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 NPM 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.

A: Just recently in Croatia ideas of NPM are introduced through articles in Law journals. In basic, just introduced document, by Ministry of Justice "Strategy of Reform of Croatian Judiciary" NPM is not mentioned as a mean of rationalisation and cost effective judiciary. Only possible introduction of private sector can be seen through possibility to use delivering companies for delivering court summons to the parties. This can not seriously infringe the independence of judiciary because companies which are delivering this service are chosen in public tender.

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

A: See answer above.

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)

A: 1,900 including judges of Petty Crime Courts. Without those judges number of judges is 1,400 including Municipal Courts, County Courts, Commercial Courts, High Commercial Court, Administrative Court and Supreme Court.

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)

A: Budget for judiciary is not calculated by percentage of state budget. In 2005 percentage out of the total state budget was not more than 3%.

2.3 Is there any fixed percentage in the overall budget of the state?
A: No. Every year it is negotiated between Ministry of Judiciary and Ministry of Finance, with no influence of Judiciary. By the Law on Courts (Judiciary Act) only Supreme Court can give its not binding opinion on the state budget proposal.

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

A: In this period financial resources allocated to the judiciary have been raised every year in absolute figures, with exception in period from 2000 to 2003. In that period there was significant stagnation in financial resources allocated to the judiciary.

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.).

A: The only cost cutting measure was lowering the salaries of judges and public prosecutors approximately for 15 -20 %. Changes in Civil Procedural Act did not effect costs of judiciary significantly, because they have been introduced mainly to speed up length of procedures before courts. In other hand number of cases before courts is raising every year so these measures, which logically would lead to cost-cutting effect, can not show effects on cost of judiciary.

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

A: 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?

A: Mediation and Arbitration are "top themes" in Croatia, largely and widely represented as magic stick which will solve all problems in court delays and reaching the decision within reasonable time.

Mediation is introduced in Courts and out of Courts but with very low success within the parties. Reasons are historical, sociological and in still present possibility to the parties to initiate court procedures without large court costs.

Parties do not see advantages of mediation and they want court ruling for their dispute. Situation is somehow different with arbitration, because this men of solving dispute is used more by companies, there are permanent arbitration courts in Croatia with long tradition organized within Chambers of Commerce.

4. Diversa

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

A: No

Stephan Gass  John Murray  Gerhard Reissner
s.gass@fhbb.ch  murrayJ@netcourier.com  g.reissner@gmx.de

Richard Aikens  Véronique Imbert
mrjustice.aikens@hmcourts-service.gsi.gov.uk  Veronique.Imbert@justice.fr
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