

Complaints management for the judicial order

1. Introduction

Requested by the High Council of Justice and under the authority of the Belgian Science Policy (in the framework of the AGORA-program), a research project started on the first of January 2004, entitled: "Complaints management for the judicial order". This research extended over 1 ½ years, and was closed in July 2005. The research was carried out by the Research Group Social Analysis of Security (Ghent University), supervised by Prof. dr. Paul Ponsaers and Prof. Dr. Els Enhus. Researchers were Gudrun Vande Walle and Antoinette Verhage.

One of the tasks of the High Council is to deal with citizens' complaints regarding the functioning of the judicial order. Since 2000, the High Council has been offering the possibility for citizens to air their grievances regarding the judicial order. Annually, the High Council is expected to report on the way they deal with these grievances to the parliament. In other words, the High Council constitutes an important link between citizens and Justice and is able to contribute to an improvement of the faith the population has in Justice as a whole. By a thorough examination of these grievances it may be possible to gain some insight in the discord among citizens regarding the functioning of the judiciary.

Based on these insights, it may be more feasible to phrase structural recommendations for the benefit of the political authorities in order to improve their policy.

After the evaluation of the first three years of dealing with complaints by the High Council, it became clear that the current procedure and registration of complaints is not sufficient and does not answer to the initial goals. The didactic effect with respect to the judiciary appears to be limited and the way the High Council deals with complaints can even be counterproductive in some cases, as they are faced with the obligation to disqualify many complaints. Therefore, the High Council made an appeal, as part of the AGORA-program, to optimize the current procedure and registration. In addition to this optimization, the High Council also intends to professionalize the handling of complaints by the courts and public prosecutor's offices.

The goal of this research was therefore threefold:

- 1) a complaints procedure needed to be developed for the courts and public prosecutors offices, accompanied by the improvement of the current procedure of the High Council;
- 2) a system had to be developed to register these complaints on the level of the courts and public prosecutor's offices on the one hand, and on the level of the High Council on the other hand;
- 3) a model for reporting these complaints had to be worked out, on the basis of which the High Council and the judicial order would be able to make their annual reports.

2. Methodology

The research was carried out in 4 phases. In the *orientation phase* the research team studied a diversity of literature regarding complaints management and complaints administration, but also regarding the visions on complaints and the confidence of citizens in the judiciary. Furthermore, we studied the current systems for the handling of complaints, both with respect to procedures as with respect to the manners of registration.

Secondly this phase aimed at the conceptualization of the ways the judiciary is currently treating complaints. We were able to conceptualize this by organizing several interviews with magistrates responsible for handling these complaints. These interviews enabled us to gain insight into the several forms of complaints management on the one hand, but also made clear the general visions of magistrates on complaints by citizens. To make this overview complete, other complaints services were also interviewed, for example the Ombudsservices or senators. These interviews allowed for the collection of larger views on complaints

management, but also resulted in several good practices and recommendations for a complaints management within the judiciary.

A third theme of this orientation phase was the analysis of a large number of files. We chose to analyze files of the High Council of Justice, complemented with files of two Public prosecutor's offices and of the Ministry of Justice. The goal of these analyses was to have a sound grasp of the subjects of these complaints: what do people complain about? A better understanding of the contents of these complaints can help to take the expectations of citizens regarding the judiciary into account. The analyses also made it possible to evaluate the current handling of complaints which permitted us to formulate recommendations. Ultimately, the analyses facilitated the formulation of a first nomenclature for complaints.

The second phase of this research was the *conception phase*. During this phase, we structured and analysed the information that was gathered until that point. This phase resulted in a proposal for the organization of a complaints management, in which the research team structured the results of the first phase and – based on those results – proposed a model for complaints management in three lines (zero, first and second). This model was complemented with a proposition for a registration system.

The third phase, *the testing phase*, consisted of the actual testing of the proposal for complaints management and the accompanying registration system. We requested two jurisdictions (one jurisdiction in the Walloon provinces, one in Flanders) to operate as test sites. In the end, and as a result of several delays, this test was limited to a first, more general test of the registration system. We were not able to test the procedure due to several practical reasons.

The final phase is the *final reporting*, in which all results were compiled to a final report, which was concluded with a series of recommendations.

3. The new model for complaints management

The final report proposes a model for complaints management on three lines: zero-line (prevention and information, first-line (the handling of complaints by the judiciary) and second-line (the handling of complaints by the High Council of Justice).

3.1. Zero-line

The zero-line is expected to meet the demands for information that exist within the community. Many complaints are actually requests for information of result from the fact that people are not informed (f.e. why is it taking so long to treat my case, who can I turn to for information about my case...). This need for information already explains a part of the complaints. From this perspective, we emphasize the zero line, which has a task of prevention and information. This zero line ought to be easily accessible, customer-friendly and approachable. In the proposal, we suggest three forms of zero-line-services.

The interviews with magistrates showed the importance of the task of the *information counter* within the court, both regarding the provision of information as regarding the 'character' of the judiciary. A friendly and professional information counter can prevent a lot of resentment. We therefore suggest developing this counter into a full and competent reception.

A second service on the zero-line is the 'justitiehuis'¹. The 'justitiehuizen' create a distinct profile for themselves as being easy-accessible services and have the legal task to 'receive users of the justitiehuis and provide them with information and advice' (Ministerial Circular Letter, 23 June 1999). In our proposal, we revalue and emphasize this task of reception and information.

¹ Litt: House of Justice

The third service on the zero-line, is the 'judicial reception'. The public prosecutor's office of Hasselt started a project in 2004, entitled 'From the step up to the public prosecutor's office'. This project entailed the organization of a reception within the courts and the public prosecutor's office, which would receive people with specific questions with respect to the contents of their own case. This reception would be hosted by jurists of the public prosecutor's office and the courts. We suggest to extend this project to other courts, which would have the advantage that questions regarding the contents of files can be answered, which is another step in the prevention of the escalation of misunderstanding to dissatisfaction.

3.2. First-line

In the proposal for complaints management, the first-line exists of the handling of complaints on the level of the judiciary. In this model, complainants can directly pose a complaint on the functioning of the judiciary (when these complaints are linked to an existing case) with that same judiciary (courts and public prosecutor's offices). This has several advantages: handling of complaints will be quicker (all the information is present at the place where the complaint is deposited), the complaint will be handled by the source and it may improve the relationship between the judiciary and the citizen.

The proposal suggests to implement a function for a complaints-manager within every district (one manager for complaints on the courts, one manager for the complaints on public prosecution). This complaints-manager (a magistrate) will be the front-office for the handling of complaints. He or she is the only one that can be approached, the focal point for complainants, and is responsible for the compliance with the rules of the back-office (the corps commander and the magistrates). Complaints management on the first-line needs to be handled in accordance with the rules, regulations and procedures. Besides these regulations and procedure, a system was developed for the registration of complaints (database). Another part of the procedure of complaints-management on the first-line is referral through other services. Every service should be brought up to speed with the competences of the complaints-manager, to make sure that every complaint ends up at the right place.

This system for complaints-management should result in a degree of uniform approach of complaints. The research showed that the way the judiciary reacted on complaints by citizens differs dramatically (ranging from taking complaints very seriously to ignoring them). The regulations for complaints management offers a set of minimal guarantees for citizens, can serve as a guideline and helps streamlining treatment and referral.

3.2. Second-line

The second-line in complaints-management is the High Council of Justice. This implies that citizens can no longer complain directly to the High Council regarding the functioning of the judiciary, when their complaint is directly linked to a specific case. The more general complaints (on policy), can still be addressed to the High Council. Furthermore, people can ask the High Council for a second opinion on complaints that have been handled by the first-line. This second opinion can be requested when complainants are not satisfied by the way the first line has treated their complaint.

There are several reasons to place the High Council on the second-line. Firstly, the High Council is still not known by the general public, has to declare himself unqualified for a large number of complaints and the handling of complaints by the High Council can take up a lot of time (e.g. because of the time that passes before all information is received).

The final report suggested two scenarios for complaints management by the second-line. We chose for two scenarios because of the gap existing between the situation on the field and a scenario in which the High Council takes up a full ombudsfuction. When a new system has to be implemented, several conditions need to be fulfilled. At this moment, a number of these conditions still need some work, which leads us to suggest initially, a pragmatic scenario. On the other side of the spectrum is the ideal scenario, in which the High Council takes up a full ombudsfuction. Both scenarios have their own pros and cons.

The *pragmatic* scenario implies that the High Council only forms a second opinion about the way the complaint has been handled on the first-line. This means that the High Council will not form an opinion about the contents of the initial complaint. If the High Council judges the complaint to be legitimate, he will send the complaint back to the first-line, where the front-office is responsible for the further handling of the complaint. In this model, the first-line gets a second chance to set right possible mistakes and act forthcoming towards the complainant. It is mainly on the level of the judiciary that the complainant can have a more usable result of a complaint.

The *ideal* scenario implies that the High Council can treat complaints on the second-line as well regarding formalities as regarding the contents of the original complaint. The High Council also decides on the consequences of this complaint (legitimacy). The decision of the High Council is mainly to make a signal, as there are no direct consequences for the complainant (no individual satisfaction). Control of the High Council on the first-line is also more extended as the High Council can now overrule decisions made by that first-line. Where the first model aims to improve cooperation and consultation, this ideal model could even enlarge the gap between the judiciary and the High Council.

Between these two scenarios, a number of solutions are possible, like a compromise model, in which the High Council can judge on complaints regarding formalities and regarding contents, but does not take any decisions on the complaint and instead sends it back to the first-line with the express request to review this complaint. In this compromise model, consultation between judiciary and High Council is stimulated, the complainant may have a larger chance of individual satisfaction and the original competences of the High Council are maintained.

The research-group suggests in the report to start with the pragmatic scenario (the most feasible model within the current context) and work from there towards the compromise model of the ideal model. The High Council has expressed his strong preference for the ideal model.

4. Registration system

Based on the model for complaints management (procedures and regulations), the research-team elaborated a system for the registration of complaints. A system was developed in cooperation with an IT-company, for both first- as second-line. This system is accessible through the internet and makes up a national database.

This database should allow for an administrative follow-up of the complaints (by the judiciary and the High Council), serves secondly as an instrument of control for the High Council regarding the handling of complaints by the first-line and thirdly enables a uniform reporting on the complaints about the functioning of the judiciary. The registration system allows for a check on the number of complaints that are handled, the subjects of these complaints and the time in which they are treated. Besides the registration system, also a model for reporting was elaborated. This model should result in a uniform and systematic reporting from the first-line to the High Council.

5. Recommendations

We here give a short overview of the recommendations that were made in the report. Firstly, we underlined the importance of the zero-line. Secondly, it was noted that the system now only applies to the functioning of the judiciary, but that it should be considered to expand this system to other professional groups that come into contact with Justice (f.e. lawyers, public notaries, process-servers...). A third and important recommendation was the organization of a thorough test phase. Based on the (limited) test sites, already a number of remarks regarding the database could be noted. We were not able to incorporate these remarks into the database. Therefore, one of the most important recommendations of the report is to put the database, once adjusted, to another thorough test, before the system will be generalized to the whole

country. This test and further implementation can however only be successful when this process is fully transparent towards all parties, so real consultation and cooperation can take place.

Of course, this system cannot be implemented without the necessary investments. In order to guarantee a thorough complaints management, magistrates have to put in a lot of time. Therefore we advise to measure the workload of complaint management during the test phase, so a real estimation can be made of the needed resources.

Finally, a complaints system can only work when the public is informed. A publicity campaign in which these new procedures are clearly put forward, seems of great importance.