

THE ANALYSIS OF THE RELATIONSHIP BETWEEN THE ORGANIZATIONAL STRUCTURE, THE INFLOW OF CASES AND FIXING THE NUMBER OF PERMANENT POSTS WITHIN THE COMMON JUDICIARY – A PERSPECTIVE OF PERFORMANCE MEASUREMENT

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Abstract

Performance measurement is a topic which is often discussed by both academics and practitioners but it is complicated by its multi-dimensional nature. One way of overcoming the inherent complexity of performance measurement system might be to employ structured design methodologies. With respect to the preliminary results of a study into the use of process approach for the design of performance measurement systems in other countries such solutions were analyzed. The empirical findings are compared to the attributes of a good performance measurement system adopted from the literature. The purpose of the article was an analysis of the applied methods as far as the allocation of judiciary permanent posts is concerned, the quantity of the inflow of cases and the organizational structure of the common courts in relation to the identified faultiness in the performance measurement. On the basis of the research and the analysis of good practice presented in the foreign literature, directions of creating a system of measurement have been pointed out, according to the process approach and the application of solutions in the area of logistics.

Keywords: performance measurement, process approach, logistics, common judiciary, efficiency

1. INTRODUCTION

The measurement of the realization and the quality of processes is a relatively popular research topic in the management science, although it usually concerns traditional business organizations, such as firms. The reasons of the search of solutions in the common judiciary are the accession of Poland to the European Union, the necessity to conform to the European procedures and the pressure to reduce the prolixity of the Polish justice in terms of dealing with cases. The topic research is particularly interesting because the relevant literature has been limited to few publications in that respect [1]. In the Anglo-Saxon countries the research concerning the performance measurement was initiated much earlier than in the countries with the continental legal system. However, there are significant differences in the above legal systems, making the comparison difficult.

In the literature, in which the problem of the examination of the functioning of organizations is discussed, there is no agreement to what are the essential criteria of performance [2, 3], understood often as productivity [4]. The examination should include the organizational activity in relation to numerous criteria, however, the performance of an organization is frequently only perceived as its effectiveness [5, 6], whereas the effectiveness and the efficiency are the domains which should be distinctly differentiated. Such an approach is reflected in many publications in the area of logistics [7, 8, 9], which allows to treat it as a paradigm in terms of the management of logistic processes. The effectiveness refers to the index of input and output or their comparisons, whereas the efficiency refers to the absolute level of input in relation to the result of the achievement [10]. Although best-functioning organizations should be efficient as well as effective, trade-offs are possible. The progression along one dimension of performance may entail a regression in another. Therefore, an organization may be efficient and not effective, both efficient and effective, or neither efficient nor effective at the same time. Organizations act in many domains and can be efficient only in a limited number of them. This multidimensional approach to performance means that only

some patterns or configurations and relations in an organization and their conditions can be used efficiently. It is essential then to define the configurations of the organizational characteristics corresponding to the performance along with designating the rules of measurement in the common judiciary.

The necessity to comply with The European legislation is the most general answer to the question why a need for change exists and why new solutions in other areas, nor explored so far, should be found. The idea usually appears with a tendency to introduce changes, in favorable conditions and using indicated good practice, which has been already tested by similar organizations in other countries. Introducing logistic solutions in the common judiciary concerns a question of the benefits which can be achieved in terms of improving the efficiency of the functioning of an organization which for ages has been operating in a traditional and unchanged way. The analysis of the possibility to apply solutions from the area of logistics to this type of organizations in order to raise the level of efficiency of functioning draws attention to the necessity to make an analysis of the adopted methods of measuring at the present level.

In the case of the specific type of organizations, such as the common judiciary, the focal area will be the analysis of the faultiness of the presently applied system of measurement of the realization of its tasks. The purpose of the article is, therefore, an analysis of the applied methods of measurement as far as the allocation of judiciary permanent posts is concerned, the quantity of the inflow of cases and the organizational structure of the common courts in relation to the identified faultiness in the performance measurement. On the basis of the research and the analysis of good practice presented in the foreign literature, directions of creating a system of measurement have been pointed out, according to the process approach and the application of solutions in the area of logistics.

The article constitutes only one section of a wider research conducted by the author. The data concerning the organizational structure, the research on the quantity of the inflow of cases and the allotment of permanent posts has been adopted from the earlier publications, quoted in the article, but the discussion on the faultiness of measurement and the recommendations to create a new system constitute a new direction in the discussed issue.

2. PERFORMANCE MEASUREMENT - METHODOLOGICAL BASES

Performance measurement recently broadened and upgraded in the literature to performance management, has been a relatively popular research subject, but until recently the focus has been on the traditional business organization. Due to the rapid emergence of knowledge concerning business, performance measurement in the judiciary has become a focal research area.[14] The level and the quality of functioning of this type of organizations and the possibilities to introduce systems of measurement have raised interest in many countries. [15, 16, 17]

The justice court processes are a professional area of work where the research and contributions on factors affecting process performance measurement are still quite limited. These facts also create difficulties in determining the exact goals and performance measures of processes and operations and specifying the value creation process of the organization [14]. The management of contemporary organizations based on the paradigm of a constructive unity of theory and practice is clearly connected with the functioning of the organization in the environment [18]. Performance measurement is influenced by the organizational structures, which are undergoing evolution from functional ones, characteristic of the classic approach, to the process structures [19, 20]. The management of the functioning of an organization should serve a more economical use of resources. Regardless of what constitutes a goal and what the resources are, the real transition from the resources to achieving goals requires an ordered set of activities, which is a process [21]. The literature puts emphasis on the system of measurement based on the process approach.

The data shows that although firms use structured methodologies for performance measurement system design, those that do often find it significantly easier to: (a) decide what they should be measuring; (b) decide

how they are going to measure it; (c) collect the appropriate data and (d) eliminate conflicts in their measurement. [22]

The starting point of the study conducted in relation to the Polish common judiciary was the lack of a method of measurement which would comply with the standards in the firms, first of all, because of the lack of the possibility to define the real situation and make comparisons. It was also essential to make the application of practical solutions adopted from the area of management, especially logistics, which were used successfully in other organizations.

3. FINDINGS OF THE STUDY

3.1. Special characteristics of Polish common judiciary performance

The object of the analysis was the organizational structure, the quantity of the inflow of cases and the allotment of permanent posts. There appear also significant differences in terms of the quality of particular appeals, in districts and territories, not only in the respect of the areas of their properties, but also in terms of the number of inflowing cases, and thus, the size of the court units and the allotment of permanent posts. The consequence of this state is the functioning of 377 organizational units of the judiciary, which consist of 11 courts of appeal, 45 territorial courts and 321 district courts [23]. The differences in the size of particular courts are significant. The available statistics shows that in the case of courts of appeal the difference in the size between the largest and the smallest court is 3.5-fold, in territorial courts it is almost 18-fold, and in the district courts it is 34-fold. [24]

The problem of the structure of the common judiciary is also the lack of the uniform, operating on all levels, and national system of managing the judges' posts, which would allow for an optimal use of the resources in accordance with the needs deriving from the real conditions of functioning of particular courts. The common judiciary still depends on the functions and professional specialties, enabling to accumulate skills and experience. It does not concentrate on processes, first of all, because of its hierarchic organizational structure, deriving from long-term traditions. The analysis of the inflow of cases indicates that the vast majority of the inflow of cases concerns district courts (over 93 %), and the remaining courts accept only 6.21 % of cases (territorial courts), and the courts of appeal - 0.69 %. The structure of the inflow does not reflect the gravity of the inflowing cases. In courts of appeal the main categories, which are appeals and complaints constitute over 70 % of cases, in territorial courts almost 60 %, whereas in district courts they constitute only approximately 20 %.

The reorganization of courts, which is an element of the reform of the Polish common judiciary, is a trial of balancing the networks of courts. The balance in the network can be assured when there are no major disproportions between the participating units. Because of the fact that an effective functioning of networks of courts meets an essential social need, it should be pointed out that the access to justice ought to be equal in every district of its activity. Such a presumption has become a base for a widely discussed administrative liquidation of small courts [25]. The data collected by the Ministry of Justice [26] and the analysis of the advantages and disadvantages of the organization of the common judiciary in Poland, presented in the report of the MCC group, [27] points to the occurring disproportions, where the most serious problem was too small a number of the size of courts, which had a particularly bad influence on the efficiency of functioning of district courts. The majority of courts of particular levels depend on the numbers of judges' posts and vacancies, whereas, what is essential for the correct functioning of a court, is the number of posts really staffed.

The identification of the goals of particular stakeholders implies that from the point of view of the society it is important to improve the quality and the accessibility of the provided services; at the level of the network, the efficiency can be measured with the equal division of responsibilities of its members, and the level of the organization means the concentration on the results achieved by particular members of the network. [28]

3.2. Limitations of the applied metrics

The metrics applied to the Polish judiciary are predominantly identified with two values: the number of judges adjudging in the department (the allotment of posts) and the number of the inflowing cases.

The search for the possibility to create a system of measuring the standards of operating in the common judiciary is connected with major difficulties and still remains undone. The adaptation of a system of the measurement of the degree of the realization of tasks from private sector businesses is not possible, as traditional financial metrics applied to typical firms are not of the greatest importance, and they are not overly emphasized. The processes and operations in courts are usually complex and abstract, and employing simplified indicators defining the final results distorts the measurement. The metrics used in the judiciary provide information only about the present level of dealing with cases, and are not used in controlling or planning. The indicators show solely what cases have been dealt with and on what date, but there does not exist an indicator defining which periods are connected with the prolixity (is it a remaining case from the year before, or from two or more years before) and what cases are presently in progress. The statistics describes a past performance, which allows for reacting only on the basis of historic presenting of the data.

The Ministry of Justice still prefers the previous indicators and applies them equally to all types of courts. The role and responsibility of the employees in particular courts is limited basically to trying to assure the achievement of goals established by the Ministry. Therefore, there are no incentives to explain the reasons of low results of individual units in particular courts.

The faultiness of the applied methodology causes the transmission of a falsified image of the results of the courts' activity and an increasing dissatisfaction of the society. The basis of the efficient work of courts should be a properly conducted analysis and measurement, which is supposed to constitute an element of the motivation to enhance efforts in terms of improving the activity.

The common judiciary, which still depends on the functions and professional specialties, enabling to accumulate skills and experience, does not concentrate on processes. This is due to its hierarchic organizational structure, deriving from long-term traditions. A signaled problem of the structure of the common judiciary is the lack of a complex, uniform, operating on all levels, national system of managing the judges' posts, which would allow for an optimal use of the resources in accordance with the needs deriving from the real conditions of functioning of particular courts. The "Doing Business" report, prepared by the experts of the World Bank demonstrates that the judiciary, neglected for ages, needs a fundamental reform [29]. The report shows that one of the reasons of the inefficiency of the Polish common judiciary is the faulty organizational structure and an improper allocation of the resources resulting in an unequal division of work in courts.

4. NEW SOLUTIONS IN THE PERFORMANCE MEASUREMENT SYSTEM - DISCUSSION

The most serious disadvantage of the measurement system applied to the Polish common judiciary is the lack of taking into consideration the time of the realization of the processes, especially logistic processes. They have a multilateral impact on the economics of the organization, but above all, they must support its strategies, its focus on the external environment. [30]

In the judiciary, logistic management should guide the flow of the cases through the overall process from receiving a new case until the disposition, archiving and enforcement. During its flow a case is passed on between people with subsequent tasks. Without adequate logistics this flow has many unnecessary waiting stacks and the efficiency of justice is in peril within the logistic management the people, documents, time and rooms need to be allocated to activities and events. Especially the document logistics within the court is huge, since the case file needs to remain complete and available for judges and staff working on cases. [31]

The ongoing programs to increase productivity of courts in general have led to the fact that the output efficiency measures are emphasized even more. This has further led to inappropriate measurement of output quantity and efficiency without understanding and analyzing the causal effects on other aspects of the organization's performance. The defective information that the measures give on process performance also makes it more difficult to comprehend the causal relationship between performance and measures. The quality of decisions is highly valued in a judiciary. There is a clear need that this concept of quality is broadened to include the lead-time as a major and important aspect of quality and the recipient's satisfaction. A good suggestion to improve the process performance measurement system was formed on the basis of the findings by P. Pekkanen and P. Niemi.

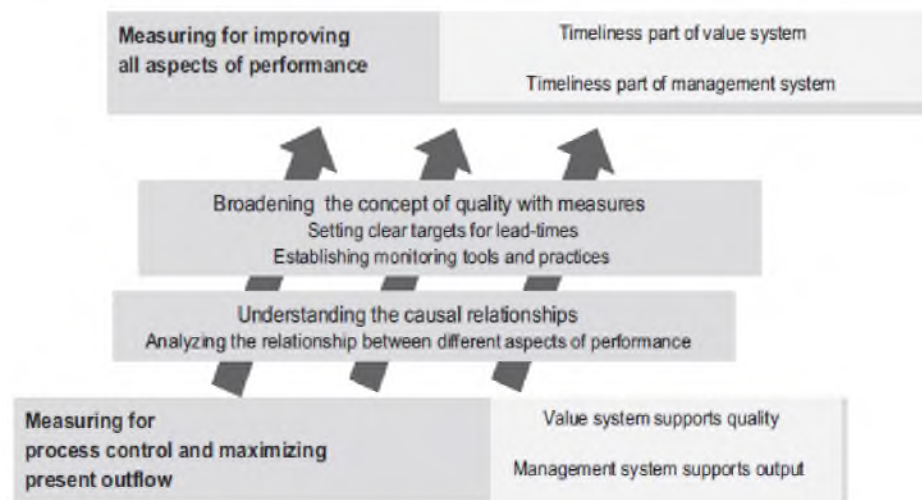


Fig. 1 Improving process performance measurement in judiciary [14]

The suggested system of the division of measurement (see Fig.1) indicates numerous vital elements, which until recently have not been emphasized. The only solution aiming at directing the measurement to the processes has been the measurement of the workload of the secretariats of particular court departments, which should enable an equal distribution of the clerical staff between the departments, depending on the number of responsibilities, [32] developed by W. Hajduk, president of the Territorial Court in Gliwice of the previous term, presently the Deputy Minister of Justice. [33]

The suggested good practice, developed on the basis of the research, indicates that the ability of good managers to organize the internal structure of courts, including the allocation of resources and motivation of the staff, seems also to have a very important role that the literature and common sense have never realized [34]. Further research is necessary to confirm these preliminary results in a more scientific manner. The role of management of court efficiency is much more important than has been traditionally assumed.

Today in organizations the BSC (Balanced Score Card) is also used to settle the metrics of reachability, defined as KPI (Key Performance Indicators), following individual characteristics of a given unit or group [35, 36]. An implementation of BSC in the Polish judiciary has been proposed within a project realized by the Ministry of Justice. [37]

The efficiency of an organization largely depends on the improvements in their functioning and the appropriate use of their resources. The realization of this goal requires a pursuit of perfection in the realization of the tasks of particular units, especially the optimization of action and the use of resources, current multilateral communication, current improvements in the realization of logistic processes and the

measurement of their efficiency and proficiency, enhancing the rate of reacting to changes, increasing the transparency of information and prompt and efficient solving emerging problems.

The application of the lean sourcing standard operating procedures and monitoring is also a good base for measuring performance and challenge deviation from the standard solution to assure efficiency of the process.[38] In practice, not all of the tools and techniques used in the manufacturing industry are appropriate for achieving cost saving and quality improvement in the public sector. It is argued that tools and techniques used in the manufacturing industry should be adapted according to specific conditions in the public sector before they are adopted [39, 40]. Some typical and frequently applied lean tools and techniques adapted and adopted in the public sector include rapid improvement event [41, 39], value-stream mapping [42] and Six Sigma [43].

5. CONCLUSION

For the rational use of the resources and the optimization of the organizational structure it is desirable to allocate 6-7 permanent judges' posts in the departments. In the case of the increase in the inflow of cases, there is a possibility to allocate more posts without dividing the department. In the case of reducing or increasing the number of posts there is no essential change in the workload.

The analysis of the inflow of cases of different categories to the courts of particular levels allows for the conclusion that the process of equalizing the distribution of the inflow of cases to particular courts, and hence, the problem of unequal workload for judges, should be planned within a new organizational structure of the common judiciary (after reorganization), in order to reduce inappropriate fixing of permanent posts of court units, according to the basic directions of the reform, which should respond to the recommendations adopted by the Committee of Ministers of the Council of Europe and aim at improving the quality of the courts' activity. Action intended to reform the judiciary ought to be aimed at a more flexible shaping of the organizational structure of territorial and district courts, rational use of the judges and financial sources, as well as improving the management of courts.

Appropriate measurements should be designed to reflect all the aspects of a judge's work and the basic tasks of an aspect organization, and special attention ought to be directed to ways of preventing delays. The planning and controlling of lead time of cases through the analysis of logistic processes in an organization should constitute an important part of a strategy in order to keep a high quality of judgments, according to the mission and values represented by the organization.

Given results might lead to a conclusion that Polish courts could further improve their level of efficiency, even if human resources were kept constant. In fact, they should better balance the amount of employed and analyze the target level for outputs and inputs of inefficient units. Good managers should organize the internal structure of courts, including the allocation of resources and motivation of the staff. Further research is necessary to confirm these preliminary results in a more scientific manner. The role of management on court efficiency is much more important than has been traditionally assumed.

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