

Practices of cooperation in the justice system

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Summary Abstract

In this paper, a framework providing a typology of interaction modes for public managers is used to investigate how a change in the law affects the interaction between Finnish investigation and prosecution authorities, with the assumption that the level and quality of interaction affects the flow through the whole judicial service supply chain. By analyzing interview data and legal documents, practices in the case studied were matched with elements in the framework, and potential success factors were identified. Future research opportunities are suggested; one being the need to further explore differences between districts and their effects on the case flow.

Keywords: Cooperation, collaboration, justice system

Introduction

Cooperation, coordination and collaboration are concepts considered to be fundamental aspects of supply chain management. Spekman et al. (1998) emphasize that closer ties, through cooperation, coordination and collaboration, is essential for the whole chain of actors involved in the supply of a goods or a service to perform well and gain a competitive advantage. The highest level of interaction, collaboration, is considered to enable “faster new product development, enhanced quality, lower product and supply chain costs, shorter fulfillment times, and improved customer service” (Fawcett et al., 2012, p. 44-45). Inter-organizational cooperation or collaboration is relevant also for public managers who face complex problems and resource shortages (McNamara, 2012).

Justice is a public service, and legal processes involve large volumes of cases of varying complexity, but suffers from prolonged lead-times in courts (Martins et al. 2007; Pekkanen et al. 2009). As for other services that require expert knowledge, Pekkanen and Niemi (2013) noted that there is a strong emphasis on the autonomy and self-management of court employees. The emphasis on objectivity, in combination with fixed roles and duties of different participants, creates silo thinking and restricts possibilities to cooperate in the production process (Pekkanen and Niemi, 2013), although the volume and variety of cases would demand the flow to be continuous, and coordinated (Pekkanen, Karppinen and Pirttilä, 2009).

The criminal justice process in Finland involves authorities such as police, prosecutors and courts, which have been mandated by society to investigate crimes, put suspects to trial and resolve disputes. From the viewpoint of the victim and offender, or the disputing parties, the justice systems’ organizations are responsible for providing a correct procedure and fair decisions in their case. The level and quality of the interaction taking place in the

investigator-prosecutor dyad may, as suggested by Pekkanen and Niemi (2013), influence the overall flow of the case and the handling activities in later stages of the legal process. What is more, Finnish media has reported that delays during the criminal investigation causes worries and stress to the complainant (Kuisma, 2016), so interaction might thus impact the overall service delivery system and the customers' (i.e. the injured party and the suspect) experience of the public services delivered.

The Finnish Criminal Investigation Act (hereafter "the Act") was amended in 2011, and the changes, coming into force on January 1, 2014, include the introduction of new rules that obliges the criminal investigation authorities and public prosecution to cooperate. The cooperation encompasses the notification of certain offences that has come under investigation, but the cooperation practices are not further specified in the law but left open for the investigation and prosecution authorities to decide on. The purpose of this paper is therefore to look into how the change in the law has affected interaction between the investigation authority and public prosecutor, what practices they have adopted for cooperating, and what the relevant factors are for a successful cooperation in this setting. The underlying assumption for the study is that interaction between the two actors in the legal process will have an influence on the performance of the "judicial service supply chain" (a term used by e.g. López and Zúñiga, 2014) by affecting the flow of the case throughout the system.

Theoretical framework

Different streams of literature have dealt with different types of interactions between organizations, but there is not a generally excepted framework for distinguishing among cooperation, coordination and collaboration; and what the relevant elements, characteristics, factors or practices are for each type of interaction. The terms "cooperation", "coordination" and "collaboration" are often used interchangeably (e.g. McNamara, 2012; Keast, Brown and Mandell, 2007). There are also different views on whether collaboration (or the other forms of interaction) is an organizational process or a structure (Morris and Miller-Stevens, 2016). Even a very narrow search in the literature shows that there are overlaps and ambiguity. Taking the concept "trust" as an illustrating example, Hudnurkar, Jakhar and Rathod (2014) identify it as a variable affecting collaboration; Spekman et al. (1998) describe it as a prerequisite for a successful partnership for which the intensity determines the type of interaction (open market negotiation, cooperation, coordination, or collaboration) while McNamara (2012) depicts it as an element that takes different forms in different types of interaction (cooperation, coordination, and collaboration) but does not necessarily exist in advance. What can be concluded is that there seems to be an understanding that interaction in the process of transforming resources or serving customers or citizens leads to improved performance or better outcomes, and that this interaction can have different intensity and take different modes, bearing different characteristics. However, integration is not static (Keast, Brown and Mandell, 2007) and while a multitude of factors will affect the ability to maintain the interaction at current level or moving it to the next (e.g. Hudnurkar, Jakhar and Rathod, 2014), the highest level of interaction is not necessarily suitable for every case.

In order to explore the assumed change in the interaction intensity or mode caused by the change in the law, the practices used and the success factors behind the interaction, a framework is needed to guide the analysis. The framework should acknowledge that there are different types of interaction, and should identify relevant elements of interaction and what forms these take. Such a framework would at best also take into consideration that

justice is a pure (i.e. not involving transformation of physical resources) and public service. For the purpose of this paper, the framework of elements distinguishing among cooperation, coordination, and collaboration suggested by McNamara (2012) will be used for guiding the analysis. This framework has been developed specifically for public managers and is thus closer to the studied setting than for example Spekman et al. (1998).

Table 1 – Elements Distinguishing among Cooperation, Coordination, and Collaboration (McNamara, 2012, p. 392)

<i>Element</i>	<i>Cooperation</i>	<i>Coordination</i>	<i>Collaboration</i>
Design	Work within existing organizational structures	Centralized control through hierarchical structures	Shared power arrangements
Formality of the Agreement	Informal agreement	Formalized agreements	Informal and formal agreements
Organizational Autonomy	Fully autonomous; policies to govern the collective arrangement are not developed	Semi-autonomous; policies to govern the collective arrangements may be developed by higher authorities	Not autonomous; policies to govern the collective arrangements are developed jointly by participants
Key Personnel	Implementation of partnership occurs at the lowest levels; leaders are not involved	Implementation of the partnership is based on higher authority; a boundary spanner may be used to foster linkages	Implementation of the partnership is based on the participants; a convener may help to bring participants together
Information Sharing	Basic information shared through informal channels	Information is exchanged through more formal channels	Open and frequent communications through formal and informal channels
Decision Making	Independent decision making	Centralized decision-making	Participants decision making
Resolution of Turf Issues	Conflicts avoided through independence	A neutral facilitator may help resolve conflicts	Participants work together to resolve conflicts
Resource Allocation	Information is exchanged	Physical and nonphysical resources are exchanged to achieve individual goals	Physical and nonphysical resources are pooled in support of collective goals
Systems Thinking	System integration does not occur	System integration may occur to better achieve individual goals	System integration does occur to better achieve collective goals
Trust	Trust relationships are not required but may develop	Leaders work closely to create relationships based on trust	Trust between participants is needed to sustain relationships

Study design

The study is designed as a case study. The paper presents the findings from only the initial phase of data collection from one court district, and the findings are thus not representative for the whole justice system in Finland. On the contrary, the court district was chosen because

of its small size and low number of potential informants, which was assumed to make it easier to get an overview of the interactions between relevant authorities. The data was collected through semi-structured interviews with head investigators in two different authorities, as well as prosecutors and other personnel at the prosecution office. The organizations and interviewees were selected through theoretical and snowball sampling, i.e. by contacting the relevant authorities and asking for potential interviewees, as well as asking informants whom else it would be relevant to discuss with. In total, the database for this paper includes 5 interviewees. The interviews will contribute with data not only for this paper, but also for a broader study on cooperation within the justice system.

The interview guide included questions about the requirements for the informant's job, who the informant cooperates with and in what forms, how cooperation has changed over time and when the change in the law was implemented, what determines the success or failure of the cooperation and how it is measured. The questions were asked in the local language. *Cooperation* is the term used in the unofficial English translation of the Act, and has been used in the English translation of the questions without intention to give a certain meaning to the word. In fact, the two official languages in Finland both have one word (*yhteistyö* in Finnish; *samarbete* in Swedish) that can be used interchangeably for *cooperation*, *coordination* and *collaboration*.

Interviews were recorded and transcribed. The data were then analyzed by using an analysis template based on the theoretical framework presented in the previous section. The interview data was supplemented with extracts from legal documents such as laws and documents from the legislative process. In order to increase the trustworthiness of the study, a draft version of this paper was sent back to the interviewees. Comments on the paper were minor, and concerned mainly the need to point out that the case district is not representative for the whole country. These member checks, together with the use of an analysis template, increase the credibility of the results.

The case is set out in a geographical area with a small population, and a relatively small number of employees at the investigation and prosecution authorities' offices. Not all investigating authorities have a head investigator that works full-time in the district, but the resource is then shared with a larger administrative unit, which means that the head investigators work also in other districts in addition to the one in the case. The majority of the investigations to cooperate on in the district was reported to be investigated by the police, and interaction with other authorities than the police was less common.

Cooperation in the criminal investigation in Finland

As indicated in the introduction, the organizations in the criminal justice process are linked together by flows of people and information, and each organization has specific tasks, stated in the law, to carry out in the different stages of the legal process. A criminal investigation is carried out mainly by the police, but also the border guard, customs and military authorities have competence to investigate certain types of offences.

The investigation is led by a head investigator from the investigating authority. If a police officer is suspected in an offence in the performance of his or her official duties, a public prosecutor acts as the head investigator. Issues to be clarified in the investigation include (according to Chapter 1, section 2 in the Act) the suspected offence, the circumstances in which it was committed, the damages caused, the benefits obtained, the parties, as well as other circumstances necessary for the consideration of prosecution and of the sanction by the public prosecutor. The investigating and prosecuting authorities are different bodies,

even administered by different ministries. From a supply chain perspective, the prosecutor can be regarded as an internal customer, receiving legal case files (containing information) from the investigating bodies e.g. the police or border guard, to process further, eventually resulting in prosecution, or a closing of the case. The parties and the society can be considered beneficiaries of the service.

The aim of the changes made to the Criminal Investigation Act (805/2011)¹, which came into force as of January 1, 2014, is to establish more exact and comprehensive rules, while taking the fundamental and human rights into consideration, and at the same time prevent crime (Finnish Government, 2010, p. 1). Chapter 5 of the Act includes rules about notice of the initiation of the criminal investigation (by the investigating authority to the prosecutor) for certain types of crimes, the competence of the public prosecutor in the criminal investigation, as well as cooperation between the criminal investigation authority and the public prosecutors.

Findings

To begin with, it must be noticed that many journal articles investigate collaboration within a team or project, or in the form of horizontal integration (as in e.g. Bruns, 2013; Keast, Brown and Mandell, 2007). In the case of the Finnish criminal justice process, the prosecution is subsequent to the investigation and cannot be initiated before the previous task is finished. The investigation and prosecution tasks have been strictly divided between investigating and prosecuting bodies, and that remains unchanged despite the change in the law. The introduction of new rules did not change the organization of the investigation, but only made explicit the expectations on the authorities to interact with one another. According to the informants, the authorities were cooperating both with other authorities within their own tier and with the authority in the preceding/following tier already before the change in the law, for instance by having weekly meetings and asking for advice from more experienced individuals in the same or different authorities.

The professional background and skills needed to perform the investigation and prosecution tasks are different. The persons in charge of the investigation usually hold basic training specific to the authority in which they work (e.g. policeman, border guard), but will have taken additional courses or professional degrees specific for conducting investigation. In addition, they have worked as investigators before becoming head investigators. Thus, the head investigators must have obtained practical experience from the job before becoming a leading investigator. The prosecutors must have a higher degree in law and must have gone through a training period at the prosecutor's office. The prosecutors thus have knowledge of the law and training in prosecution.

Despite the division of expertise and tasks, the new rules in chapter 5 of the Act mandates prosecutors, being knowledgeable of the law, to advise the investigator on what route to take (based on the legal categorization and description of the offence in question), and can thus ensure that actions taken are the most appropriate for the legal issues at hand. The prosecutor can also, according to the informants, give advice on formal requirements for particular types

¹ The Act is available on www.finlex.fi, a website owned by the Finnish Ministry of Justice. The Swedish version of the Act was downloaded on February 23, 2016, and includes amendments made and published online before that date. In addition, the unofficial translation to English of the Act was used for this paper. The translation is available from the same website (www.finlex.fi), and includes amendments up to 736/2015.

of crimes, so that mandatory documents are not missing in the trial phase, which would require the case to be sent back to the investigating authority for corrective or additional actions.

In terms of the McNamara (2012) framework, the *Design* of the interaction after the change in the law corresponds to coordination, since participants are independent, but linkages between participants contribute with specialized skills to a specific action (Keast, Brown and Mandell, 2007). Informants mentioned that the Office of the Prosecutor General and the other central bodies of the investigating authorities have published guidelines for how to realize the cooperation required through the Act, but the informants also reported that these central bodies do not measure, nor control or follow up the implementation of the cooperation guidelines. What is more, it was commented by one respondent that it is sometimes necessary to be flexible and deviate from the guidelines. In this context, the *Design* element goes hand in hand with *Organizational Autonomy*; policies to govern the arrangements have been developed by higher authorities, and although there is room for flexibility at the participant level, the organizations' responsibilities and expertise remain separated. These circumstances are not fully in line with the descriptions provided by McNamara (2012) but corresponds best to coordination.

When it comes to *Formality of the Agreement*, obligations written in the law could be considered the highest level of formality, in this setting imposing rules on the behavior of the investigator and the prosecutor. The informants in the district reported that the small scale of their operations and proximity to each other made it easy to cooperate and “get to know each other”. The formal agreements are thus in this case supported by interpersonal relationships, which corresponds to collaborative interaction in the McNamara (2012) framework. This paper does not include a content analysis of previous legislation, and it is therefore not known how formalized the interaction was before the change, but informants indicated that cooperation existed before the change but was less formalized.

The *Key Personnel* element in McNamara's (2012) framework is more difficult to fit with the studied setting. As explained above the professionals involved in investigation and prosecution have very specialized knowledge and experience. Partners are predefined, although some offences (e.g. against children) will require the involvement of additional authorities such as social services and child care in the investigation. What is more, informants reported that the parties – the victim and the suspect – nowadays have more explicit rights to get information about, and influence, the investigation. The investigating authority will have the responsibility to manage the inputs from other actors and stakeholders, which could be compared to a convener that establishes the collaborative arrangements by identifying the problem and bringing the stakeholders together to address it (McNamara, 2012). However, in contrast to the propositions in the theoretical framework, in the Finnish justice system there is no room for selecting which external partners to interact with, since these are defined by law. In addition, the cases are assigned to prosecutors by a secretary in the prosecutor's office, not selected by the prosecutor nor appointed by investigator. The McNamara (2012) framework seems to assume that interaction is voluntary while this is not the case in the justice system.

Section 3 of Chapter 5 of the Act states that the investigator should “notify the public prosecutor of the conducting of a criminal investigation and of circumstances connected with criminal investigation measures and otherwise of progress in the investigation”. *Information sharing* between the police and prosecutor is taking place initially through notification via ICT systems. The investigator leaves a note in the system, which can contain

more or less details, and the information is then automatically transferred via the system to the prosecutor's office. In addition to these systems, interviewees reported that questions, discussions and notifications are shared with the counterpart through meetings, e-mail, phone calls and video. In the case studied, the police and prosecutor have established the practice of having weekly meetings for discussing current cases being under investigation. This practice was however reported to have existed for some time already before the change. The informants' reports indicate that the change in the Act only formalized the already established practice. To conclude, the case illustrates the use of "open and frequent communication through formal and informal channels" (McNamara, 2012, p. 392) i.e. collaborative information sharing, both before and after the change in the Act.

Decision Making relates to goal implementation and organizational autonomy (McNamara, 2012). The informants' accounts indicate that they have a common understanding that interaction is beneficial for all, and the individuals involved respect the counterpart's work and expertise. Although information goes both ways in the interaction, the Act states that the investigation authority must comply with orders given by the prosecution authority. The prosecutor can thus be regarded as a coordinator of the investigation to a certain extent, although many decisions are made independently by the investigation authority. On the other hand, the investigating body is coordinating with all other stakeholders involved in the investigation. These circumstances position the interaction in both the cooperation and coordination boxes of the framework.

Resolution of Turf Issues refers to how disputes are resolved. According to the McNamara (2012) framework, turf issues are either avoided in cooperation, resolved by a third party in coordination, or resolved by the participants in collaboration. Although informants were asked indirectly about conflicts and how chemistry between people influence the interaction, the informants reported no problems in working together. They did however mention the success of the interaction being determined by availability of the prosecutor and investigator, which could indicate that turf issues are easily ignored by allocating time to other tasks or cases, thus ignoring the problematic ones.

Resource allocation is according to McNamara (2012) about the investments made in or allocation of resources to inter-organizational units. As described above, time must be invested in interaction. However, resources are in the case not exchanged or pooled to any inter-organizational unit, but information shared among the parties. The informants reported that no additional financial resources have been allocated to their respective authorities as a consequence of the change in the law, but instead interaction has been added as an additional work task (although being used also before the change in the law). Thus, resources are allocated in a cooperative manner according to the McNamara (2012) framework.

Systems thinking refers to "a holistic approach to expanding and integrating appropriate aspects of [a] service delivery system" (Thatcher, 2007, p. 9, referred to by McNamara, 2012, p. 397). In the McNamara (2012) framework, this element refers mainly to the integration of information systems, which is prevalent in the case setting in the form of the notifications of new investigations via the ICT system. It is not evident from the data set to what extent the systems integration existed before the change in the law.

The informants were also asked whether they trust their counterpart in the interaction, and the answer was yes, without specifying how trust has been built up or is maintained. It might stem from trust in the others' professional expertise, which would be evident in one respondent's answer that "you have to trust" the others. The McNamara (2012) framework incorporates the activity of building of trust between interaction partners, and the effort put

into creating stronger links through trust. From the informants' answers in this case study, trust seems to be already built into the system.

The level of interaction that fits the circumstances of the case are summarized in table 2.

Table 2 – Identification of the mode of interaction between investigating and prosecuting authorities in Finland (adopted from McNamara (2012))

<i>Element</i>	<i>Level of interaction</i>	<i>Description from the McNamara (2012) framework and evidence from the case</i>
Design	Coordination	Organizations remain separate entities, but some structural linkages contribute with specialized skills or resources to a specific action (Keast, Brown, and Mandell, 2007)
Formality of the Agreement	Collaboration	Formal and informal agreements are used to develop jointly roles and responsibilities; interpersonal relationships support formal structures established by law
Organizational Autonomy	Coordination	Roles and responsibilities remain separated; instructions and guidelines come from central bodies; some room for flexibility at the lowest participant level
Key Personnel	N/A	<i>Not applicable since participants can't choose their partners</i>
Information Sharing	Collaboration	Information is shared via shared ICT systems, as well as over different types of communication channels
Decision Making	Cooperation; Coordination	Independent decision-making, although prosecutor can order the investigator to take measures; investigator coordinates with stakeholders
Resolution of Turf Issues	Cooperation	Turf issues can be ignored by not interacting
Resource Allocation	Cooperation	Information is shared, but resources neither exchanged nor pooled
Systems Thinking	Collaboration	ICT systems are integrated and communication of cases and needs for interaction determined by entries in the system
Trust	N/A	<i>Trust is already built into the system, while the McNamara (2012) framework treats it as something that requires active efforts</i>

Practices and success factors

The case shows that the change in the law mainly formalized practices that were already in place. The investigating and prosecuting authorities were interacting already before the change, exchanging information through ICT solutions and one-on-one interaction. On the other hand, the interviewees indicate that the law change brought some more clarity and standardization, for instance in planning of the investigation through establishment of guidelines and procedures.

When it comes to success factors, the majority of the informants expressed that a successful or failed interaction between the investigating and the prosecuting authorities is

visible in the completeness of the case file when handed over to the prosecution: the better cooperation, the less errors or gaps, and the lower risk that the prosecutor will have to send back the investigation for additional or corrective measures.

When being asked about how cooperation could work even better, informants at both ends of the dyad in the case mentioned that being physically located in the same building as the other authority could make the interaction even better. Knowing each other and the others' expert areas were also mentioned as a factor making it easy to not only know whom to contact, but also to actually approach that person. Proximity, both geographical and relational, thus seems to be perceived as an important success factor for the interaction. It is noticeable that one informant in the case could recall visits from higher level authorities for benchmarking even before the change in the law, which indicate that the case might be an example of a district having had best practices in investigation cooperation in place. This conclusion is however not confirmable due to the lack of data, but should be further explored.

A general moderating factor was reported to be the availability of prosecutors and the amount of time they could invest in the interaction (i.e. taking part in meetings, answering e-mails, giving feedback on the progress of the investigation).

Conclusions

The McNamara (2012) framework proved useful in classifying the interaction going on between investigation and prosecution authorities. On the other hand, the study highlighted some drawbacks of the model, one of the major being the fact that it does not contain a level with no interaction (e.g. open market negotiations in the Spekman et al. 1998 framework), which means that the analysis assumes some level of interaction being the baseline for each element. It must also be acknowledged that the McNamara (2012) model is based on examples of horizontal integration, while a supply chain approach considers interaction upstream and downstream. In addition, the descriptions of some elements e.g. *key personnel* suggest that the framework has been developed to distinguish between levels of interaction in voluntary relationships in contrast to coercive settings where the interaction is obligated by law. The differences between the interaction elements in a horizontal compared to a vertical integration setting may need further attention, especially in a public service context. By testing the McNamara (2012) model in a public service setting, this paper contributes to the literature on inter-organizational relationships.

The study also has managerial implications. Identifying the levels of interaction and their characteristics can help managers to pick practices described in the literature to maintain the interaction at the current level, or to change it when the operating environment changes (Keast, Brown and Mandell, 2007), depending on the resources available and needs of the organizations involved in the interaction, as well as the judicial supply chain as a whole. Based on the interviews done for the study, an area of improvement could be the follow-up and measurement of how interaction is carried out, and what the effects are on the legal cases being processed in the justice system.

The data included in this study came from the initial phase of data collection for a broader study on cooperation in the justice system. The number of informants is low and from one district only, and the findings are therefore not generalizable to the whole justice system in Finland. In fact, informants in the studied court district expressed their concerns about the comparability of the district with other districts, which indicate that there are differences between court districts in Finland. This is a relevant finding, since justice should be the same

for all, and it would be relevant to explore the differences in detail. In order to get a more comprehensive picture of interaction between investigators and prosecutors and whether the practices in place corresponds to an appropriate level of interaction, more data from a larger number of court districts should be collected.

Despite being based on a low number of interviews; the paper illustrates how a change in the law affects the interaction between experts in a dyad in a public service supply chain. Specifically, the paper fills a gap in the literature by exploring cooperation in the judicial supply chain. The recently raised concerns in Finland regarding the prolongation of criminal investigations (Kuisma, 2016) make this study timely. Future research should look further into cooperation in the criminal investigation as an element that affects the flow of the legal case, not only from crime to prosecution, but throughout the whole judicial service supply chain. Further research could also focus on determining to what extent the interaction actually affects the flow of cases through the judicial supply chain.

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