

Internal and External Dialogue: a Swedish Approach to Quality Work in Courts

MARIE B. HAGSGÅRD*

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Abstract

When evaluation shows that a court is not delivering justice in the best possible way, change in the way a court operates can be hard to accomplish. One way is to engage all judges and staff in an internal and external dialogue about the way the court is functioning and how to improve it. When judges and staff are actively involved in evaluating the present situation, in analyzing, suggesting and implementing new measures and in evaluating the effects of those measures, improvements can be reached in the way the court operates in a range of areas. The deployment of such approach in a growing number of Swedish courts is an indicator of the success of the method.

At present the majority of Swedish courts are involved in a broad external dialogue, where judges and staff attend meetings with prosecutors and lawyers and interview court users. The aim of the dialogue is to evaluate and improve information and treatment of parties and witnesses and the writing of intelligible judgments.

Key words

Organizational development; quality work; Internal and External dialogue; professional organization; improvement of a court; treatment of parties and witnesses

Resumen

Cuando una evaluación muestra que un tribunal no está administrando justicia de la mejor manera posible, puede ser difícil lograr cambiar la forma en que ese tribunal funciona. Una opción es involucrar a todos los jueces y personal en un diálogo interno y externo sobre el funcionamiento del tribunal y cómo se podría mejorar. Cuando los jueces y el personal participan activamente en la evaluación de

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* Marie B. Hagsgård served as a trial judge and as appeal judge in Swedish courts. Since 2003 she has been quality developer at the Appeal Court for Western Sweden. She also worked at the Swedish Court Administration, engaged in quality and business development on topics like specialization of judges and quality work. Since 2013 she is on leave of absence from the Court of Appeal to work full time as a consultant in the quality work of Swedish Courts and other professional organisations. <http://www.kvalitetsutvecklingen.se> marie.hagsgard@kvalitetsutvecklingen.se



la situación actual, analizando, sugiriendo y desarrollando nuevas medidas y evaluando los efectos de esas medidas, se pueden conseguir mejoras en la forma en la que el tribunal opera en diferentes áreas. El uso de este enfoque en un número creciente de tribunales suecos es un indicador del éxito del método.

En la actualidad la mayoría de los tribunales suecos están involucrados en un amplio diálogo externo, en el que jueces y personal participan en reuniones con fiscales y abogados y se entrevistan con usuarios de los tribunales. El objetivo del diálogo es evaluar y mejorar la información y el tratamiento de las partes y de los testigos y la redacción de sentencias inteligibles.

Palabras clave

Organizational development; quality work; Internal and External dialogue; professional organization; improvement of a court; treatment of parties and witnesses; Desarrollo organizativo; trabajo de calidad; diálogo interno y externo; organización profesiona; mejora en un tribunal; tratamiento de partes y testigos

Table of contents

1. Introduction.....	996
2. Background	997
3. Presentation of the method internal and external dialogue to judges and staff	998
4. Internal dialogue- Interviews with judges and court staff.....	999
5. Internal dialogue - group discussions and joint suggestions for improvement	1000
6. Decisions of measures of improvement and implementation.....	1002
7. External dialogue- meeting with professional interested parties	1002
8. External dialogue- qualitative interviews with parties and witnesses.....	1003
9. Internal dialogue again.....	1004
10. Evaluating the effect of implemented measures.....	1004
11. An ongoing external and internal dialogue	1005
12. Examples of results of the method.....	1005
13. How internal and external dialogue has been used	1006
14. Possibilities and limitations of the method	1008
References	1010
Appendix 1. Suggested questions for interviews of judges and other court staff	1012
Demands and expectations	1012
Organization	1012
Cooperation.....	1012
Routines	1012
Information and influence.....	1012
Competence	1013
Leadership	1013
Administration and service.....	1013
Most important measures to improve the court	1013
Something to add?	1013
Appendix 2. Twelve steps to improve a court by Internal and external dialogue	1014
Internal dialogue involving judges and other staff	1014
External dialogue with interested parties.....	1014
Internal dialogue again.....	1014

1. Introduction

How do you evaluate a court or the work of judges? There are many different ways but few (if any) capture the whole complexity of what a court and judges are supposed to deliver: justice in an efficient way according to the rule of law and legal security as the goal is set for the Judicial system by the Swedish Government (2013, p. 13).

Furthermore, even when it is possible to evaluate and get a reliable picture of the present state of a court, it tends to be difficult to improve the functioning of the court, as that entails convincing judges and court staff to change the way they work and to implement new measures. As eager as judges often are to improve their individual skills, they are usually less interested in improving the court as a whole. They tend to see that as the responsibility of the administration and the court leader. And the view of the judges is often shared by the rest of the staff.

This leaves the administration and the court leader to evaluate the functioning of the court and to try to implement change when needed. Experience from Swedish courts working systematically with court development shows that if judges and court staff are not committed to implementing new measures, the result of the work of the administration and court leader will be limited (Domstolsverket 2011, p. 17 ff).

The same can be seen in other professional organizations. In hospitals and universities, professionals like doctors, nurses or professors are interested in improving personal skills but often reluctant to take part in developing the organizations as a whole. It has also been proved difficult to successfully implement change in these organizations as a whole as professionals tend to want to decide what measures to apply in different situations based on their professional knowledge. Professional organizations are therefore considered difficult to change (Adler *et al.* 2007, p. 271; Bruzelius and Skärvad 2004).

But there are examples of professional organizations that have managed to develop as a whole. A key to successful development seems to be that professionals take an active part in developing the organizations. If professionals are active in the quality work of their organization the result can be both an improved organization and improved individual knowledge for the professionals (Sveiby and Riesling 1986).

In Sweden, this has been experienced also by courts. When judges and court staff take an active part in developing courts as a whole, the courts will improve in a number of ways at the same time as the professional knowledge of judges and staff will increase. Examples from courts of other countries suggest the same. Methods where judges and staff take an active part in evaluating the present situation of the court, identifying the areas in which the court needs to develop and suggesting and implementing new measures, led to practical improvements in the functioning of the court. One such example is the Quality project of the Courts in the Jurisdiction of the Court of Appeal of Rovaniemi in Finland (Savela 2006).

But how can all judges and staff be engaged in improving the court? In Sweden the method of Internal and external dialogue has proved to be one valuable way (Contini and Carnevali 2010).

The method involves an active role for judges and other staff in every stage of the quality (work developing the functioning of the court) work approach in the local court, in:

- Evaluating the present situation; the strengths and weaknesses of the functioning of the court;
- Analyzing the problems which need to be solved;
- Suggesting solutions to the problems;
- Implementing measures of improvement;

- Following up the effects of measures implemented.

This is done by an internal and an external dialogue involving the court leader, judges, court staff and external interested parties such as court users (parties and witnesses), lawyers and prosecutors.

The effects of the method have been improvements in local courts in a wide variety of areas, such as agreed and uniform routines to make the preparation of cases more efficient and predictable for court users, knowledge management¹ in order to share and improve judicial quality, better treatment of and information available to court users, as well as judgments written in a more understandable language and better reasoned.

The method started to evolve in the Court of Appeal for Western Sweden in 2003 and, since then, has been applied in ten other courts to its full extent. An associate judge at the Court of Appeal has supported the implementation and development of the method in the Court of Appeal and the other courts. A few courts have applied the method on their own without external support (for example Nedre Romerike tingrett in Norway).

Internal and external dialogue is thus not a method in a narrow scientific sense. It can rather be described as a practical way of making the quality work of courts systematic, building on the experiences and ideas of judges and staff and external interested parties regarding how to improve the court as a whole.

In the following sections a description of the method will be given according to how it is presented when a court is interested in applying the method. The method is never used exactly as it will be described. It will always be adjusted to the needs of the local court by the court leader, judges and staff using it.

The introduction and use of the method and its twelve steps of deployment (see Appendix 2) takes approximately one and a half to two years to go through. Although the method takes time from "ordinary" court work, no court working with the method has had an increase in pending cases. On the contrary most courts have reduced their caseload while introducing the method.

The method is fairly easy to introduce and apply. In order to run smoothly it is an advantage if the introduction and start of the method can be supported by somebody who has previous experience using the method, such as a consultant with deep knowledge of how a court functions or a judge from a court using the method. Then the court can run the quality work by itself with only a minimum of external support if unforeseen obstacles turn up.

Before the method is explained a short background to the court system in Sweden and the quality work pursued in Swedish courts will be given.

2. Background

Sweden has two parallel types of courts, each with three levels - the general courts (district courts, courts of appeal and the Supreme Court) and the general administrative courts (county administrative courts, administrative courts of appeal and the Supreme Administrative Court).

The focus of the court system lies in the first instance. The main task of the second instance is to determine whether the appealed rulings are correct and to rectify any errors. The primary task of the Supreme Court and the Supreme Administrative Court is to provide guidance through precedent.

¹ Choosing and assembling in a database for the court, interesting judgments or investigations of legal questions examined in the court, as well as good examples of formulation of judgments or decisions and administrative routines etc.

The National Courts Administration (NCA) is the central administrative agency for Swedish courts.

The general courts deal with criminal cases, civil cases and a number of non-contentious matters. The general administrative courts process cases that concern disputes between individuals and administrative authorities, for example tax cases and social insurance cases.

There are in all 75 general and administrative courts in Sweden. They vary widely in size. The smallest is a general court in the far north of Sweden with 11 staff and the biggest is an administrative court in Stockholm with over 500 staff (including in these numbers both judges and other staff).

The efficiency of the Swedish courts is continuously measured. Statistics showing how single courts manage to meet the timeframes set up by the government for different types of cases are published quarterly on the website of the NCA (<http://www.domstol.se/Ladda-ner--bestall/Pa-engelska/Court-statistics1>). In the past ten years there has been a big focus on increasing the efficiency of the Swedish courts and, according to the former director of legal affairs, there was an increased efficiency of 30% during that period².

The NCA encourages courts to pursue systematic quality work. In 2005 the presidents of the courts of appeal with the support of the NCA produced a booklet (Domstolsväsendets kvalitetsgrupp 2005) encouraging courts to start systematic quality work according to a version of the PDCA-circle (that is to pursue continuous improvement in the way local courts are functioning in accordance with the four steps; Plan, Do, Check, Act/Adjust, developed by W. Edwards Deming (2014)).

The NCA left courts free to decide how to organize the quality work in order to administer justice in both an efficient way and a way that promotes the rule of law. Courts which work actively with quality work can get extra budgetary funding from the NCA to pursue that work (Contini 2010).

It is in this setting that the method of internal and external dialogue for quality work started in 2003 in the Court of Appeal of Western Sweden. Since then it has been used in full in about 10 courts and in parts in 40 more (mainly the external dialogue). The method has grown out of its use by judges and staff in different courts with the financial support from the NCA and advice by consultants.

3. Presentation of the method internal and external dialogue to judges and staff

Before a court leader decides if internal and external dialogue should be used as a method for quality work in the court, the method is usually presented to judges and court staff. The aim of the presentation is to let judges and staff have a say about why and how quality work should be pursued in the court. Although the final decision is in the hands of the court leader, it is important to listen to judges and staff and reach as much agreement as possible about using the method and how to use it. Their agreement to try the method achieves a higher motivation for judges and staff to engage in the quality work of the court at the same time as it gives an important opportunity for judges and staff to influence the method and adjust it to the local needs of the court.

An important reason for judges and court staff to get engaged in an internal and external dialogue is that it is a method where they can influence both the areas that will be included in the quality work and the measures that will be implemented to improve the functioning of the court. Usually both judges and staff are interested in developing other aspects of delivering justice than just efficiency. When their knowledge and experience of how to deliver justice is used as the foundation for

² Marie B. Hagsgård and Per Hall, personal communication, December 2013.

quality work, a wide range of aspects of quality will be considered and measures for improvement will be adapted to the needs of their court.

An obstacle to using the method often brought up by judges and staff is that it takes time away from "ordinary work". Most judges and staff feel stressed by the fact that they have to handle and decide cases in a certain timeframe established by the government and adding quality work to the workload is naturally questioned. If the need for change and improvement of the functioning of the court is big enough usually both judges and staff will be ready to put in the extra work needed in order to develop their own court.

4. Internal dialogue- Interviews with judges and court staff

The internal dialogue starts with a dialogue between the court leader and judges and court staff in order to give a comprehensive and honest picture of the present situation of the court. To evaluate the present situation of a court and identify the areas that are most urgent to improve, judges and court staff are involved in individual and anonymous interviews about what is working well and what needs to be improved in the local court.

Interviewing judges and staff takes advantage of their knowledge of the present situation at the same time as reflecting and giving their candid opinion on how different aspects of the court are really working in practice. Topics discussed can vary from uniform routines for handling cases to how to organize recurrent legal discussions between judges about problems arising in the everyday work of the court. Also quality as court users see it can be discussed.

When judges and staff are interviewed they are actively engaged in the quality work of the court. Judges and staff are the best-informed persons about the present situation and they are also the ones who will (or will not!) implement measures to improve the functioning of the court. It is therefore important to involve them in the quality work, right from the start. As the interviews move on, ideas of how to improve the court from previous interviews can be tried out with judges and staff in later interviews. In this way the interviewer gets an idea of what measures of improvement are the most likely to be embraced by judges and staff.

Some court leaders choose for the interviews to focus on a wide range of subjects such as routines for preparing cases, knowledge management, treatment of parties or the writing of judgments while others choose for the interviews to focus on a certain subject that they want to develop at that time. Questions asked in the interviews are often based on a questionnaire like the one available in Appendix 1. But all courts end up with different questionnaires in order to suit their specific needs at the time for the interviews.

Even if the interviews have different focus in different courts, all interviews so far have started the same way with these three questions to the judge or the staff interviewed:

1. What demands and expectations do the citizens have on the court and you as a judge or member of staff according to your opinion?
2. In what way do you think the court/you in your position fulfill those expectations in a good way?
3. In what way do you think the court/you in your position need to improve to meet the expectations of citizens?

In this way the interview immediately focuses on the task and role of the court in society and usually starts a fruitful discussion about how to fulfill this task in the local court as a judge or as staff member.

The interviews of all judges and staff are conducted by colleagues from the court (usually between 5-10 people, both judges and staff). In this way the interviewers

are knowledgeable about the functioning of the local court which makes it easier both for them and those being interviewed to go into depth about the subjects that are the most urgent to discuss. Reasons for present problems, as well as ideas of how to solve them, can be discussed.

Before the interviews start the group of interviewers receive a short training in interviewing techniques (for qualitative interviews) as well as feed-back on suggested questions in order to formulate open ended questions to promote reflection of what needs to be improved and why, and of how to improve the court in different areas (half a day of training).

Each interviewer interviews both judges and other staff. Usually each interviewer interviews between 7-12 people. By doing so the interviewers get an overall view of how cases are being handled from the moment they arrive in court to the moment the judgment is passed and becomes enforceable and what problems arise along the way. The members of the interviewing group in this way become valuable as advisers to the court leader in the following quality work of the court. Usually they also become very engaged in the quality work of the court as they have heard and discussed many ideas with different people and from different perspectives.

Experience from courts using the method shows that both judges and court staff, although a bit hesitant in the beginning, found the interviews rewarding as they had time to reflect and to give their views on what is working well and what needs to be improved in the court where they are working.

The result of the interviews is organized in a report drafted by the interviewers. The aim of the report is to give an "as true a picture as possible" of the present state of the court with its strengths and weaknesses and of what judges and other staff think needs to be done to improve the functioning of the court.

The interviewers present the report to the court leader and all staff without revealing who has had a certain opinion or idea (anonymity has been shown to be important in order to make people as candid as possible in the interviews about existing problems). The report is presented both in writing and orally.

When the report is presented orally to all staff, it is for many, the first time they have a full picture of how they and their colleagues see the functioning of the court. Although comments can be made and viewpoints added, this is very rare. The presentation to the court leader is different. It is more dialogical, and the court leader can interrupt the interviewers with follow up questions to get a deeper insight into how judges and staff have commented on different issues. Also, the court leader usually takes advantage of the knowledge of the group of interviewers by discussing with them what areas should be addressed first in the following quality work of the court.

On the basis of the report the court leader decides what areas the quality work of the court should focus on (if this has not been done before the interviews) and formulates specific problems which need to be solved in the following quality work of the court.

5. Internal dialogue - group discussions and joint suggestions for improvement

The next step of the internal dialogue is that the court leader refers the specific problems that have been identified to groups mixed of judges and staff. The groups are given the task of making a deeper analysis of the cause of the problems and to suggest solutions to them/measures to be taken.

All judges and other staff are asked to take part in the work of at least one group. By discussing the problems in mixed groups the problem is dealt with from different angles. Different aspects of the problems are monitored by judges and staff with different roles handling the caseload of the court (for example registrars, clerks

preparing cases for court hearings and judges sitting in court hearings as well as security staff). After analyzing the problems and possible solutions, the groups come up with joint suggestions for measures to solve the problems pointed out by the court leader.

In order to have fruitful group discussions where the members of the group listen and learn from each other and discuss different aspects of a problem and different solutions, groups need to be put together carefully. Talkative individuals need to be mixed with more quiet ones, critical with more positive ones etc.

Group leaders should also be picked out carefully and offered short training in how to lead the group in order to have fruitful discussions where judges as well as staff give their views of problems identified and possible solutions. Group leaders also need training in how to lead groups to joint solutions (usually half a day). The one thing which needs to be stressed is how to lead the group so that every member is active in the discussions, both in voicing their own opinion and in listening to the opinion of others.

It is often an advantage to agree on "rules" about how to work in mixed groups to achieve a fruitful dialogue. Judges and staff usually do not have previous experience of such a dialogue and the hierarchy of a court strongly promotes judges to give opinions and staff to listen to them without giving their own opinion. To reach a situation where all members in mixed groups contribute actively with their experiences and actively listen and learn from others, an agreement to do so often helps.

Groups as a rule work hard and are dedicated to solving the problems referred to them by the court leader. Usually groups find a way to compromise between the views of different individuals and can present a joint solution to the problem at hand. Even if a member of a group is not convinced that the solution suggested by the majority of the group is the best, he or she can agree to try out the solution proposed by the majority and to evaluate the result of it.

After about four months of work in mixed groups a meeting is held where the groups present the solutions they have reached to the problems referred to them by the court leader. Usually the meeting is held during a day when the groups present the result of their work to the court leader and all staff with the possibility for others to ask questions and to give their views of the solutions presented. In that way all judges and staff have an opportunity to add their view before the court leader takes his/her decision based on the suggested solutions.

Solutions proposed by the mixed groups are normally well thought through as they are based on the knowledge of judges and staff in the local court. Often groups have discussed solutions to problems with judges and staff at other courts, which adds to the quality of the solutions. A common comment from judges, staff and the court leader is that they are both surprised and impressed by what they have accomplished together in the form of suggestions for the development of the court. Satisfaction with suggested measures also promotes a readiness to implement them and a willingness to carry on with the quality work in the court.

Another positive outcome of the work in mixed groups that judges and staff often comment on is that, in the process of discussing and finding solutions to common problems of the court, judges and staff become more aware of the knowledge and work of other occupational groups of the court. They also have become more aware of and interested in the functioning of the court as a whole.

This result of the work in mixed groups resembles the findings of work in "quality circles" in the industry where groups of staff with different tasks in the organization analyze problems and find solutions. There too, increased knowledge of the organization as a whole and increased sense of responsibility among group members has been one of the results (Bruzelius and Skärvad 2004, p. 262).

6. Decisions of measures of improvement and implementation

When all groups have put forward their proposed solutions it is time for the court leader to decide what measures should be tried out in order to improve the functioning of the court.

Usually it is not hard for the court leader to take decisions based on the suggestions of the groups as they are based on the knowledge of his/her colleagues and other staff. Another advantage of these solutions is that compromises already have been made between different groups and members of groups before they have been presented to the court leader. This makes it easier for the court leader to take decisions based on solutions proposed.

Often the court leader will find that the proposed measures only need small adjustments before taking a decision based on them. In choosing the solutions proposed by the groups the court leader also gets the advantage of a group ready and interested to try it out and follow up the results.

This is important because decisions of new measures need to be followed up. A good way to do that is, for the court leader, to give that task to the group which proposed the new measure. They are the best informed about the reason and contents of the measure applied (for example a new routine for preparing cases) and can easily have a renewed discussion of adjustments of the measure that is almost always needed.

When and how evaluation of the effects of decided new measures should be done is preferably decided at the same as the decision of the measure. Otherwise the evaluation tends to be put off for too long. Evaluation is often much appreciated by court staff as they want to see if the measure they have proposed is really giving the desired effect.

7. External dialogue- meeting with professional interested parties

When the first round of internal dialogue is done, it is time to extend the dialogue to external interested parties. Using the same method of internal dialogue described above, judges and court staff meet and listen to the professional interested parties instead of handing out questionnaires to them. By listening carefully to the critique put forward in the meetings and by having the chance to ask follow up questions, the staff of the court will get a fuller and deeper picture of how external interested parties see the current functioning of the court.

The meeting with professional interested parties is organized so that representatives for these groups are invited to the court to give their opinion on an issue identified as an area for development of the court³. The main questions put to them are the same as those discussed internally: what is working well in the functioning of the court, what needs to be improved and do you have suggestions for how do it? Some courts choose to involve judges and staff to suggest more detailed questions to be asked in order to get more specific external views on some issue. Examples of this can be views of how the court handles civil cases, how parties are treated by judges during court hearings, how well judgments are understood by the parties etc.

The discussion at the meeting is focused on the functioning of the court as a whole and, not on the behavior of single judges or members of staff. Critique of a more personal character should be directed to the person concerned directly or to the court leader (There is of course also always the possibility of handing in a formal complaint to JO, i.e. the Parliamentary ombudsmen).

³ Another way of doing it is to ask an open ended question to lawyers and prosecutors of what is working well and what needs to be improved in the functioning of the court. That way they will identify what area they find the most urgent to improve.

Often courts start inviting lawyers and prosecutors to meetings and then move on to inviting personnel supporting victims of crime, probation officers and other groups to give their views on the functioning of the court.

To get as free and as full a picture as possible from the visiting professionals, the meeting starts by discussions in small groups to form a mutual opinion before the group presents its view of the court to judges and other court staff present. That way no single lawyer or prosecutor has to voice an (critical) opinion of their own in front of the court staff. It also helps the court staff to get an overall view of what opinions lawyers and prosecutors have in common and where they differ.

A small group of judges and other staff are present at the meeting to listen to the views of the external professional interested parties and forward them to their colleagues. They are instructed before the meeting to listen and to answer questions but not to defend the court when critique is put forward. The meeting is led by a judge from another court in order to encourage those invited to give their opinions and critique freely.

As lawyers and prosecutors are well aware of the functioning of courts, meeting with them and listening to them gives valuable information about how the court is perceived to function by them and the parties, as well as many good ideas for improvement.

After the meeting the views of the professional external parties are conveyed to all judges and staff by the group which has been present at the meeting. In this way colleagues get a chance to ask follow up questions about the opinions voiced at the meeting.

Sometimes judges and staff which have been present at the meeting with external interested parties will give suggestions of measures to improve the court based on the external input. Sometimes they will only convey what they have heard for further discussion with their colleagues.

8. External dialogue- qualitative interviews with parties and witnesses

In addition to meetings with professional external parties, individual interviews are held directly with the court users (parties and witnesses). Instead of using professional interviewers, judges and court staff are asked if they want to interview parties and witnesses themselves after court hearings. The reason for this is that they are familiar with the way the court is functioning and consequently can ask follow up questions and suggest changes in practice in a more knowledgeable way than hired interviewers could do. They are also seen as more credible when they convey the result of the interviews to other judges and staff.

The advantages of interviewing parties instead of asking them to fill out questionnaires are the same as those for interviewing members off staff and meeting with professional interested parties. In interviews it is possible to ask follow up questions and in that way get a fuller and deeper picture of how the court users see the functioning of the court. Judges and other staff interviewing can also test ideas for improvements during the interviews. For example a follow up question testing an idea can be put like this: "You say you did not have enough information about court hearings and that you felt intimidated by this. If we had given you some brief information in writing about this, for instance in the waiting room of the court, would that have helped you to feel more at ease and better prepared?"

Another advantage of judges and staff interviewing court users is that they get to meet and listen to them and their views directly in a different situation. In particular judges have found interviewing parties about court hearings very interesting and have often commented on how little changes in leading a court hearing can make a big difference for the court users' sense of being heard by the

judge. As a result many judges, after interviewing parties and witnesses, have started to introduce themselves and other professional actors in the courtroom at the beginning of the court hearing in order to get a good start to the court hearing. Many judges also give a short explanation of how the court hearing will be held before beginning it. And judges start trying to show a more active interest in what is being said during the court hearing for example by more eye contact with parties and by asking follow up questions.

A condition for judges interviewing parties and witnesses outside the courtroom of a colleague is of course that the colleague has agreed to this. Such an agreement has been reached on the condition that the interview is anonymous and the purpose is to gain knowledge of *what kind of information and treatment in general* is appreciated by parties and witnesses.

Before interviews start with court users the staff has been briefly trained in technique for qualitative interviews (one day of training).

Usually about 20-30 interviews are enough to cover the different views of the parties and witnesses and the result can be reported back to the court leader and the rest of the staff.

The meeting where quotes from interviews with parties are read aloud to all judges and staff usually arouses great interest. To listen to colleagues who have interviewed parties and who give their ideas of how to improve treatment and information to parties and witnesses is found to be very interesting.

9. Internal dialogue again

When the views of external parties; lawyers, prosecutors, parties and witnesses have been reported back to the court leader and the staff, the internal dialogue is used again to single out what problems should be given priority and how they can be solved.

Due to the role of the court and resources available it is not always possible or appropriate to take measures based on the views of the external interested parties. Judges and staff are asked - with their knowledge of the task of the court - to give their opinion of what measures should be taken as a result of the views presented by the interested parties.

By discussing the opinions of the interested parties in the mixed groups where judges and other staff sit together (see above) the court leader will get well founded and knowledgeable suggestions for suitable measures of improvement.

Once decisions are made as a consequence of the views put forward by external interested parties, it is important to report the decisions back to them. Reasons for not taking action should also be reported to them if that is the case. In that way the interested parties see the outcome of their effort to give their views about the functioning of the court and they can be more active in following up and evaluating the effect of measures taken.

10. Evaluating the effect of implemented measures

Evaluating the effect of implemented measures entails the same methods of an internal and external dialogue which have been used for evaluating the functioning of the court at the start of the quality work. However evaluation usually starts with the external dialogues with prosecutors and lawyers and interviews with court users.

Following the external evaluation, an internal dialogue and evaluation in mixed groups of judges and staff is held. The questions discussed in the groups are: have implemented measures given the desired effects, that is have they solved the

problems earlier identified? If not what new measures should be suggested to solve the problems that still are there.

The discussion in the mixed groups can also lead to suggestions for new areas that need to be addressed in the future quality work of the court.

11. An ongoing external and internal dialogue

After the first round of internal and external dialogue followed by trying out of measures to improve the functioning of the court and following-up the effects of measures applied, the court will carry on the quality work with an ongoing external and internal dialogue.

Every year the court holds meetings where interested external parties give their views of what is working well and what needs to be improved in the functioning of the court. Measures which have been introduced and applied during the past year can be evaluated at such meetings, and new areas for improvement of the court can be suggested.

Every other year (or every third year) parties and witnesses are interviewed to voice their opinion of how justice is delivered by the court.

New members of staff, both judges and other staff, should be given the opportunity to be present at meetings with external interested parties as well as be given the chance to interview parties and witnesses. In this way judges and staff in the court get a shared experience of listening directly to the views of external voices about the functioning of the court.

Interest in attending meetings and conducting interviews with external interested parties tend to grow among judges and staff the longer the quality work goes on. At the same time prosecutors and lawyers become more candid in giving their opinions of the court in meetings with this purpose.

Yearly the opinions of external interested parties is reported back to all judges and staff and discussed in the mixed groups.

Every year, after listening to how the court is perceived to function in the external dialogue, an internal dialogue is held in order to evaluate the present state of the court. All judges and staff take part in discussions in mixed groups to evaluate the effect of measures applied during the year. Discussions result in suggestions for adjustments of measures taken or new measures to be adopted.

Need for development in new areas of the functioning of the court should also be discussed. If a deeper analysis of the present situation of the court is needed individual interviews should be held with the staff again.

12. Examples of results of the method

In the courts applying the method of internal and external dialogue, improvements have been seen in a number of different areas such as:

- Judges have worked out and agreed on a more efficient and active way to handle civil cases;
- Staff have worked out and agreed on uniform routines for preparing cases;
- Judges and staff have worked out user friendly checklists for appeal which have put on the external website of Court of Appeal;
- Knowledge Management⁴ has been introduced;
- Better introduction of new staff worked out by staff;

⁴ Knowledge management is a system where a court collects both routine and interesting judgments or legal research made in a specific case in a mutual database that can be used by all judges and staff in their work in the court.

- Regular discussions between judges have been introduced regarding upcoming legal issues in handling cases and how to lead court hearings,
- Judges have agreed on ways to improve information/treatment of parties before and during court hearings, for instance by giving both oral and written information about the way a court hearing is held,
- Judges and staff have formed groups to receive visiting groups and explain the task of the court and the importance of contributing as witness in court proceedings
- Policies for the work of interpreters have been created after inviting and listening to the problems the interpreters have encountered working during court hearings,
- Shorter turnaround times for cases,
- Increase in staff satisfaction by as much as 50 %, especially in the field of being able to influence their own work.

The result of the method of internal and external dialogue has thus been seen both in statistics for turnaround times and in staff satisfaction which are the two indicators that are measured in all Swedish courts.

Another way of measuring results of the method has been to invite lawyers and prosecutors to give their opinions about how the courts have changed their functioning. The feed-back received at these yearly meetings has been very positive (Hagsgård 2008).

Also court users have shown a greater satisfaction during the second round of qualitative interviews when new measures of information and a more active leading of court hearings have been introduced (Hovrätten för Västra Sverige 2008)⁵

One study made by students at the University of Gothenburg has also shown positive results of the quality work at the Court of Appeal of Western Sweden (Hagsgård 2008). A more thorough scientific evaluation of the result of the method internal and external dialogue still remains to be done.

13. How internal and external dialogue has been used

The internal and external dialogue method has been used to its full extent as described in this paper, in three Courts of Appeal and in seven courts of first instance. Every court has adapted the method to its special needs so the method differs in details from court to court.

The ten courts which have used the method range in size from six judges and a total of 30 staff to 70 judges and a total of 230 staff. The method has been tried in part (the external dialogue) in another forty courts.

Since December 2010 most Swedish courts have had a strong focus on external dialogues in order to investigate how interested external parties perceive information and treatment by judges and court staff. This has included questions of how understandable judgments are to court users (how clear the language and motivation of judgments are).

The reason for this work is that all court leaders in December 2010 agreed to implement two strategies and two plans of action in order to work systematically improving information and treatment of court users and the writing of more intelligible judgments (Sveriges Domstolars 2010a, 2010b).

In order to support this work, the NCA at the same time presented methods that could be used in two handbooks for the courts (Sveriges Domstolars 2010c). The methods are built on the experiences of courts which had already had an external dialogue with interested external parties.

⁵ Report from interviews with court users 2008 in the Court of Appeal of Western Sweden.

Since December 2010 two thirds of the Swedish courts have invited lawyers and prosecutors to meetings listening to their views and have also conducted qualitative interviews with litigants and witnesses. So far about 2000 qualitative interviews have been undertaken with court users (by judges and staff) after court hearings or by telephone after the judgment has been sent to the parties.

BRÅ (Brottsförebyggande Rådet/The Swedish National Council for Crime Prevention, an agency for research and development within the judicial system) has recently evaluated the work of the courts in the field of information and treatment of court users and in doing so they have reviewed 800 of the interviews which have been made by judges and staff. In addition researchers from BRÅ have conducted 45 in depth interviews with court users themselves (Westlund and Eriksson 2013a).

The result of the interviews of the researchers resembles that of interviews done by judges and court staff. Interviews show that court users would like more information about court procedure in general and court hearings in particular and that they need this information in different ways and several times in order to understand court procedure. It is very important for court users to be able to voice their opinion during the court hearing and to be able to understand the language that is being used (which is not always easy). Court users wish to be met in person when they arrive in court and they wish court hearings to start by the judge introducing all key persons who are present in the courtroom and explaining their roles.

BRÅ also comments on the future work of Swedish courts in the field of information and treatment of court users. The researchers stress that it is important to evaluate the opinion of court users both by quantitative investigations and by more in-depth qualitative interviews. Qualitative interviews provide a more nuanced view of the court users and ideas for improvement to suit different court users. "Given that "one size fits all" solutions are not appropriate" as BRÅ expresses it (Westlund and Eriksson, 2013b, p. 14-15, English summary). BRÅ also points out the importance of including the voices of lawyers and prosecutors in future work as they have a broad knowledge of the treatment of court users through their work in court.

In referring to the strategy and action plans of the Swedish courts, BRÅ stresses the importance of continuous work in order to improve the treatment of court users. They mention "Råd och Tips", the handbook produced by the NCA to assist the courts in implementing the activities described in the action plan in a systematic manner.

So far there has been no comprehensive investigation of concrete measures taken in courts in order to improve treatment of court users and information of them. Some examples of measures taken from different courts are:

- information about the court hearing and court proceedings available on the court's website as well as in the waiting room of the court;
- staff in the court's waiting room explain the main stages of the court hearing to parties and witnesses waiting for their turn;
- judges start the court hearing by presenting themselves and explaining who is who in the court room and how the court proceeding will be held;
- judges and lay people actively show interest in what has been said during court proceedings by eye contact and asking follow up questions;
- judges lead the court hearing in a more active way and in a language understandable for non-lawyers (Hovrätten för Västra Sverige 2008, p. 4)⁶;
- judges strive to explain the judgment orally to parties.

⁶ Report based on 75 interviews with court users 2008, following up the work with treatment of court users in the Court of Appeal of Western Sweden.

Also changes have been made in practical ways giving court users information about how to find and get to the court, where to park and where to wait for the court hearing in order not to risk facing your opponent.

Lawyers and prosecutors who have repeatedly been invited to meetings to voice their opinion on measures taken, report that relatively small changes in information and treatment of court users are very much appreciated by parties and witnesses.

14. Possibilities and limitations of the method

At best the method of internal and external dialogue leads to improvements in a number of areas of a local court and to a growing interest among judges and staff to constantly find ways to improve the way their local court is working. The Court of Appeal of Western Sweden and the District Court of Vänersborg are good examples of that.

Efficiency will usually increase in courts using the method. In most courts, statistics show that cases pending have been reduced already during the first year of work with Internal and External dialogue as well as staff satisfaction (Hagsgård 2008, p. 16-18).

But the main reason for using the method is not to increase the efficiency of courts but to improve a court in *all aspects that are* important to the delivery of justice. When the quality work of the local court builds on the knowledge and experience of judges and staff they will not only strive to improve efficiency but also strive to improve in other areas that are important for the delivery of justice.

As one judge said when the court he was working in had increased its efficiency by introducing better and uniform routines for handling cases: *"Now I can put more time into the legally complicated cases and have more time to write my judgments. This has of course made my job more interesting"* (Domstolsverket 2011, p. 19). The method thus can help judges improve professional/legal quality at the same time as it engages them in work to make the court more efficient.

When the external dialogue is added to the internal, judges and court staff have the opportunity to listen directly to lawyers and prosecutors and to the view of court users. Then improvements will also be made in areas important to court users, such as information and treatment of them and judgments that are clearly written in language understandable to them.

Another advantage of involving judges and staff in the quality work of the court is that they become engaged in improving the court as whole and no longer resist change. They become "drivers of change" instead of "obstacles" to it.

This is not unique for courts. The method of a broad dialogue within an organisation between staff and management in order to improve the quality of the work of the organisation has also been proved successful in other organizations. Professors Flemming Norrgren at the University of Chalmers in Sweden (Ingelgård and Norrgren 2001, p. 93-105) has shown that methods involving staff in a broad dialogue of what needs to be improved and how to do it– a bottom-up approach - leads to bigger improvements in the functioning of an organization than a traditional top-down approach. Professor Michael Beer, Harvard School of Economics has come to similar conclusions (Beer and Eisenstad 2004).

As the method of internal and external dialogue builds on the knowledge and experiences of judges and court staff and the views of court users, there is no reason why the method should not be possible to use in local courts outside Sweden. As long as the base for improvement lies with the local knowledge of what is working well and what needs to be improved, the method should work to improve courts anywhere.

But of course there are limitations of the method. Clearly one limitation can be the reluctance of judges to engage in developing their local courts. Judges will always hesitate to take time from their individual cases and put that time into interviews and meetings in order to find ways to improve the court as a whole. They often consider developing the court to be the task of the court leader or administrator. Court leaders and administrators on the other hand may also find having an internal and external dialogue too time consuming. They may want quicker ways to find measures of improvement for the court.

But in order to find the concrete obstacles to a well-functioning court and the best practical solutions to overcome those obstacles, all judges and staff in a court need to put their professional knowledge and experiences to use in the quality work of their own court. If they do not engage in pointing out the problems and possible solutions, others will do so. But when others have chosen new ways for the court to work judges are often reluctant to change the way they work. Improvements will therefore be hard for the court leader to achieve.

Involving judges and staff in the first step of the internal dialogue is usually not difficult. Most judges and staff will be willing to be interviewed about the present state of the court and to give their views of what needs to be improved. The next step can be more difficult. To achieve cooperation in groups mixed of judges and staff in order for them to come forward with new measures for concrete improvements can be challenging. There are several reasons for this.

First, as a court is usually a hierarchy where judges have more of a say than other staff, it can be difficult to have an open discussion about the causes of problems and solutions to them in groups mixed of judges and other staff. The report from the interviews can help though. In the interviews everyone has had a chance to give their view individually and anonymously. If discussions in the mixed group are hard to get started the interviewers can help by reminding group members of views and ideas put forward during the interviews.

The next obstacle can be for judges to agree on a solution to a problem that has been identified. A good group leader is essential to overcome this obstacle. If the group leader can lead the discussions in a way that encourages judges and staff to listen to and learn from each other a joint solution is more likely to be reached. Sometimes the fact that the solution will be tried out and evaluated will lead to the final compromise needed to agree on a solution. If an agreement cannot be reached more than one solution can of course be put forward for the court leader to decide on.

If these difficulties can be overcome the meeting where all the groups put forward their suggested measures to improve different areas of the court often will be somewhat of a breakthrough for the internal dialogue. When the court leader, all judges and the staff see what they have accomplished together they usually are both surprised and encouraged to continue and ready to try the suggested measures out and in due course, evaluate them.

Another obstacle that can arrive is when the court leader has all recommendations for measures from the groups. It can be an overwhelming experience to see all these recommendations and know that - as a court leader - he/she has the final say. If the court leader waits too long in deciding what measures should be tried out the energy and interest to implement new measures and follow up results will decrease. Knowing that judges and staff have compromised before presenting recommendations to the court leader and asking the groups to make priorities among their own recommendations can help. Also knowing that suggested measures are not definite but will be evaluated and can be improved will help the court leader to make decisions.

The external dialogue is usually not difficult to accomplish even if some judges are reluctant to interview litigants and witnesses outside the courtrooms of colleagues.

Judges who choose to conduct such interviews find it very interesting to listen directly to the reactions of court users and often find that little changes in the way they lead court hearings can result in big improvements in the views of parties and witnesses.

But the next step may pose a problem. Moving from listening to external interested parties to suggesting measures for improvement to be applied by all judges and staff is not easy. Judges who have conducted interviews will often change the way they lead court hearings, but others may be more reluctant to do so. The key to solving this is usually to have good discussions within the court about what measures should be tried out and evaluated. Often an agreement on a few measures with a majority of judges behind them is better than a great number of measures with only a few judges behind them. That way measures taken can be applied and evaluated on a larger scale.

Finally keeping the Internal and External dialogue going is a challenge. New judges and new staff will have to be introduced to and take part in the ongoing dialogue as will new court leaders.

There must be routines also for the quality work of the court. In the internal dialogue mixed groups need to meet regularly to identify obstacles in the way the court is working and to suggest measures to overcome those obstacles. External yearly meetings need to be held with lawyers and prosecutors in order to listen to their views. All judges and staff have to gather every year in meetings where everybody takes part in evaluating new measures taken that year and suggest further improvements for the year to come.

Interviews need to be held on a regular basis, both internally with judges and staff and externally with court users, in order to get a full view both of obstacles in delivering justice and of improvements needed in the local court.

If routines for meetings and interviews can be introduced, it is usually not hard to do the things needed to keep the dialogue going. The reward for doing so will be that the court is improving in a lot of different areas and parties, witnesses, lawyers and prosecutors perceive those improvements.

Another gain is the satisfaction of judges and staff working in a court which is constantly building on the experience and knowledge of judges and staff in improving the functioning of the court. As a law clerk from the district court of Vänersborg said *"To work in this court is not only to be a clerk, it is to be part of improving a court"*.

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Appendix 1. Suggested questions for interviews of judges and other court staff*Demands and expectations*

1. What demands and expectations do the citizens have on the court and you, according to your opinion?
2. In what way do you think the court/you in your position fulfill those expectations in a good way?
3. In what way do you think the court/you in your position need to improve to meet the expectations from the citizens?

Organization

4. How does the way the court is organized work?
5. What works well?
6. What needs to be improved?
7. Do you have ideas of how to improve it?

Cooperation

8. How do you think the cooperation within your unit works?
9. How does the cooperation between judges and other staff work?
10. How does the cooperation among judges/among other staff work?
11. What works well?
12. What needs to be improved?
13. Do you have suggestions for how to improve the cooperation within your unit?
14. How do you think the cooperation between your unit and other units works?
15. What works well?
16. What needs to be improved?
17. Do you have suggestions for how to improve the cooperation between units?

Routines

18. How well do the routines for handling cases work?
19. Are the routines clear?
20. What works well?
21. What needs to be improved?
22. Do you have ideas of how to improve it?

Information and influence

23. Do you get the information you need to do your job?
24. What works well?
25. What needs to be improved?
26. Do you have ideas of how to improve it?
27. Do you have a possibility to influence the way you do your job?
28. If not how would you like to be able to influence it?

Competence

29. Do you have the possibilities to improve your competence to be able to do a good job?
30. What works well in this area?
31. What needs to be improved?
32. Do you have ideas of how to improve it?

Leadership

33. What do you think of the way the president/head of your unit leads this court?
34. What works well?
35. What needs to be improved?
36. What do you think is important for those who lead the court to think about in leading the court?

Administration and service

37. What expectations do you have on the administration and its service?
38. What works well?
39. What needs to be improved?
40. Do you have ideas of how to improve it?

Most important measures to improve the court

41. What measures are the most important to improve this court according to your opinion?
42. What do you think should be given priority in the quality work of this court?

Something to add?

43. Do you have something to add to what you have said in this interview?

Appendix 2. Twelve steps to improve a court by Internal and external dialogue

Internal dialogue involving judges and other staff

1. Court leader chooses a group of 5-10 members of staff who have the confidence of others to carry out interviews with all judges and staff (short training in technique of interviewing).
2. Court leader decides - after dialogue with interviewers - what areas should be covered in the interviews (either a broad range of topics such as; routines for handling cases, treatment of and information to users, introduction of new staff etc. or one of these topics).
3. Individual and anonymous interviews with questions within the chosen areas; what is working well, what needs to be improved and how to improve it?
4. Result of interviews reported back to court leader and all staff. Court leader points out areas for improvement after dialogue with interviewers.
5. Discussion in mixed groups involving all staff with the task to give joint suggestions of concrete measures to take to improve the functioning of the court in the appointed areas.
6. Court leader takes decisions.
7. All staff involved in follow up in mixed groups; what are the results of measures taken? Adjustments needed? Check of statistics.

External dialogue with interested parties

8. Meeting with representatives of lawyers and prosecutors. Members of staff listen to the view of the lawyers and prosecutors. What is working well, what needs to be improved and how to improve according to their opinion?
9. Interviews by staff with the court users (defendants, plaintiffs and witnesses) after court hearings. What is working well, what needs to be improved and how to improve according to their opinion?

Internal dialogue again

10. Views of lawyers, prosecutors and court users communicated to all staff and discussed in mixed groups with task to suggest concrete measures to improve the functioning of the court in view of answers given.
11. Court leader takes decisions.
12. Follow up involving interested parties and staff (start with 8-9 above, end with 7).