

**International Association of Judges; Annual Meeting in Marrakech, Morocco
1st Study Commission; November 21st to November 24th 2005**

**“Economics, Jurisdiction and Independence”
(«Gestion des juridictions et indépendance»)**

Questionnaire

Country: Iceland.....

1. "New Public Management" in the Judiciary

1.1 Introduction

New public management (NPM), management techniques and practices drawn mainly from the private sector, are increasingly seen as a global phenomenon. NPM reforms shift the emphasis from traditional public administration to public management.

NPM reforms have been driven by a combination of economic, social, political and technological factors. A common feature of countries going down the NPM route has allegedly been the experience of economic and fiscal crises, which triggered the quest for efficiency and for ways to cut the cost of delivering public services. However, it may well be argued that "fiscal and economic crises" are just used as excuses to push forward political intentions!

NPM refers to two concepts. The most relevant may be the new institutional economics. "The new institutional economics refers to introducing incentive structures (such as market competition) into public service provision. It stresses aggregating bureaucracies; greater competition through contracting-out and quasi-markets; and consumer choice." (Rhodes,1996.¹)

The NPM style of government involves distinguishing between policy decisions and service delivery. Service delivery, proponents of NPM argue, is best left to "entrepreneurial" governments based on principles like competition between service providers, outcome based performance standards, decentralized authority, market mechanisms and other qualities not traditionally found in government bureaucracy. Rhodes notes that "NPM and entrepreneurial government share a concern with competition, markets, customers and outcomes." (1996)

Key elements of NMP may include

- various forms of decentralizing management within public services (e.g., the creation of autonomous agencies and devolution of budgets and financial control),
- increasing use of markets and (internal) competition in the provision of public services (e.g., contracting out and other market-type mechanisms such as benchmarking),
- increasing emphasis on the quantity of outputs, performance and customer orientation.

1.2 Questions

1.2.1 There are Ideas of NPM, which are or are planned to be applied in several countries in the judiciary. They may infringe on the independence of the judiciary and the judge. **Please give a short survey** of certain tendencies or features which may derive from NPM in your jurisdiction.

¹ Rhodes, R. A. W. 1996. "The New Governance: Governing without Government." Political studies XLIV: 652-667.

Answer:

Ideas of NPM have not been, to any notable degree, on the agenda in the judiciary.

1.2.2. Please report on the following typical features of NPM.

Are they applied in your judiciary? If yes, in what way are they applied?

Do you think that they infringe on the independence of the judiciary?

- Global budget, devolution of budgets
- financial control,
- internal competition, benchmarking
- best practice
- quantity of outputs ^
- flexible distribution of workload
- customer orientation,
- emphasis on performance, incentives
- Quality control
- others

Answer:

For a long time, the budget of the courts has been controlled by the Ministry of Internal Affairs, which makes a recommendation to Parliament, after receiving comments/wishes from the Judicial Council. The ministry of justice has many other institutions in its basket, such as the police, and the amount allotted to the courts is always meagre and less than the Judicial Council asks for. There is no doubt that this has an effect on the independence and functions of the courts.

There are general emphasis on performance and efficiency with reference to ethics and the demands of local law and the ECHR, but NPM type demands in that sector have not reached us.

2. Costs of the judiciary

2.1 How many professional judges are there in the judiciary of your country? (absolute figure and per 100'000 inhabitants)

Answer:

Law decides the number of judges. The judicial system is a two level system. The total number of judges is 47, thereof 38 at the lower courts and 9 at the Supreme Court. Inhabitants are about 300.000, thus there are 6.4 per capita both levels counted, and 7.9 per capita at the lower level only.

2.2 How much is the share of the judiciary of the overall annual budget of the state? Indicate the percentage out of the total state budget)?

Answer:

Ca. 4.5% to the judiciary, incl. e.g. legal aid. To the courts proper ca. 2.9%.

2.3 Is there any fixed percentage in the overall budget of the state?

Answer:

No.

2.4 What is the recent development (1995-2005) of finances allocated to the judiciary? Give a short survey.

Answer:

The finances allocated to the court do not varied much between years, apart from 2002-2004 in which it was less than necessary to meet costs. Inflation is met in the budget. Budget only allows for salaries and necessary costs. Increase in order to engage in new activities, housing improvement, new equipments, new staff are difficult to obtain.

2.5. Can you report on any cost-cutting measures in the last 10 years (1995.2005)? If yes, give a short description of them (please consider especially changes of court procedures, remedies etc.)

Answer:

In the years 2002-2004 funding to the courts was not raised to meet necessary costs, and the ministry demanded that the courts would cut down in their functions to be able to keep the budget. This meant that the courts had to guard their expenses closely, and as a result several legal assistants and some secretaries had to be fired. Also, which was even more serious, the ministry took it twice upon itself to delay to advertise a vacancy of a judicial position. This resulted in a greater caseload on appointed judges for few months, and this at a period when the caseload at the courts was unusually heavy.

2.6. Is there any influence of these cost-cutting measures on judicial independence and jurisdiction? If yes give a short description.

Answer:

It is obvious that that finances influence the assistance judges get. If judges are overloaded with work it can infringe their independence. The act to delay to advertise a vacant judicial office, the number of which is decided in law, has the same effect and is an insult to the independence of the judiciary.

3. Privatisation of the judiciary

3.1. Are the tendencies to shift competences from the state courts to private arbitration, mediation and "private courts" ("rent a judge")? What are your experiences?

Answer:

There is a tendency of the government to increase the number of committees that have the power to decide on specific kinds of disputes. However, there is in principle a possibility to bring such a quarrel to court as well.

4. Diversa

4.1 Is remuneration for judges dependant at all on their performance (quantity or quality of output)?

Answer:

No.

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Please send the answers to this questionnaire by E-Mail to the presidency of the First Study

Commission and to the Secretariat of the IAJ not later than by 31-07-2005