

Administrative Justice and Tribunals Council Newsletter

Evaluation of European Judicial Systems by CEPEJ

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For most of you the French acronym CEPEJ (Commission européenne pour l'efficacité de la justice) is probably a complete mystery; in English it stands for the European Commission for the Efficiency of Justice. It is all too easy to think this is a body established by the EU, but this is not the case. The CEPEJ was created in 2002 by a resolution of the Council of Europe (COE) in Strasbourg and represents all 47 Countries of Europe.

The CEPEJ was created out of concern by the COE for the number of Article 6 violations (right to a fair trial) of the European Convention of Human Rights, in particular the denial of justice caused by delay. You may have heard the famous Gladstone quotation that epitomises the work of the CEPEJ so well: “justice delayed is justice denied”. The tasks assigned to the CEPEJ are wide ranging, but it cannot compel member states to improve or adopt recommendations and guidelines as it is only a recommending body.

This absence of ability to compel member states to comply does work to the CEPEJ's advantage as it allows recommendations to be made without compromise. The commission is comprised of an expert from each member state who are there to offer their personal and professional opinion without political or domestic considerations and this freedom is reflected in the recommendations

produced. Member states then have the option of complying, in full or part, with the recommendation or rejecting it for whatever reason. Hopefully those states that reject the ideas coming out of the commission will try to aspire to them in time.

This differs so much from the negotiations in Brussels over Regulations etc. where the proposals have to be implemented (except where there is an opt-out) and the end result is a draft that is workable and acceptable to each member state although it may not be ideal. Over the years the CEPEJ has produced a number of publications and best practice guidance on a variety of subjects including:-

- Mediation;
- Enforcement;
- Quality; and
- Effective timeframes.

The work on quality and effective timeframes is relevant to any court or tribunal and it is worth looking at the CEPEJ website to see what tools and guidance is available:

http://www.coe.int/t/dghl/cooperation/cepej/presentation/cepej_EN.asp?

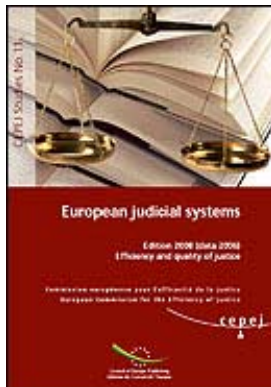
But the main theme of this article is the evaluation of judicial systems across Europe. There are 47 member states and therefore 47 judicial systems and each system is different to the others in some degree. In fact the variety of systems is even greater when you take account of the federal states which again will be different in some way. The UK has three different

The tasks of the CEPEJ are:

- ▶ to analyse the results of the judicial systems;
- ▶ to identify the difficulties they meet;
- ▶ to define concrete ways to improve, on the one hand, the evaluation of their results, and, on the other hand, the functioning of these systems;
- ▶ to provide assistance to member States, at their request;
- ▶ to propose to the competent instances of the Council of Europe the fields where it would be desirable to elaborate a new legal instrument.

systems, although Northern Ireland is very similar to England & Wales whereas Scotland is very different; in Germany we have 16 Lander and in Switzerland there are 26 Cantons all with some variations of the national system.

I hope you can begin to see the size of the task confronting any organisation wishing to carry out an evaluation of European judicial systems. But before the evaluation can begin, data has to be collected to produce a comparable study; to do this commonalities have to be identified so that you can compare like with like. With the work that passes through the courts and tribunals this is exceptionally difficult as the definitions of cases vary, including trying to identify if a case is civil or criminal as even this not consistent across Europe. In the end the CEPEJ settled on four common case categories for comparison that all member states could relate to and they are Robbery, Dismissal (employment), Homicide and Divorce. For more



general data collection the work of the courts and tribunals was broken down into categories representing civil & commercial, family law, administrative, employment and criminal without being too specific.

This study is undertaken every two years and the third cycle is currently underway. Unfortunately because states work to different statistical years and it takes time for some of them to produce their statistical returns there is an unavoidable delay in producing any report. The current cycle is based on 2008/09 data and the collection process is still underway with many countries still asking for more time. The report will hopefully be published at the end of 2010.

This report is the only empirical study of judicial systems across the whole of Europe and is recognised around the world as a valuable academic tool, but it is not perfect. The big question is, how accurate is the data? The evaluation team does challenge statistics that appear 'suspect' and changes are made, but there is no independent verification of the information and in the end the CEPEJ has to accept what the member state provides.

In an ideal world the CEPEJ would like to have certainty that the information is accurate and reflects the true position, but that is not to be. It is fair to say that over the years the quality of information has improved and I hope the next report will be, by far, the most accurate.

What happens next? Well the report is used within the CEPEJ to inform its work and identify areas for further examination by a dedicated working group. It is also widely used by policy makers who examine differences in systems between countries:

- Why do England & Wales grant legal aid in more cases (495) per 10,000 inhabitants than any other Country (Russia grants legal aid in 4 cases per 10,000)?
- Why do England & Wales have 22 lawyers per 100,000 inhabitants (Scotland has 9) when Portugal has 244 and Spain 266?
- Why do the UK and Northern Ireland spend 0.47% per capita GDP on legal aid compared with Denmark spending 0.08%, France 0.15% and Italy 0.18%?

The examples above give some extreme examples of differences, the answers may be obvious but it does make Ministers and policy officials ask the question, WHY?

As a result of the evaluation process the CEPEJ has created a number of tools for member states to use. I have mentioned some of the areas already, but two tools that are of particular use for administrators and managers are 'The Time Management Checklist'

[https://wcd.coe.int/ViewDoc.jsp?Ref=CEPEJ\(2005\)12&Sector=secDGHL&Language=lanEnglish&Ver=rev&BackColorInternet=eff2fa&BackColorIntranet=eff2fa&BackColorLogged=c1cbe6](https://wcd.coe.int/ViewDoc.jsp?Ref=CEPEJ(2005)12&Sector=secDGHL&Language=lanEnglish&Ver=rev&BackColorInternet=eff2fa&BackColorIntranet=eff2fa&BackColorLogged=c1cbe6)

and the 'Checklist for Promoting the Quality of Justice and the Courts'

[https://wcd.coe.int/ViewDoc.jsp?Ref=CEPEJ\(2008\)2&Language=lanEnglish&Ver=original&Site=DGHL-CEPEJ&BackColorInternet=eff2fa&BackColorIntranet=eff2fa&BackColorLogged=c1cbe6](https://wcd.coe.int/ViewDoc.jsp?Ref=CEPEJ(2008)2&Language=lanEnglish&Ver=original&Site=DGHL-CEPEJ&BackColorInternet=eff2fa&BackColorIntranet=eff2fa&BackColorLogged=c1cbe6)

These checklists identify the components and procedures that need to be in place to help courts and tribunals manage their waiting times and the quality of their service. Both these documents were devised by a panel of international experts endorsed by the Plenary of the CEPEJ and the Committee of Ministers at the COE. A third useful document is nearly ready for publication and that will be a model customer satisfaction survey with guidance on how to produce the best results. In the UK asking customers what they think of the service is a regular occurrence but in many other countries the practice is still unheard of.

It is widely considered that in the UK we have one of the more efficient judicial systems in Europe and the lessons we can learn from these documents will not be as great as in the emerging countries like Armenia, where they are literally starting from scratch in building a respected system of delivering justice. Only by visiting countries like Armenia have I come to appreciate how lucky we are. One court I visited had a record of very short hearings; when asked why I was informed that the heating had not worked for three years and in the winter the temperature was -20C.

All the documents produced by the CEPEJ have two constant themes running through them: communication and transparency. It is vital that courts and tribunals engage with all their users to explain to them the level of service that should be expected and develop a procedure to establish the level of service and performance the customer expects. Only through this engagement can we ever hope to meet the 'realistic' needs of our customers.

Transparency is vitally important if you hope to create public confidence in the way your court or tribunal handles cases and reaches decisions. Transparency comes in many forms but must include the production of information regarding the performance and evaluation of your service, the procedures that are to be followed and how to obtain redress if something goes wrong. Only then do you have a judicial system to be proud of.