formulated as legal norms of the judiciary and, which can be applied by the judges of the national courts as the criteria of assessment of the particular situations – real evident circumstances (V. I. Borisov, V. S. Zelenetsky, 2010: 57)

The conceptual idea of Court Excellence, which is represented in many modern Western models of the assessment of court quality, can be the primary benchmark of the effectiveness of this institution performance. However, even with the availability of the numerous approaches there are no grounds to claim that there is a definite and unambiguous answer to the question, what the content of the excellence benchmarks of the of the judiciary is. As we could observe above, in each state the standards are developed in view of the specific character of the national judicial system. At the same time, they cannot contradict fundamental principles of justice administration, which are formulated in the international legal authorities, in the documents related to the so-called "international soft law", in the constitutions and in the national legislation in general.

The excellence benchmarks of the judiciary, in our opinion, should include a managerial conception of the assessment of the effectiveness, the key components of which should be the domains, the criteria, the rates and the methods of the assessment of the court performance. In this context we consider to be relevant to specify the content of the terms 'domain', 'criterion', 'indicator' and 'rate' of the effectiveness of the judiciary.

Under the structure of 'the domain of effectiveness of the judiciary' we mean the key conditions of the performance of the judicial system. As the latter is a variety of the transparent social structure, the effectiveness of its performance can be considered in 2 dimensions – the internal and external ones.

External domains are displayed in mutual interactions with other authorities, in the mechanism of financing, in the system of structural organization of its elements, in public trust and confidence, etc. They define optimality and balance of the judiciary with reference to the external factors of its performance (the state, the society, in general). As S.Yu. Marochkin justly emphasized, not all the external factors are able to perform the role of such an institution, as they are of a different character and can have both positive and negative impact on court excellence. They key domains are considered to be only those of them, which are necessary for the formation and occurrence of a particular property (Marochkin S.Yu., 1988: 45)

In the structure of the external domains it is possible to allocate the general conditions, namely the factors affecting the effectiveness of the judiciary, on the whole (as a state institution considering legal controversy), and the special ones – the factors, from which the overall performance of a particular court depends.

The internal domains of the effectiveness of the judiciary are of rather a complex legal foundation. They rate the quality of the internal system interrelations in the judicial system. Both managerial factors – the mechanism of the administration of the court performance, the system of management and control, the character of interrelations among separate elements within the system, and the procedural ones – the excellence of the court performance, the quality of legal norms, the quality of judgements, etc. can be referred to the internal ones.

In our opinion, five domains (layers) of the effectiveness of the judiciary are possible to be allocated: (a) the external organization (the judiciary); (b) the judicial practice; (c) peopleware; (d) court management; (e) social court excellence. Each position should be specified by the criteria, which, as a matter of fact, are the content of standards of the excellence of the judiciary.

The term "criterion" originates from the Greek word "kriterion" that means a "ground for the assessment, definition or classification of something, some measure". At the same time in the scientific literature the concept of a "criterion" is frequently identified with the concept of a "rate".

We admit that the given concepts can be associated in the sense that each criterion assumes the system of rates, the quality of which is determined by the comprehensiveness and the objectivity of the chosen criterion. However, we share the views of those scientists,(Davydenko, L. M., 1999: 67-81; Smirnov A., 1990: 198–250; Sharylo N. P., 1996: 90 –93) who emphasize the necessity to distinguish these concepts. We share the point of view of those scientists, who emphasize the necessity to distinguish such concepts, as a "criterion" and a "rate" of effectiveness, and we also suggest the introduction of the concept "indicator", as a structural element of a criterion to the scientific turn-over.
Thus, under the structure of the "criterion of excellence of the judiciary" a characteristic, grounds for measurement and an evaluation vector should be meant. The system of the criteria is actually an operational or technological expression of the assessment standards of the judiciary. Each assessment provision of the judiciary is characterized according to the criteria, enabling the most comprehensive assessment of an excellence level.

The system of indicators depends on a particular criterion. If the term "criterion" is interpreted as a characteristic, then the term "indicator" should be interpreted as an absolute or relative value, the degree of quality of the criterion state, which is displayed by means of the system of rates.

Under the structure of the 'rates of the excellence of the judiciary' one should recognize real data, which make the measurement and definition of the developments and the problems of management and performance of the judicial system possible. They specify indicators and can be of a varied character: the questions of a questionnaire, the statistical data, the type of behaviour, the frequency of the event, the presence or absence of any facts, etc.

Therefore, there is a close interrelation among the criterion, indicator and the rate. Under the criterion as a determinant of excellence of the judiciary a constant, settled value is meant, which, as an ideal, reflects the conditions for its effective performance. In other words, the particular quality standards of the performance of the judiciary, which represent optimal conditions, at which the purpose is reached, are to be the content of the criterion of the effectiveness of the judiciary, as this system was created to achieve it. The indicator specifies the criterion, defines its elements, and makes its measurement and determination possible. The rates are that quantitative and qualitative information, by which it is possible to judge the degree of the achievements of the purposes assigned to the judicial system. The rate specifies the criterion, a number of

indicators and a system of rates can be referred to one chosen criterion. The main condition is that there should not be too much criteria, indicators and rates for rating excellence of the judicial system, i.e. the standards should not be too complicated. Their authors should suit moderately to the performing of the idea of court excellence so that the developed standards are to be suitable for the application of the system of the judiciary quality assessment.

Let us demonstrate, using a particular example, the form the excellence standards of the judiciary can have. For example, the first domain allocated by us is the organization of the judicial system. What criteria and indicators are appropriate to use? From our point of view they should be: (a) accessibility and affordability (institutional, financial, procedural and subject accessibility of the court can serve as indicators); (b) independence (institutional and financial independence of the court, independence of the judges); (c) specialization (specialization of the courts and judges); (d) stability (stability of the judicial system, integrity of the judicial practice and stability of the court adjudication).

The second domain is the judicial practice. Three criteria will be the key ones for its assessment – (a) fairness of legal proceedings (can be expressed by means of such indicators as: fairness (equality, objectivity, honesty) of legal proceedings and equity of the court adjudication); (b) impartiality of the court adjudication (impartiality of the judges and the court impartiality); (c) timeliness of the court adjudication (duration of a case preparation to the hearing; the reasonableness of the terms of legal proceedings; the time of implementation of the court adjudication).

The third domain is the professional peopleware. The main criteria can be: competence and high professional skills of the judges (the recruitment and nomination of judges, judicial education for the judges, professional compliance with the bench and success of the judge's performance can be allocated as indicators) and competence and high professional skills of the court staff (competence and professional culture of the court staff are indicators).

The fourth domain is the judicial management. As the criteria the management of the judiciary and the court management can be used.

The fifth domain is the social court excellence. From our point of view it is a key domain. As the criteria we offer the following: court authority (the multi-purpose capability of judicial jurisdiction; variability of the ways of settlement of legal controversies); public

trust and confidence towards the court (the level of social culture regarding the ways of settlement of legal issues; court transparency).

As to the opportunity to use the standards in the system of the excellence assessment of the judiciary, then firstly, a system of rates should be suggested for each indicator. At the same time it does not exclude that one rate will have values for the evaluation of different indicators and criteria. The importance will have a common point of proximity to the maximum possible rate. Secondly, it is also rational to include a description of a particular toolkit, acceptable for the assessment of one or another criterion (indicator) and data acquisition concerning particular rates to the system of standards. In other words, the instruments for the assessment – the subjects and the means of assessment should be constituent elements of the standards. Let us expand more on the given point.

It is necessary to note that the authors of the standards can face the problems of both conceptual and technological character while selecting techniques and methods for the excellence assessment of the judiciary. To the first group namely the problems of development of the tools for the excellence assessment of the given system refer. Obviously, during their development it is necessary to take into account the following: (a) social and legal matters, i. e. not only legal (institutionalized matters of the legal activities, a number of the decided lawsuits, a number of the lawsuits returned for the second trial, etc.), but also other groups of social facts (fairness of the adjudication, competence and high professional skills of the judges, etc.) are the objects for the assessment; (b) an object of the assessment can have 3 forms: a form of a state and legal institution, a form of a social and legal institution and a form of an independent organization (consistent mechanism) providing legal services; (в) the social domain of the court performance contemplates appropriateness for the use of methods of cognition accepted not only in jurisprudence, but also in sociology. Respectively, the chosen methods of the assessment should be universal, i.e. appropriate for the assessment for each of the listed forms.

To the technological problems of the excellence assessment of the judiciary the following ones can be referred. Firstly, it is receiving of the adequate data. As it has been indicated above, the excellence assessment of the judiciary provides for the use of both qualitative and quantitative rates. At the same time the first ones and the second ones should be operational and relevant on the part of their validity (reliability) and adequacy (compliance) with the criteria.

Secondly, the assessment procedures, as a matter of fact, are important. Holding the excellence assessment of the judiciary can take place within: a) scientific research; b) the procedures of external assessment; c) the procedures of the internal monitoring and control; d) the procedures of public control. At the same time the assessment algorithm should be universal and integrated, i.e. suitable for each case (V. I. Borisov, V. S. Zelenetsky, 2010: 56).

At present, the most widely accepted tools, which are applied in the practice of the excellence assessment of the judiciary, are considered to be the quantitative methods. At present, the empirical basis proper is admitted to be the foundation of the assessment of the court performance. But, as Yu. N. Tolstova justly noted, the quantitative method should be talked about, when "social entities can be described by means of accepted real numbers, and their research assumes regular mathematical operations" (Tolstova, Yu. N., 2001: 119–124) .The limitation of the empirical results does not allow to present complete information as to the performances of such social institution as the judiciary. Therefore, along with the quantitative methods of cognition it is necessary to operate with the qualitative ones, which are often admitted to be a more adequate tool of cognition of social aspects of the legal institutions, than traditional methods of quantitative analysis.
The use of the qualitative methods together with the traditional quantitative ones should be followed by the assessment of the reliability (validity) of the results obtained. For the quantitative methods the procedure of such assessments is considered to be sufficient, they are clearly formalized and sequenced into a few standard basic procedures, which can be applied in view of the specific character of the research concerning the judiciary performance. In the case of operating with the qualitative methods the opportunity of standardization and formalization of the assessment procedures of the reliability are limited by the character of the results obtained. Therefore, in this case, the main problem of the excellence assessment of the system under consideration is not the development of the methodology of application of the indicated methods of the assessment, but the interpretation of the results obtained and their analysis.

The algorithm of combination of the quantitative and qualitative methods is of basic value: in the further analysis their results being of a different character should be integrated. For example, it is necessary to formalize the analysis of the quality (legitimacy) of the adjudications, the amount of the decided legal cases and the surveys (interviews) of the accused, which these decisions were delivered to, and the complainants seeking for fairness from the adjudication, as well as questioning of those, who are present in the court as to the

objectivity, impartiality, competence and high professional skills of the judges. Of course, the question of the possibility to overlap the obtained results will inevitably arise. This problem always arises with the use of both qualitative and quantitative methods within one research. 3 models of combination of the results obtained by means of the methods specified are allocated in science: the convergence of the results, the combination of the results on the basis of the principle of augmentability, their collision (divergence) (Laba, L. Ya. 2004). Therefore, at the development of the specified tools and evaluation methodology these moments should be paid a particular attention for.
In our opinion, the main methods, which can be used in the system of the judiciary assessment, are:

1. Self-assessment. The essence of this method is that the assessment is implemented by the subject, which is included in the structure of the judiciary. For example, it can be the Superior judicial authority concerning the assessment of the quality performance of the judiciary on the whole, the Superior specialized court concerning the assessment of the quality performance of the specialized branch of the judicial system and the court itself, its authorized staff. Of course, the obtained results will be subjective, but on the whole they can become a definite basis for the further assessment of the qualitative criteria. The comparison of the data received by means of the self-assessment with the data received with the use of alternative methods, for example, by means of questioning the users of the judicial services will be particularly interesting. But the main thing is that, these data will enable the allocating of the deficiencies in the effective organization and performance of the judicial system and as a result can become the justification of the directions of its reforming.

The main way of realization of this method is questioning of the judges and the court staff. The preparation of the questionnaire for self-assessment, the definition of the criteria which can be assessed this way, the methods of the analysis and the interpretations of the received data are the subject-matter for the independent scientific research.

2. The survey is a traditional sociological method. Depending on the orientation, i.e. the determined criterion of the research, it is possible to define a target group for this procedure: a) wide (random interrogation of the society members apart from the presence of any experience of contact with the judicial system), b) specific (the persons with the specific professional experience – attorneys, public prosecutors, human rights defenders participate in the

interrogation), в) limited (the persons, who have a certain experience of intercommunication with the court – the participants of a lawsuit take part in the interrogation).

When applying this method it is necessary to determine, firstly, the circle of respondents, secondly, the criteria, for which this method of the assessment can be applied, thirdly, the degree of reliability of the received data. The information, received by means of this method, will be, as well, of a subjective character, some misrepresentation is possible depending on presence (or absence) of the experience of contacts with the courts for judicial services and its result, whether the party gained a suit at law or not, etc. However, the fact that the received data will allow assessing of the social excellence of the court as a participant of social and legal relationships, i.e. social effectiveness of the judicial system, is important. The data analysis will make it possible to adjust the judicial policy; it will enable to introduce a series of measures aimed at increasing of the social status of the court, the image of judiciary on the whole.

3. The assessment by a group of experts. The separate qualitative criteria are best to be assessed by a group of experts. The method of the expert assessment of the judiciary excellence is based on the conclusions of the professional lawyers possessing high professional and scientific level and wide experience of practical activities. For example, it is appropriate to include a judge, a public prosecutor, an attorney and a scientist in such a group. The application of this method is preferred under the assessment of those criteria, for which the use of only statistics is not enough for receiving complete information.

The measurement of the court excellence can be carried out on the basis of the algorithm for obtaining an expert assessment, which includes the following phases: a) the clarifications of the content of the quality criterion of the court performance, the content of its rates to the experts; b) the clarification of the chosen system of assessment to the experts, i.e. the system of points, according to which the level of the court excellence by means of the particular criterion is assessed; c) the control of the expert awareness of the tasks they are set; d) the processing of the expert assessment results, the determination of a degree of objectivity and reliability of the received data.

The information received by the method of the expert assessment, of course, has also a certain degree of subjectivity, as the conclusions drawn at the research of this type reflect the attitudes of the experts, formulated in response to their personal characteristics, hence, they

are not objective. Besides, the assessment itself is not presented by the quantitative measurements and that does not allow the correlating of the received data with the statistics. The overcoming of the specified deficiencies is possible by means of a reasonable, well-considered approach to the formation of an expert group. Due to the proper approach it is possible to predict that the expert assessment will be at most close to the real, objective rate.

4. The statistics. The most of the excellence criteria of the judiciary can be assessed due to the statistical method. The statistics are objective rates of the determined excellence criteria, which need interpretation and comparison with other data. Certain information can be received from the statistical accounting systems, which are recorded by the courts; receiving some more information requires special data acquisition.

The statistical method of data acquisition is the most common in the judicial system. Mostly the object of the statistical analysis is the judicial practice: its quantitative and qualitative rates, the effective influence on various domains of the social reality. The statistical method of analysis of the judicial practice allows to reveal the most common deficiencies during the process of preparation of the court adjudications by the judge, and as a result, to formulate methodical recommendations as to the improvement of this aspect of the court performance. At the same time, the judicial practice does not contain information about the circumstances of the court session and the level of professional competence of the judges. Besides, this method of analysis is not quite representative, as the research aimed at the judiciary practice is selective, nonsystematic and does not allow to assess the data about the whole complex of the problems.

Much more complete information about the court performance quality is presented by the data of analytical and statistical reports, which are officially conducted by the judicial system. In particular, the specified data allow assessing the excellence of the court performance of different instances, the timeliness of legal proceedings, the potential staff of the judicial system, the busy schedule of judges, the level of financial and technical support of the judicial system, etc.

One of the problems of the statistical method application during the excellence assessment of the judiciary is the development of the ways of measurement of the facts, stated in the adjudications, as well as the ways of combination and analysis of the quantitative rates obtained by means of the statistical method of measurement, and the

qualitative rates obtained due to the alternative methods of cognition.

5. The social and legal experiment. The principles of excellence of the court performance can be defined, tested and proven by means of their practical application (probation); one of the ways is a social and legal experiment.

The creation of model courts is a vivid example of using the method of social and legal experiment. The development of the conceptually new approaches to the court management, its administration, the personnel policy, the informational and analytical activity, the court staff professional skills advancement and other key points are the main basis for the experiment implementation. The main purpose is thorough examination of the effectiveness of the pioneer methods of the court management and court performance, revealing positive and negative experience, its analysis, data correlation and dissemination of positive results to the activities of the whole judicial system. This method allows to approve separate reformative approaches in a particular court, to analyze their effectiveness in comparison with the current practice and only in the case of receiving a positive result to disseminate them at the national level. Under this approach significant material and administrative resources are saved, the risk of tactical errors in reforming of the judicial system decreases.

The social and legal experiment is closely connected with the supervision, comparison and measurement; therefore the given method should be applied in close interrelation with the listed above methods of quality assessment of the court performance.

The methods of the assessment listed above facilitate receiving of both objective data, and more or less subjective information. Taking into account the specific character of the court performance, for the receiving a realistic and complete impression as to the quality the court performance these methods should be combined.

The main advantage of the objective methods of the assessment is that with their help it is possible to receive a certain impression of the correspondence of the criterion being assessed to the ideal (absolute) result (standard). At the same time they are not necessarily capable to cover completely all the criterion, and therefore they are not capable to provide in full extent enough implications for the development and implementation of particular measures for the improvement of the rates as to the determined criterion.

The advantage of the subjective methods of assessment is that they are capable to provide too extensive in the range information about the quality of the criterion being assessed. At the same time, the information received applying these methods can be inexact or even wrong.

The determination of the way of the assessment of the results of the subjective methods of cognition and their correlation with the objective data, are, first of all, the main problems of analysis of the data received with the use of the listed methods of the excellence assessment of the judicial system. Most of the criteria of excellence of the judicial system can be analyzed and assessed by means of assessment rates. First this attempt, as it has been already noted above, was undertaken by T. G. Morschakova and I. L. Petrukhin, who proposed a technology of construction of scales of the quality assessment for legal proceedings of the criminal cases (Morschakova, T. G. 1987). Later this technique was used for the research of effectiveness of the civil legal proceedings by A. B. Tsykhotsky (Tsykhotsky, A. B, 1997). We believe that the method of scaling can be well applied at the development of the methodology of the judicial system excellence assessment.
The specified technique is based on the research of the effectiveness of the court performance from the point of view of the quantitative analysis. Its essence is in the data acquisition as to the judiciary management and performance according to a certain programme in compliance with the developed model of standards of the judiciary excellence, further it is analyzed and is put onto a special scale by means of the assessment rates.

For the assessment of each quality criterion of the judiciary performance a separate scale is built, where the assessment categories are indicated, such as: “completely corresponds”, “relatively corresponds”, “badly corresponds” and “if at all corresponds”. The appropriate point corresponds to a certain response. Eventually, the received points are summarized and a conclusion of the judiciary quality in a certain domain is drawn. The nearer the rate approaches the maximum level (i.e. 100% of the responses are “completely corresponds”), the more the judicial system corresponds the criterion of effectiveness. Of course, the experts should be enlisted for the development of such scales.

Therefore, the excellence measurement of the judicial system is possible with the assumption that the following factors are determined: (a) the quality standards of the judicial system, in the content of which the criteria, the indicators of effectiveness and the system of their rates are allocated; (b) the technique of data

acquisition, the method of the information analysis and assessment; (c) the composition of the expert group, which will conduct the quality assessment of the judicial system; (d) the degree of influence of each rate on the general effectiveness of the judicial system.

Summing up the considerations presented above, let us note that to carry out the assessment (measurement) of the effectiveness of the judicial system as a complex systemic formation is only possible due to a complex approach, at which all the aspects related to the court daily performance will be taken into account. The development of the system of the methods to consider the diverse results of the court performance will facilitate a more objective quality assessment of the court performance. The more diverse methods of cognition will be operated with, the more properties of judicial system will be researched. In this aspect, the combination and analysis of the obtained results for the simulation of the comprehensive structure of the excellence of the judiciary become an actual target. Its decision will become possible under the development of the methodologically justified research procedures, which will allow to combine results of the application of the quantitative and qualitative methods of the assessment.

Thus, summarizing all the stated above, it should be emphasized that the purpose of the excellence measurement of the judiciary is a comprehensive and detailed revealing of the deficiencies, taking place in its management and performance, and the advancing of the purpose-oriented measures aimed at increasing of its effectiveness.

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