

**International Association of Judges; Annual Meeting in Marrakech, Morocco
1st Study Commission; November 21st to November 24th 2004**

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

Country: ARGENTINA

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*)

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.

Preliminary

Argentina is a republic and has adopted a federal system of government. There coexist two judicial organizations in its territory: federal and provincial.

The justice system consists of 25 Judicial Branches, which are separate and independent. These are: the National Judicial Branch, established and maintained by the Federal Government, the judicial branches or courts of the 23 provinces and the courts of the Ciudad Autónoma de Buenos Aires.

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.

In February of the year 2002, the Mesa de Reforma Judicial [Debate for Judicial Reform] in the context of the Diálogo Argentino [Argentine Dialogue] and the Plan de Modernización del Estado [State's Modernization Plan], which was launched at the beginning of 2001, with the representation of different sectors and entities related to the judiciary invited by the Ministerio de Justicia y Derechos Humanos de la Nación [National Ministry of Justice and Human Rights], in which the Asociación de Magistrados y Funcionarios de la Justicia Nacional [Association of Judges and Officers of the National Judiciary] and the Federación Argentina de Magistrados provinciales [Argentine Federation of provincial Judges], among others, took place, agreed on an action plan aimed at facing the essential problems which affect the Argentine Justice, which may be grouped in functional issues (points 1 to 5) and institutional issues (points 6 to 6):

- 1. Problems in the access to the judicial system*
- 2. Excessive judicial workload and delays*
- 3. Deficiencies in the administrative system*
- 4. Lack of qualification*
- 5. Insufficient infrastructure*
- 6. Institutional reforms*
- 7. Lack of confidence*
- 8. Judicial independence*

From this point of view, among other objectives, it was suggested the implementation of information and management control systems, by means of:

- a) Measurement of economic information destined to compare production and the unit and system cost.*
- b) Measurement destined to determine answer quality.*
- c) Measurement destined to determine answer time.*
- d) Verification of the existence or not of objective causes of inefficiency.*

The Programa Integral de Reforma Judicial [Integral Program of Judicial Reform] develops, in turn, the Proyecto de Desarrollo de Juzgado Modelo -PROJUM- [Development Project of the Model Court], which main objective is to design and make operative a new model of organization and internal administration of the courts that may be able to improve its efficiency levels according to the control benchmarks previously defined. The pilot project is implemented in the Consejo de la Magistratura [entity in charge of the appointment of candidates to enter the judicial system] of the National Judicial Branch, and is performed in 12 selected courts, 10 of which sit in the city of Buenos Aires, and 2 of which sit in the provinces.

The model of judicial organization suggested by the PROJUM is based on three premises:

- 1. To achieve an actual separation of judicial and administrative functions. The new model has a tendency towards specialization, making a distinction between judicial and administrative capacity.*
- 2. The pilot tends to achieve an operative organization of the courts' offices.*
- 3. The management of information and statistics, as a tool for management and decision-making.*

Moreover, since 2003 and with the institutional support of the Consejo de la Magistratura of the National Judicial Branch, several pilot tests are being performed in courts with competence over different matters, applying the quality techniques of the ISO Standards. One of the tools taken into account is the classic Deming's Cycle: Plan - Do- Check = tactics for obtaining quality: Planning - Organization - Direction - Control.

The quality strategy seeks to satisfy and exceed the users' needs. Commitment with the premise of Continual Improvement = Constant Effort = Improvement.

Judges, being responsible for their Courts, are the ones who set the Quality Policy, its strategic goals, its vision, and who communicate said policy.

Quality should be measured by an internal audit, and by an external one, if it is to be certified. Certification guarantees that the organization is well structured, and that the results of the programs and courses are meeting the objectives and needs established by the judicial unit, according to the spirit of the mentioned ISO standards.

So far, these tests do not appear to affect the judiciary's independence.

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

Please, refer to answer 1.2.1.

The NPM characteristics are only contained in the two mentioned projects -PROJUM and IRAM ISO STANDARDS-, which are performed in courts selected to that end. Its practice pursues the following objectives:

- *a deeper satisfaction of the users regarding the delivery of justice*
- *an impact on the critical points of the process*
- *the elimination or reduction of activities not focused towards users' satisfaction*
- *the elimination or reduction of delays*
- *simpleness of implementation*
- *more efficiency in the courts' offices*
- *reduction of the costs of the process*

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)

In the Argentine judicial system there are 4,029 judges. The population adds up to 37,050,000. Therefore, there are 11 judges every 100,000 inhabitants.

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)?

See preliminary information.

Allocation to the National Judicial Branch:

Year 2002: 1.5% (\$ 658,627,208.-) [Argentine pesos]

Year 2003: 1.1% (\$ 693,583,327.-)

Budget for the Provincial Judicial Branches Year 2000/2001:

Province	% of the Public Sector	Judicial Branch
<i>Buenos Aires</i>	<i>5.62</i>	<i>\$ 563,052,000</i>
<i>Catamarca</i>	<i>3.33</i>	<i>\$ 20,089,327</i>
<i>Chaco</i>	<i>7</i>	<i>\$ 75,681,000</i>
<i>Chubut</i>	<i>8</i>	<i>\$ 40,449,332</i>
<i>Córdoba</i>	<i>10</i>	<i>\$215,000,000</i>
<i>Corrientes</i>	<i>7</i>	<i>\$ 54,733,000</i>
<i>Entre Ríos</i>	<i>6</i>	<i>\$ 61,754,000</i>
<i>Formosa</i>	<i>4</i>	<i>\$ 41,109,880</i>
<i>Jujuy</i>	<i>3.30</i>	<i>\$ 24,142,000</i>

<i>La Pampa</i>	3.90	\$ 24,023,530
<i>La Rioja</i>	3.80	\$ 23,471,000
<i>Mendoza</i>	4.72	\$ 85,449,274
<i>Misiones</i>	4.08	\$ 38,475,000
<i>Neuquen</i>	3	\$ 41,395,913
<i>Rio Negro</i>	5.86	\$ 43,332,522
<i>Salta</i>	4	\$ 38,926,975
<i>San Juan</i>	6.02	\$ 28,000,000
<i>San Luis</i>	2	\$ 17,592,754
<i>Santa Cruz</i>	3.80	\$ 27,255,000
<i>Santa Fe</i>	5	\$147,204,892
<i>Santiago del Estero</i>	2.57	\$ 24,122,925
<i>Tierra del Fuego</i>	4.23	\$ 18,810,000
<i>Tucumán</i>	5.67	\$ 60,378,000
<i>Ciudad de Buenos Aires</i>		\$ 27,598,660

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

There is no fixed percentage.

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

The percentage allocated to the National Judicial Branch in the State's annual global budget varies each year. In the last decade it has ranged from 1.1 to 1.6%.

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.)

The most significant measures that may be mentioned are:

a) Modernization of the delivery of justice with the introduction of technological improvements that speed up the process and reduce costs.

b) The existence of mediation for labor matters at a national level, which is a mandatory step prior to the judicial action.

c) The establishment, also in mandatory terms, of mediation prior to every trial, promoting in that way a direct communication between the parties for the out-of-court resolution of the dispute. It is not applicable in the following cases:

- Criminal cases.

- Processes of personal separation and divorce, nullity of marriage, filiation and parental guardianship, except the patrimonial issues derived from said processes.

- Processes of declaration of incapacity and rehabilitation.

- Cases to which the National State or its decentralized entities are a part.

- Amparo [remedy seeking legal protection], habeas corpus and interdicts.

- Precautionary measures until they are decided upon, completing in that regard all the stages of appeal, the mediation process coming next.

- Preliminary measures and anticipated evidence.

- Successions and voluntary trials.

- Reorganization and bankruptcy proceedings.

- Cases being heard by the National Justice in Labor matters.

The mediation process shall be optional for claimants in execution and eviction processes.

d) Amendment to the articles of the Código Procesal Civil y Comercial de la Nación [National Code of Civil and Commercial Procedure] which establish that either the judge and the parties may propose conciliatory agreements. If such conciliatory agreement is reached, it must be approved by the judge hearing the case.

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

In principle, no.

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?

The law which establishes the "mediación obligatoria" [mandatory mediation] - refer to answer to 2.5- enables the parties to attempt a private solution, even though experts in civil procedure have not agreed on the matter.

The arbitration procedure is established in the Código Civil y Comercial de la Nación in force. Either because of lack of application or because of ignorance, said procedure is neither used by lawyers nor suggested by any organization whatsoever nor attempted by judges of the Judicial Branch. This alternative to the lawsuit is not used.

4. Diversa

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

No. Same job, same remuneration.

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