

Administration of Justice and Courts' Budget: An Independence and a Managerial Issue

Administração da Justiça e Orçamento dos Tribunais:
Uma Questão de Independência e Gestão

Federica Viapiana*

Research Institute on Judicial Systems, National Research Council of Italy, Italy

Marco Fabri**

Research Institute on Judicial Systems, National Research Council of Italy, Italy

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ABSTRACT

How, and how much, justice systems and courts gain from the State budget, and in which way they are accountable for what they spend, is of paramount importance for judicial independence and for the competent functioning of courts. Since the New Public Management wave started, budget has played a major role as a powerful managerial tool to improve planning, policies' development, services delivered, and accountability mechanisms. However, generally speaking, European justice systems have been unresponsive to the application of managerial techniques, and this is particularly true for budget planning and expenditures. Courts' budgets have been, and still are in many cases, drafted only based on historical costs, and although so important for the court functioning, they have been one of the most neglected subjects in court administration studies. In recent years, some countries have been developing new approaches to justice systems and court budgeting, using a "performance-based" budget perspective, which relates organizational costs and organizational outputs, policies development and resource allocation, performance targets and resource appropriation, managerial discretion and accountability. This paper addresses the topic of justice system and courts' budget, focusing on three cases studies (Finland, France, and the Netherlands). After a brief overview of the literature available on the topic, the paper will

* Research Institute on Judicial Systems, National Research Council of Italy (IRSIG-CNR), Bologna.
E-mail: federica.viapiana@irsig.cnr.it

** Research Institute on Judicial Systems, National Research Council of Italy (IRSIG-CNR), Bologna.

present three case studies particularly interesting in the European landscape, because of their innovative approaches about court budgeting, within different judicial system governance settings. The three case studies will be compared in terms of assessing budget needs, budget appropriation processes, and criteria used for budget allocation to courts. The concluding remarks will focus on the peculiarities of these three case studies, and then will consider to what extent a performance-based budget can enhance both the independence and the quality of justice.

Keywords: budget, court management, judicial administration, allocative efficiency

RESUMO

Como e quanto os sistemas de justiça e os tribunais ganham com o orçamento do Estado, e de que forma eles são responsáveis pelo que gastam, é de suma importância para a independência judicial e para o bom funcionamento dos tribunais. Desde o início da nova onda de gestão pública, o orçamento tem desempenhado um papel importante como uma poderosa ferramenta de gestão para melhorar o planejamento, o desenvolvimento de políticas, os serviços prestados e os mecanismos de prestação de contas. No entanto, de um modo geral, os sistemas de justiça europeus não responderam à aplicação de técnicas de gestão, e isso é particularmente verdadeiro no planejamento e nas despesas orçamentais. Os orçamentos dos tribunais foram, e ainda são, em muitos casos, elaborados apenas com base no histórico de custos e, embora sejam tão importantes para o funcionamento do tribunal, eles foram um dos assuntos mais negligenciados nos estudos de administração dos tribunais. Nos últimos anos, alguns países vêm desenvolvendo novas abordagens para sistemas de justiça e orçamento de tribunais, usando uma perspectiva orçamental «baseada no desempenho», que relaciona custos e resultados organizacionais, desenvolvimento de políticas e afetação de recursos, metas de desempenho e apropriação de recursos, descrição de gestão e responsabilização. Este artigo aborda o tema do sistema de justiça e do orçamento dos tribunais, concentrando-se em três estudos de caso (Finlândia, França e Holanda). Após uma breve visão geral da literatura disponível sobre o tema, o artigo apresenta três estudos de caso particularmente interessantes no cenário europeu, devido às suas abordagens inovadoras sobre o orçamento de tribunais no âmbito de diferentes configurações de governação do sistema judicial. Os três estudos de caso são comparados em termos de avaliação das necessidades orçamentais, processos de apropriação orçamental e critérios utilizados para afetação orçamental aos tribunais. As observações finais irão destacar as peculiaridades desses três estudos de caso e, em seguida, promover o debate sobre se e até que ponto um orçamento baseado no desempenho pode melhorar a independência e a qualidade da justiça.

Palavras-chave: orçamento, gestão dos tribunais, administração judicial, eficiência de afetação de recursos

1. Introduction

“New Public Management” (NPM) is primarily a label, which implies the private sector’s management techniques to improve public sector efficiency (Hood 1991). The NPM deals mainly with institutional and organizational change related to budget planning and financial management, organizational development, labor relations, audit, and evaluation (Barzelay, 2003).

Budgeting is a central issue in NPM. Budgeting can be defined as “a comprehensive and coordinated plan, expressed in financial terms, for the operations and resources of an enterprise for some specified period in the future” (Fremgen, 1976).

The budgeting process in public administration, thanks also to the NPM approach, has moved from a historical *line-item* budget, based on the expenditures needed to supply public services, to a budget more focused on the results they are supposed to achieve.

NPM affected most of the public sector since the beginning of the '90s, while only in the late '90s, judiciaries started to feel some pressure for improvements and to deal with their effectiveness and efficiency (Maier, 1999; Fabri and Langbroek, 2000; Fabri et al., 2003).

On the one hand, there may be some grounds for the claim that: “Calls for increased accountability in performance were often discarded based on an understanding of judicial independence largely perceived as an entitlement of judges” (The World Bank, 2011). On the other hand, funding mechanisms, and budget allocation in particular (i.e., personnel, salaries, facilities, operational costs, information technology, etc.) given to the judiciary, can affect access to justice, judicial independence, and judges' impartiality. A low level of resources allocated to the courts can result in a deterioration of the quality of services to the citizens and force court managers to raise funds from other organizations, exposing the courts to some kind of indirect external pressures.

In the United States, this issue is known as the “Inherent Powers of the Judiciary” (Jackson, 1993; Shapiro, 1994). It was triggered by a decision of the North Carolina Supreme Court, which confirmed a judge's inherent authority to require the executive to provide necessary financial support for the judicial branch to carry out their constitutional duties.

In addition, an evidence-based and fair distribution of resources can contribute to guarantee judicial independence from the other governmental branches, while, at the same time, a transparent allocation of resources can improve the trustworthiness of the judiciary. Finally, through a performance-based approach, an allocation of resources aimed at pursuing equal performance of the different courts is reflected, in a sense, on equality of citizens before the law (Webber, 2007).

Some forms of performance-based budgeting, where performance-information is somehow integrated into the budgetary process, can be found in the judiciaries of Albania, Denmark, Estonia, Finland, France, Ireland, Switzerland, the Netherlands, and the UK.

The challenge for judiciaries is to adapt a performance-based budget to their peculiar features to avoid possible threats to judicial independence, but also to improve the court functioning thanks to a more managerial approach.

Performance-based budget models, especially the ones using incentives for organizations and their professionals, have to be carefully implemented in the judiciary. They have to be finely tuned to avoid giving “absolute priority to productivity and figures, to the detriment of the quality of legal work” (Langbroek, 2008), or there is a high risk of dysfunctional behavior, if they are based upon imperfect performance measures (Paul and Robinson, 2007).

This paper addresses the “performance-based” budget for the judiciary, focusing on three cases studies: Finland, France, and the Netherlands. These three countries have been selected because they have experienced different ways to implement a performance-based budget in three different governance settings: Finland and France enjoy a traditional ministerial model, while in the Netherlands the Judicial Council has a leading role in the budget drafting.

After a brief description of the main performance-based models, this paper will focus on the three case studies, and draw some conclusions based on their comparative analysis.

2. Models of performance budgets

The performance-based budgets aim to: a) rationalize the allocation of public expenditure, b) prioritize services of higher social value, c) increase efficiency and productivity.

There are different performance budget models, but all of them have some basic principles in common: a) They use and integrate performance information into the budget process, b) they aim to improve government’s planning, c) they focus on goals and priorities, d) they have a long-term approach, e) they monitor and measure results, f) they pay attention to transparency, g) they use incentives, h) they pursue flexibility and accountability of public managers.

Different performance-based models are based on different combinations of these principles. Governments can then use different models for different areas of policy.

“Program budgeting” is one of the first PB models implemented. It was introduced by the US government in the ‘60s, and its primary objective is to reach allocative efficiency through expenses prioritization. Its primary characteristics are the classification of expenditure into objective-based programs, and the use of performance information to address budgetary decisions. The performance information is related to output (and outcomes) achieved by programs. In this model, budgeting is strictly related to the “policy cycle”, and budget decisions are based on the evaluation of the results achieved by programs, and on the resources used to achieve those results. In this model, the link between performance information is loose, and the budget is mainly allocated to the program activities.

“Zero-based budgeting” is a specific model of program budgeting adopted from the ‘70s. Its purpose is to ensure allocative efficiency through marginal prioritization techniques. It is based upon the “systematic application of marginal analysis techniques to the budget formulation” (Taylor, 1977), to rationally allocate and shift funds between programs, taking into consideration priorities. Programs are broken down into “decision packages”, with different levels of priority and alternative budgets. Zero-based budgeting allows the shifting of funds from one package to another, based on the relative priorities. As the name suggests, every year, the budget is supposed to start from zero, and every expense must be justified and approved. In practice, in modern zero-based budgeting models, only the portion of program activities and marginal costs and benefits of each decision package are discussed. The performance information regards marginal costs and marginal benefits of decision packages. Compared to the “program budgeting”, the “zero-based budgeting” is supposed to be more effective in reallocating resources and realizing allocative efficiency using formal methodologies for expenditure prioritization. As for program budgeting, “zero-based budgeting” also has a loose link between performance and funding.

The “Budget-linked performance targets” is characterized by the setting of specific levels of performance targets, and it is aimed at improving efficiency (output targets) or effectiveness (outcome targets). Performance targets are calibrated to the level of funding provided, and they describe the level of performance expected at any point in the expenditure: any additional request for money from departments should be justified by an improvement in output and outcome.

The three models just mentioned are loosely linked through performance information and funding. Some other PB models have a tight link between information and funding such as: the “Agency level budgetary performance incentives”, the “Formula funding”, and the “Purchaser-provider model”, the latter being similar to the “Formula funding”.

The “Agency level budgetary performance incentives model” entails mechanisms of incentives or sanctions depending on performance. Best performing agencies receive more money, while poor performing agencies receive less money. In this model, incentives can also be related to a certain flexibility in the allocation of resources. The forecasted budget is related to past performance, and the amount of funding is not calculated by an algebraic formula, but by a more discretionary analysis of the performance information collected.

In the “Formula funding model”, the link between funding and performance information is very tight: it depends on an algebraic formula that links the planned output to the amount of funding, which can be the total amount or a part of the amount to be allocated. Its purpose is to improve performance and allocative ef-

iciency. The formula can be “activity cost-based” or not. “Activity cost-based” means that the formula is strictly related to the costs that occurred to perform that specific activity. The formula can also be “not cost-based” when, for example, the calculation of a bonus funding is not related to the specific costs of the activity, but on the performance achieved.

The “Purchase-provider model” is a peculiar cost-based model. Its purpose is to enhance technical efficiency and performance through incentives (payment for results). The budget is calculated by multiplying a given “price” per unit of output: the more the output, the higher the budget allocated.

In the next section, we will examine which ones of the performance-based budgeting models described have been applied to the judiciary in the three case studies: Finland, France, and the Netherlands, and what performance measures they rely on.

In the judiciary, the performance-based budget is primarily a tool to have a rational and balanced distribution of resources among courts. The calculation of the resources needed to make the judiciary function properly should take into consideration the past as well as any forecasted performance, to better estimate the resources needed, and then allocate them to the courts in the most effective possible way (Viapiana, 2018).

The issue at stake is “allocative efficiency”, which is very important in the judiciary landscape to grant equal access to justice and comparable services to court users, as well as a fair distribution of the caseload among courts and judges. The budget is a fundamental tool to try to balance efficiency and effectiveness among courts, and, in so doing, to ensure equal treatment of citizens before the law.

3. The funding mechanisms of Finland, France, and the Netherlands

Although all the performance-based budgets are related to the performance information, the overall approach, the indicators used, and the links between performance information and funding allocation are quite different in the three countries.

The budgeting process is affected by the governance structure. The governance model adopted in both France and Finland is ministerial, while in the Netherlands there has been a shift of several functions, including the budget, from the Ministry of justice to the judicial council.¹⁾

Finland started from a “management by results” overall approach, and then moved to a “result-oriented budget process” with a model that can be associated

1. Witttrup (2010) distinguishes two models: the traditional “Ministry of Justice model”, where the budget is managed and allocated by the MoJ, and the more recent “Council model”, where the budget is managed and allocated to a more or less independent body, that can be either the Judicial Council or an agency for Court Administration.

with the “Funding-linked performance targets” model. The explanatory notes to the State budget are used to list performance targets for each ministry and agency. However, these targets are not quantified regarding costs, and the budget allocation for the different ministries does not directly depend on performance. Performance information is just used to inform decision-makers.

In Finland, the Ministry of Justice based on the State budget frame, decides guidelines and principles for budget allocation. The Department of Judicial Administration within the Ministry of Justice is in charge of negotiating the budget needs and setting targets for the next year “face to face” with each Court President. The discussion starts from the evaluation of the results of the previous year, and then moves to the forecasting of incoming and solved cases for the following year, together with a proposal of budget and resources needed. During this discussion, additional judges or temporary staff, where appropriate, are negotiated. Before individual negotiations, a kick-off meeting with all the courts is arranged, with the aim of increasing transparency and providing a general overview of the situation for the judicial sector. At the end of the discussion, the funding appropriation of the court and the targets are decided. Efficiency targets consider productivity, economic efficiency (cost per weighted case) and timeliness. Court management can also decide to set additional quality standards, such as timeliness and transparency of judicial procedures, consistency, and readiness of judgments, etc. The accomplishment of the targets is settled in the annual reports, which are used as a tool in the negotiation process. Even though the targets and the budget are negotiated through the same process, there is no direct link between them (Contini, 2017).

The principal instrument for performance management is the annual central government budget, which includes resources and agreed targets and indicators to analyze the achievement of the targets. In the justice sector, the Department of Judicial Administration, with the collaboration of the courts, establishes indicators to assess the operational performance of the courts (Aarnio, 2003).

However, “[e]ven though these indicators were developed to allocate resources to particular court offices, their use for this purpose does not follow automatically. The indicators instead form a source of knowledge on which to base discussion around the negotiation of the budget of each court. They are also used during annual meetings to help the Ministry of Justice and the heads of each court office to define the objectives to be met” (Contini and Mohr, 2008).

The primary criterion in resource allocation is the estimation of the weighted caseload (using weighted scores) for the following year, also taking into consideration the available resources, which are the basis for the budget negotiation process between the Ministry of Justice and the Presidents of the courts.

Other indicators used in the budgetary negotiations are: a) Productivity (defined as the ratio between output and input) — the number of decisions per judge, or the number of decisions per court personnel (calculated by dividing the number of decisions of a court by the number of judges or total staff working in that court); b) Effectiveness (defined as the capability to reach the goal), the length of court proceedings; c) Efficiency (defined as the capability to reach the goals with the minimum use of resources), total court budget divided by the number of solved cases in that court (Aarnio, 2003).

As it was mentioned, the Finnish budget has a loose link between court performance and allocation of resources. Nevertheless, there is a very important aspect of this budgeting process. Performance targets are set in an open discussion between the Ministry and the Presidents of the courts, through regular meetings that enhance mutual trust and the sharing of common goals. This open discussion, based on performance and available resources, allows for the setting of feasible targets, which increase courts' productivity.

France has been using a “Program-budgeting” approach since 2006. The country introduced a programmatic budget law (*Loi organique aux lois de finances* – hereinafter LOLF) based on Missions, Programs, and Sub-programs, with the goal of increasing the autonomy of the Ministerial departments and program managers, appointed for each program. They have the flexibility to allocate and re-allocate resources within programs to achieve performance targets. Targets are related to three different standpoints: a) the citizens, interested in social and economic effectiveness; b) the users, concerned with the quality of service; c) the taxpayers, concerned with efficiency.

The “Justice Mission” is divided into five Programs. Each Program is under the responsibility of a program manager, and is divided into operational budgets. For the Justice Mission, Presidents of the courts of appeal are responsible for the operational budgets, but the program manager controls the fungibility of funds (Kirat, 2010).

In France, the preparation of the budget for the judiciary, as well as for all the other public sectors, falls under the exclusive competence of the government” (Contini, 2017). In this case, one of the key phases of the budget cycle is the discussion and the determination of objectives, indicators, and targets^[2]. At the beginning of the year, the Ministry of Justice discusses with the Ministry of Finance the budget amount allocated for next year and the actions to be undertaken. At the same time, the Budget Directorate staff of each Ministry gets together to de-

2. B. Lannaud (2007) Performance in the new french budget system, in Marc Robinson, *Performance budgeting. Linking funding and results*.

termine their financial needs. After these conferences, the Prime Minister can fix for each Ministry, and for each Mission, the maximum appropriation amount. In parallel, Performance Conferences are organized with the aim of establishing and evaluating the objectives and the related indicators of performance for each Mission. The result of these conferences is the “Annual Performance Program”, which is annexed to the Budget Law. Then, the budget appropriations are broken down by Programs. In September, the budget is submitted to Parliament, to be approved in October.³ The performance information and the objectives for the three coming years are not used to determine the budget allocation between Programs; targets are set after the allocation of budget to Programs. “The challenge is to assure Parliament that government units will seek the best possible use of the funds granted to them, for a given policy.” (Lannaud, 2007)

The Judicial Council is not involved in the budgeting cycle. Once the budget has been approved by Parliament, it is allocated to the Ministry of Justice, which is responsible for the various programs managed by program managers appointed by the Minister, usually the head of a ministerial department. Since 2004, the Presidents of the court of appeal are responsible for the implementation of the operational budget. They also authorize expenditures.

The budget of the judiciary is included in the “Justice Mission”, which is divided into five programs. In 2018, the Program had three objectives and twelve indicators:

- ◆ OBJECTIVE 1 – IMPROVING QUALITY AND EFFICIENCY
 - Indicator 1: Average processing time for each type of court
 - Indicator 2: Percentage of courts exceeding 15 percent of the targeted average processing time
 - Indicator 3: Average processing time in criminal matter
 - Indicator 4: Solved civil cases by a judge
 - Indicator 5: Solved criminal cases by a judge
 - Indicator 6: Solved civil and criminal cases by a staff employee
 - Indicator 7: Court of appeal reversal rate

3. <<http://www.vie-publique.fr/decouverte-institutions/finances-publiques/ressources-depenses-etat/budget/quelles-sont-etapes-elaboration-adoption-loi-finances.html>>.

- ◆ OBJECTIVE 2 – IMPROVING THE EFFICIENCY OF CRIMINAL JUSTICE RESPONSE, THE ENFORCEMENT, AND ARRANGEMENTS OF CRIMINAL PENALTY
 - Indicator 1: Percentage of criminal cases subject to an alternative to prosecution
 - Indicator 2: The average time for recording a judgment on the National Criminal Record
 - Indicator 3: Enforcement rate of suspended or effective prison sentences

- ◆ OBJECTIVE 3 – MODERNIZING THE ORDINARY JUSTICE MANAGEMENT
 - Indicator 1: Average cost per criminal case
 - Indicator 2: Number of electronic filings to be dealt with by the registry and number of electronic filings from the police

The indicators try to measure efficiency (productivity and expenses), effectiveness (length of judicial proceedings), and quality (reversal rates, enforcement, and alternatives to prosecution). These indicators are integrated into the budget, and the annual performance plan is annexed to the Budget Law. This plan includes actions, costs, objectives, and results obtained and expected. However, it is not clear the extent to which these indicators are linked to the number of financial and human resources granted to each court. Indicators are mostly used to evaluate whether resources are efficiently allocated to programs and whether actions are coherent with the objectives. “This information may, when necessary and along with other factors, lead members of parliament to propose amendments aimed at reallocating appropriations between programs grouped under the same mission” (Lannaud, 2007).

Presidents of the appeal courts allocate the operational budgets among the first instance courts within the court of appeal jurisdiction. This allocation is made after consultation with presidents of first instance courts in a so-called “budget conference”. However, it is still not clear how performance indicators affect the results of this consultation, since “the allocation of funds to courts remains broadly speaking, disconnected from the performance achieved in courts management” (Kirat, 2010).

The Netherlands uses different budgeting models, depending on the public sector. Performance information is disconnected to budget in those sectors where results are weakly connected to funding, and where Government has low control over the outcome. Performance budgeting is used in those sectors where per-

formance can be more affected by the public authorities' actions (De Jong, 2013; OECD, 2016).

The funding mechanism used in the Netherlands' judiciary is the "Purchaser-provider model". Budget amounts and courts' funding allocation are based on a "Price x Quantity" formula; where quantity is the number of solved cases, and the price is set by the Judicial Council. After a negotiation with the Ministry of Justice, costs to process different categories of cases are taken into consideration.

In the Netherlands, there are two separated and overlapping flows to the budget formulation, approval, and execution. The first flow deals with the Ministry of Justice and the Judicial Council; the second one deals with the Judicial Council and the courts. As far as the first flow is concerned, in January, the Council submits to the Ministry a budget proposal based on the forecasted number of solved cases and their prices. The number of cases solved is subject to annual negotiation between the Council and the Ministry, while the prices for each category of cases are discussed every three years, starting from the prices determined in the previous years. In September, the Ministry submits the proposal to the Parliament. Every change from the Council's proposal must be justified by the Ministry of Justice. In October and in November, the Parliament discusses the proposal which can be amended.

The budget preparation for allocating budget funds to the courts follows a different timing. In May, courts are asked to fill in a form with the performance of the previous year, and a forecast for next year, about the caseload (incoming and solved cases), the forecasted "revenue" (Price x Quantity) and forecasted expenses. Based on these data, in October the Council prepares its budget plan to allocate funds to the courts.

As mentioned, in the Netherlands, the Ministry is responsible for reviewing the plan and the budget proposal put forward by the Council. Then, the budget of the Council is integrated into the total budget of the Ministry, and it goes to Parliament.

As for the management of the budget within the courts, one of the main features of the budgetary reform in the Netherlands is the autonomy of the courts.

Courts are self-administering organizations, under the supervision of the Judicial Council: each court has its management board, which is in charge of the general management. The management board is composed of the president of the court, the "director of operations" (usually someone with a managerial background), and another judge of the court appointed by the Council (CCEJ, 2016). The board is in charge of the allocation of resources within the court. Since no amount is earmarked, the board has a large discretion about how to spend the money.

In the Netherlands, the use of resources in the courts is subjected to audit by a private external auditor every year. The courts must account to the Judicial Council for the resources' used, but not to the Ministry of Justice.

The Dutch budget allocation criteria for courts is straightforward. The allocation is based on the formula “ $P \times Q$ ” (prices of cases multiplied by the number of cases solved — the calculation is done per different case categories).

The budget allocation from the Ministry of Justice to the Judicial Council is based on 11 case categories, which consolidate 70 case categories that are then used to allocate funds from the Judicial Council to the various courts.

It is also worth noting that the budget allocated from the Ministry of justice to the Council with the price for quantity mechanism is 95 percent of the total budget. The five percent left is allocated by the Ministry of Justice to the courts for mega cases, or for other particular circumstances. Then, only 75 percent of the budget available to the Judicial Council is allocated to the courts through the price for quantity calculation; 25 percent is managed directly by the Council for information and communication technology projects, and for building rents.

The prices for case categories are discussed by the Ministry of Justice and the Judicial Council every three years, while quantities are negotiated every year, based on the forecasted number of solved cases. In the second flow, the Council sets every year both prices and quantities used to allocate funds to the courts, based on forecasted caseload and courts' outputs.

In the last years, some “quality measures” have been integrated into the calculation of prices per case category. For example, the number of cases that are decided by a panel of judges, or the number of cases reviewed by another judge^[4] have higher prices.

Each court obtains the same amount of money for a given case category. Courts that define more cases than expected receive 70 percent of the agreed price on the surplus of cases. Courts that define fewer cases than the forecast must return 70 percent of the price of the unsolved cases into an “equalization account” managed by the Council for the Judiciary.

4. Concluding remarks

The European Network of Judicial Councils for the Judiciary has carried out a survey among judges in Europe (see, *Report on Independence, accountability and Quality of the Judiciary*, adopted at the general assembly in Bratislava the 7th of June 2019 — www.encj.eu).

4. This can be the case of a senior judge who reviews a case of a less experienced judge.

The figure below (ENCJ, 2019, 46) shows that in all the European countries, with different intensity, judges perceived as dramatically important the relationship between court resources and their independence.

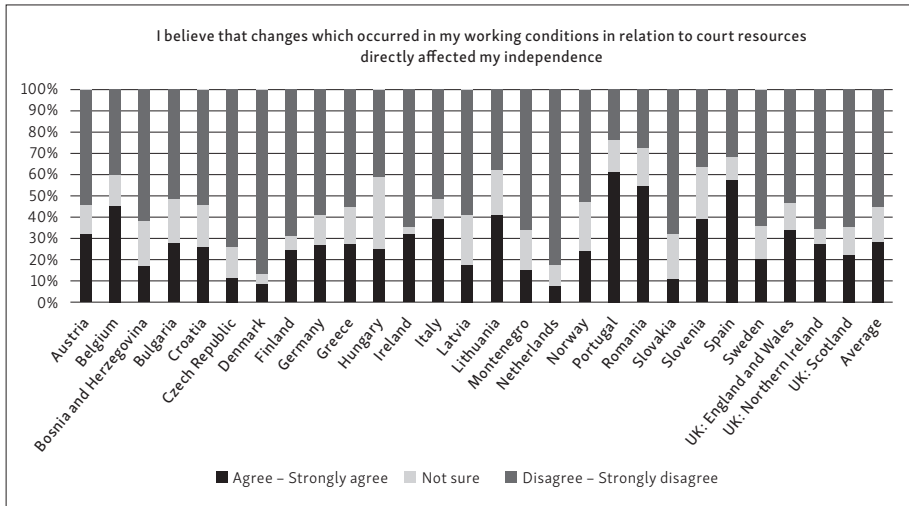


FIGURE 1. Judges' perception about court resources and judicial independence

This is further evidence of the important role that budget and allocation of resources have in the judiciary, which should be more proactive in the innovation processes that are taking place.

Within these innovation processes, there is the use of performance-based models, which may be used to improve performance, equalize the distribution of resources, pursue a more consistent delivery of justice across the country, and ensure judicial independence.

Only a few judges respond "I strongly agree" to the sentence "I believe that changes which occurred in my working conditions in relation to court resources directly affected my independence". Therefore, a conclusion can be made that, generally, judges do not perceive court resources as directly affecting the independence of those countries which have adopted a performance-based budget. Obviously, further analysis is necessary.

In this paper, we have taken into consideration as a starting point of analysis three performance-based budget models that have been implemented in the judiciary of Finland, France, and the Netherlands.

In Finland, the performance-based budget has stimulated more attention on courts' performance and judges' accountability. The allocation of resources is managed at the central level through negotiation with the local courts, to take into consideration their local peculiarities but also to have a more equitable distribution of resources among courts.

In the Netherlands, the Court of Audit emphasizes that: "Since the introduction of performance-based funding, the cost of a court case stabilized after having increased for a long period of time (1983-2002), and the cost differences between courts and cases have declined. It is reasonable to assume that this is due in part to the introduction of performance-based funding"^[5]

Based on the data collected, the performance-based budget, in its price by quantity version, has produced a more equitable allocation of resources among courts and a kind of ceiling on courts' expenses.

In addition: "the performance-based budget has made the resource allocation process more transparent and based on clear and shared criteria, which contribute to improving allocative efficiency" (Viapiana, 2018).^[6]

In France, at this stage, it is not clear what kind of results the performance-based budget (LOLF) has produced, and further research is needed. There is some concern about the list of performance indicators, because they "do not reflect the reality of the judicial activities within the courts" (Kirat, 2010), while, some others, such as the appeal reversal rate, should be handled with extreme care because they do not necessarily measure judicial quality.

Both in Finland and in the Netherlands, judges indicated that the pressure on efficiency would shift their attention to the number of cases rather than their quality. This is why performance indicators cannot only focus on the number of cases that have to be solved but also on their complexity and age from filing, to avoid opportunistic behaviors such as prioritizing easy cases to avoid complicated and time-consuming ones.

For this reason, it is important that the performance-based budgeting is grounded on a proper performance management system, which both takes into account and balances different values and indicators of quantitative and qualitative performance.

The change in budgeting approach can be affected, but can also affect, the organizational governance of the judiciary. For example, in Finland, it is nowadays debated that the establishment of a Court Administration Agency in the Nether-

5. <<https://english.rekenkamer.nl/publications/reports/2016/04/21/funding-the-judiciary-system-consequences-for-efficiency>>.

6. Interview with Jos Puts (Council for the Judiciary) – 11 April 2018.

lands as the new budget model contributed to creating more autonomous courts managed by a local management board. Changes in the allocation of resources can also lead to changes in the case assignment systems or in setting case priorities, which are two typical points for attention regarding judicial independence.

This kind of organizational changes can be carried out by explicit norms, or they can rely on practices. This is one of the reasons why more empirical research in the field is needed to better understand the changes undertaken, and the implications for judicial independence and court functioning.

We would like to assess the effects of performance-budget on courts' efficiency and judicial independence through more in-depth data analysis and interviews in the three selected countries. The final goal is to draft "guidelines" to design and to implement a performance budget model in the judiciaries, which would be able to balance efficiency and quality without jeopardizing judicial independence.

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