The European Association of Judges
Regional group of the International Association of Judges

e-NEWSLETTER

July 2007, No. 1

Introductory word

Dr. Virgilijus VALANČIUS, President of the Association

Dear Members of the EAJ,

It is a great pleasure for me to persent you the first issue of the e-Newsletter of the EAJ.
The idea to create such a newsletter was based on several reasons. Firstly, the e-Newsletter is meant to induce the spread of the relevant information about the activities of the EAJ among its members in more expeditious way. Secondly, it is expected the e-Newsletter to become a tool which stimulates intercommunication between the member associations of the EAJ and creates an opportunity to follow the important events in the respective national judiciaries. Last but not least – the e- Newsletter may become a useful forum where the members of the EAJ can discuss the most topical issues related to the activities of the EAJ as well as to the activities of their respective associations.
For the beginning the Newsletter will be disseminated 2-3 times a year. Later on, if the request will be and capacity permits, the periodicity of the e-Newsletter may be increased.
Indeed, the topicality and usefulness of the e-Newsletter depends on all of us. I would therefore like to encourage you to submit periodically and expeditiously all the surveys, articles and other information related to the independence, ethics, role and cooperation of the judiciary that you find relevant.
In the first issue of our new communication tool you will find information on recent events, relevant to the judicial community, in which the EAJ actively participates. This includes activities within the framework of the Council of Europe (CCJE, CEPEJ, etc.), other European institutions, as well as information on interesting events provided by the national associations. The reports, presented by the members of the EAJ, who represented the EAJ in the relevant meetings, will help you to form a clear view about the state and process of the consideration of respective issues. At the end of this e-Newsletter you will find a presentation of Mr. Justice Richard AIKENS, judge of the High Court of England and Wales, made at the 3rd Conference of Judges, which gives a perfect overview of the present situation of the high councils for the judiciary in the Council of Europe member states.
I hope you will find this e-Newsletter informative and useful.

In This Issue:

Éditorial

M. Virgilijus VALANČIUS, Président de l'AEM

Mesdames,
Messiers,
Chers Collègues, les membres de l'Association Européenne des Magistrats,

Je suis particulièrement heureux de vous présenter une première Bulletin électronique d'information de l'Association Européenne des Magistrats (AEM).
Tout d'abord l'objet de ce Bulletin électronique d'information est d'encourager les échanges d'informations entre les membres de l'AEM sur les activités de l'AEM. Deuxièmement ce Bulletin électronique d'information aidera à découvrir la richesse des activités des systèmes judiciaires nationaux. Finalement, le Bulletin électronique d'information peut devenir un forum de discutions où les membres de l'AEM pourraient échanger des idées et discuter sur les événements importants concernant l'AEM et l'activité des membres de l'association.

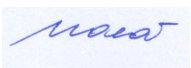
Tout d'abord il est prévu d'éditer 2 ou 3 numéros du Bulletin électronique d'information par un an.
Je me permets, donc, de vous encourager à participer à la préparation de cette Bulletin électronique d'information en envoyant des rapports, des contributions individuelles sur des thèmes actuels (l'indépendance de la justice, l'éthique du magistrat, le rôle de la juridiction, la coopération des juridictions étrangères, etc...).
Dans ce premier Bulletin électronique vous trouverez une information sur les éventements importants pour le monde des Magistrats où participe l'AEM.
Il s'agit de la coopération de l'AEM avec les Institutions Européennes (Conseil de l'Europe, Conseil Consultatif des Juges Européens (CCJE), Commission Européenne pour l'Efficacité de la Justice (CEPEJ)), actualités présentées par les Associations Nationales de Magistrats, rapports des membres de l'AEM qui avaient été délégués dans les différentes réunions.
Vous trouverez également dans ce Bulletin électronique d'information le discours de M. Richard AIKENS *(Judge of the High Court of England and Wales*), donné dans la Troisième Conférence Européenne des Juges, traitant du rôle des „Conseils Supérieurs de la Magistrature" dans les Etats membres du Conseil de l'Europe.
En espérant que ce Bulletin électronique d'information sera profitable et intérssant, veillez Monsieur, Madame, agréer l'expression de mes sentiments les meilleurs.

Einleitungswort

Dr. Virgilijus VALANČIUS, Präsident der Europäischen Richtervereinigung

Sehr geehrte Mitglieder der Europäischen Richtervereinigung,

Mit großem Vergnügen präsentiere ich Ihnen die erste Ausgabe des neuen E-Newsletters der Europäischen Richtervereinigung (ERV).
Die Idee einen E-Newsletter zu erstellen entstand aus verschiedenen Gründen. Erstens, die Entstehung des neuen E-Newsletters sollte den Informationsaustausch über die Aktivitäten der ERV unter Ihren Mitgliedern effektiver zu gestalten und zu beschleunigen. Zweitens, E-Newsletter der ERV sollte die Kommunikation zwischen den Mitgliedern der ERV Vereinigungen anregen und zugleich über die wichtigsten Ereignisse in den nationalen Gerichtssystemen informieren. Zu guter Letzt, E-Newsletter sollte den Mitgliedern der ERV als ein nützliches Diskussionsforum und eine Anlaufstelle für die wichtigsten aktuellen Fragen im Zusammenhang mit der Tätigkeit der ERV und der nationalen Richtervereinigungen dienen.
Es ist vorgesehen, dass E-Newsletter zuerst in regelmäßigen Abständen 3-4 jährlich erscheinen wird. Bei erhöhtem Bedarf besteht die Möglichkeit den E-Newsletter zukünftig auch öfter erscheinen zu lassen.
Zu erwähnen ist, dass die Aktualität und Nützlichkeit des E-Newsletters der ERV ganz wesentlich von uns allen mitbestimmt wird. Deshalb würde ich Sie gerne anregen sämtliche Artikel, Berichte und andere Information, welche Ihrer Meinung nach für unser E-Newsletter von Interesse wäre, insbesondere im Zusammenhang mit solchen Themen wie richterliche Unabhängigkeit, Ethik, Funktion und Zusammenarbeit der Richter, umgehend und regelmäßig zu übermitteln.
In der ersten Ausgabe unseres neuen E-Newsletters finden Sie die Information über alle für die Richtergemeinschaft wichtige Vorhaben, Ereignisse und Tagungen, an welchen die ERV aktiv teilnimmt. Es wird berichtet sowohl über die Aktivitäten im Rahmen des Europarats (CCJE, CEPEJ, u.a.), anderer europäischen Institutionen als auch über die von den nationalen Richtervereinigungen bekanntgegebenen interessanten Veranstaltungen. Berichte von den die ERV an den verschiedenen relevanten Treffen vertretenden Mitgliedern der ERV wird Ihnen helfen die Übersicht über den Zustand und Entwicklung der aktuellen Problemfragen nicht zu verlieren.
In unserer ersten Ausgabe des E-Newsletters finden Sie also die Präsentation des an der dritten Richterkonferenz von dem Herr Richard Aikens, Richter an dem Hohem Gericht von England und Wales, gehaltenen Vortrags, welche einen perfekten Überblick über die gegenwärtige Situation der obersten Räten der Gerichtsbarkeit in den Mitgliedstaaten des Europarats gibt.
Ich hoffe, Sie finden den neuen E-Newsletter interessant und hilfreich.



Dr. Virgilijus Valančius
President/ Président/ Präsident

WITHIN THE FRAMEWORK OF THE COUNCIL OF EUROPE

The 3rd European Conference of Judges (Rome, 26 - 27 March 2007)

The Council of Europe's 3rd European Conference of Judges was hosted by the Italy's High Council for the Judiciary in Rome on 26 and 27 March 2007. The conference attracted approximately 170 participants from the Council of Europe's 46 member states. The EAJ was numerously represented at the Conference as well.

The aim of the Conference was to discuss the structure and role of high councils for the judiciary and equivalent bodies. Results of the Conference were intended to be used as a basis of work for the drafting of the CCJE Opinion No. 10 entitled "Council for the Judiciary in the service of society".

The President of the EAJ was asked to chair one of the sessions of the Conference. The audience was reminded that the 1st Study Commission of the IAJ analysed the similar question in 2003.

„These independent bodies […] are at the crossroads of powers, and then essential elements of the balance between these powers"

At the end of this Newsletter you will find a presentation made by Mr.Justice Richard AIKENS, judge of the High Court of England and Wales, during the mentioned Conference, which gives a perfect overview of the present situation in the Council of Europe member states.

More information about the Conference may be found at the website of the CCJE:
http://www.coe.int/t/dg1/legalcooperation/judicialprofessions/ccje/meetings/conferences/conseils/default_EN.asp

Finalization of the draft Opinion of the CCJE on the Councils for the Judiciary

The draft opinion No 10 of the CCJE entitled "Council for the Judiciary in the service of society" has been finalised after the meeting of the Working group of the CCJE, held in Graz (Austria) from 25 to 27 June 2007, and has been sent to the all members and observers of the CCJE, including the EAJ, for comments.

The Opinion should be adopted at the 8th Plenary Meeting of the CCJE, which will take place in Strasbourg, on 21-23 November 2007.

More information about it:
http://www.coe.int/t/dg1/legalcooperation/judicialprofessions/ccje/textes/Travaux10_en.asp

Update of the Recommendation No. R (94)12 of the Committee of Ministers

At its 81st plenary meeting in 2006 the European Committee on Legal Co-operation (CDCJ) agreed to update the Recommendation No R(94)12 on the independence, efficiency and role of judges in the light of new ideas and practices concerning judicial services and their functioning in Europe, which have emerged since its adoption. The group of Specialists on the Independence, Efficiency and Role of Judge (CJ-S-JUST) has therefore been created in order to carry out this task. Its terms of reference were adopted by the Committee of Ministers in January 2007.

The EAJ was granted the observer status to the CJ-S-JUST.

The first two meetings of the CJ-S-JUST already took place in Strasbourg: the 1st on 15-16 March 2007 and the 2nd on 2-3 July 2007.

In both meetings the EAJ was represented by Mr. Gerhard REISSNER. You can find his detailed Reports about the meetings in the „Reports" section of this Newsletter.

The next meeting of the CJ-S-JUST will be held in November 2007.

More about the CJ-S-JUST:
http://www.coe.int/t/e/legal_affairs/legal_cooperation/steering_committees/cdcj/CJ_S_JUST/Default.asp#TopOfPage

The 9th Plenary Meeting of the CEPEJ (Strasbourg, 13-14 June 2007)

The 9th plenary meeting of the CEPEJ was held in Strasbourg from 13 to 14 June 2007. The EAJ was represented in the Meeting by Mr. Gerhard REISSNER, whose report about the event you can find in the „Reports" section of this Newsletter.
The abridged report of the meeting is also available at the website of the CEPEJ:
https://wcd.coe.int/ViewDoc.jsp?Ref=CEPEJ(2007)17&Language=lanEnglish&Ver=prov&BackColorInternet=eff2fa&BackColorIntranet=eff2fa&BackColorLogged=c1cbe6

COOPERATION WITH THE OTHER EUROPEAN INSTITUTIONS

The General Assembly of the European Network of Councils for the Judiciary (Brussels, 6-8 June 2007)

From 6 to 8 June 2007, the annual General Assembly of the European Network of Councils for the Judiciary (ENCJ) was held in Brussels.
More than 90 representatives (mostly representatives from the various Members and Observers of the Network, but also representatives of the European Commission, of the CCJE and of the CEPEJ, of the EJTN and of the International Association of Judges) participated in the Assembly.
The EAJ has made continuous efforts to be granted the status of an observer within the ENCJ. Following the letter by the President of the EAJ Mr. Virgilijus VALANČIUS of 18 April 2007 to the president of the ENCJ Mr. Luigi BERLINGUER, this request was finally satisfied – in the General Assembly the EAJ was represented by Ms. Monique DELOS, whose report you can find in the „Reports" section of this Newsletter.
More about the General Assembly of the ENCJ:
http://www.encj.net/encj/

Justice and Home Affairs Council of the European Union

Portugal took over the presidency of the EU from Germany on 1 July 2007 and will hand it over to Slovenia on 31 December 2007. It is the 3rd presidency of Portugal, after the presidencies of 1992 and 2000.
According to the agreement of the Valencia Meeting of the EAJ, the Portuguese Association of Judges (ASJP) has made contacts with the Portuguese Ministry of Justice in order to schedule a meeting of the President of the EAJ and the Minister of Justice of Portugal during the second half of 2007.

The Portuguese Minister of Justice showed his interest on the meeting. The meeting is scheduled for the 14 September 2007.

Work on e-Justice Conference (Bremen, 29-31 May 2007)

G. Caruana DEMAJO

A conference on *Work on e-Justice*, organised by the German Federal Ministry of Justice and the Justice Ministries of the German Länder within the context of the German EU presidency, was held in Bremen between 29 and 31 May 2007.

The objective of the conference, which was attended by over 500 participants and speakers, was to provide a forum for discussing the application of information and communication technology in the field of justice with a view to the adoption of a common European e-justice strategy and the implementation of common standards for information-technology supported communication, thereby facilitating communication – within a national as well as a cross-border dimension – and leading to a faster, more efficient judicial process.

The conference was organised in four thematic units, *viz.*

1. the justice portal as a link between different legal systems;
2. cross-border communication between parties

to judicial proceedings;

3. exchange of information between national judicial registers;
4. procedural models for standardisation at the European level and associated legal issues.

The justice portal, intended mostly for the use of citizens and commercial enterprises, links various national and European sites providing access to information on legislation, remedies and institutions, as well as direct access to (and not merely information on) procedures. The need to develop common standards so as to ensure interoperability was highlighted. The European Judicial Network and the European Judicial Atlas were presented as a practical example of cross-border co-operation by means of the internet.

A practical demonstration of cross-border communication within the context of judicial proceedings was provided in the form of a live video-conference link between the conference centre in Bremen and a court in Portugal and another court in Italy. The European Order for Payment Procedure and methods for electronic filing of pleadings – such as the Italian *Processo Telematico* – were also described and discussed.

Exchange of information is not limited to strictly judicial topics but extends also to matters such as land registers, trade and company registers and police co-operation.

The final thematic unit concerned issues of a more technical nature, such as various methods of authentication of electronic identity and signature, technical standardisation issues, and the pooling of resources to develop common solutions.

More detailed information, as well as a conference overview and the text of some presentations, are available on the conference website:

http://www.e-justice2007.de/index.php?option=com_content&task=view&id=5&Itemid=24&lang=en

A follow-up conference is to be held in Lisbon on 3 September 2007.

JUSTICE

WORKING GROUPS OF THE EAJ

Working group on the problems of the EAJ's member associations

The permanent Working group on the situation of member associations to the EAJ had been set up in Madrid in 2001. At the EAJ meeting in Valencia (30 March 2007) Mr. Bjorn SOLBAKKEN was appointed the chair of the group.
Presently the Working Group is inquiring into the situation in Hungary concerning the criticism of the Hungarian courts and judges made by some politicians and different types of media in Hungary with a view to preparation of the report for the next EAJ meeting in Trondheim (23 September 2007), as charged by the Resolution of Valencia meeting.

The head of the Working Group Mr. Bjorn SOLBAKKEN has got a letter from the Hungarian Presidency, informing that an independent inquiry committee was created, which is expected to give its report in the end of July 2007. The Working Group decided to wait for the result of the work of the mentioned Committee.

The Hungarian Association of Judges has informed, that for the time being they consider no need of a visit of an examining delegation, as proposed by the Resolution of Valencia meeting.

Resolution of the EAJ concerning Hungary:
http://xoomer.alice.it/goberto/valenciaen.htm

NEWS FROM THE MEMBER ASSOCIATIONS OF THE EAJ

LIETUVOS RESPUBLIKOS TEISĖJŲ ASOCIACIJA

Lithuanian Association of Judges

Visit of the delegation of judges from Montenegro (Vilnius, 22-23 June 2007)

Delegation of judges from the Republic of Montenegro visited Lithuania on 22-23 June 2007 following the invitation of the Lithuanian Association of Judges. The delegation consisted of Mr. Vukoman GOLUBOVIC, President of the Appeal Court of Montenegro, Mr. Zoran PAŽIN, President of the Basic Court in Podgorica, Mr. Rade PERISIC, President of the Basic Court in Niksic, Mr. Tofil ZUJOVIC, President of the Basic Court in Bijelo Polje, Mrs. Vesna BEGOVIC, Judge of the Supreme Court of Montenegro and Mrs. Biljana VUKSANOVIC, Judge of the Basic Court in Podgorica.

On the 22nd of June the delegation had a meeting with the President of the EAJ Mr. Virgilijus VALANČIUS in the premises of the Supreme Administrative Court of Lithuania. Judges from Montenegro were interested in the activities of the EAJ. They asked and were informed about the conditions for the membership to the IAJ.

On the 23rd of June the delegation participated in the annual sport festival of Lithuanian judges, organized by the Lithuanian Association of Judges in Dubingiai.

REPORTS FROM THE MEETINGS

Report of the 1st Meeting of the CJ-S-JUST (Strasbourg, 15-16 March 2007)

Gerhard REISSNER

On behalf of the EAJ I participated in the Group of Specialists on the Independence, Efficiency and Role of Judges (CJ-S-JUST) to which the EAJ has an observer status.

This body was established by the Committee of Ministers of the Council of Europe following a proposal of the European Committee in Legal Co-operation (CDCJ), the relevant steering committee of the Council of Europe. It is composed of 5 specialists chosen by the Secretary General among them the president of our IAJ Maja TRATNIK, the other members are Edwin KILBY (UK) who was appointed as chair of the group, Marek SAFJAN (Poland), Nikolay ROMANENKOV (Russia), Carlos GOMEZ MARTINES (Spain) and Francois PAYCHERE (Switzerland); there are two experts: Daniel LUDET (France) and Rosa JANSEN)Netherlands). The CCJE, the CEPEJ, MEDEL and the Association of European Administrative Judges are invited as observers.

Task of this body, which should finish its work at the end of this year is to examine Recommendation 94/12 and propose amendments in the light of new ideas and practices concerning judicial services and their functioning in Europe

In my first statement I proposed to simply change the European Charta on the Stats for Judges into a recommendation, which of cause was unrealistic. In fact it was the Charta and the Opinions of the CCJE which stood in the centre of the considerations how to amend the Recommendation 94/12.

The discussion if the new text shall be a revised version of the original, if it should be an amendment to the existing recommendation or if it should be a complete new text were postponed to the next meeting, which will take place in July. I underlined that in any case it will be important, that the positive content of the old recommendation, which is widely known and accepted in the judiciaries of Europe should not be weakened or destroyed.

There followed a general debate which points of the existing recommendation should be improved and what should be added: The following points where identified: Selection and career; tenure of office, appointment to international courts, Higher Councils of Judges, Remuneration, Training, Budget, excessive workload; impartiality, extrajudicial activities, judge and terrorism; responsibilities and discipline.

The experts were entrusted to examine this topic in the light of the Charta, the Opinions of the CCJE and other sources and prepare proposals for possible amendments.

Report of the 2nd Meeting of the CJ-S-JUST (Strasbourg, 2-3 July 2007)

Gerhard REISSNER

On behalf of the EAJ I participated in the second meeting of the Group of Specialists on the Independence, Efficiency and Role of Judges (CJ-S-JUST) to which the EAJ has an observer status.

First point of the agenda was the postponed decision which form the new text should have, if and how it should substitute the existing Recommendation 94/12. After an extensive discussion it was decided to produce a document Recommendation 94/12 revised". It will be the existing text with the necessary changes and amendments included.

Following the proposals of the experts as a guideline for possible texts for a draft, all the issues, which where identified at the last meeting where discussed in detail.
To my opinion the outcome so far is very successful, it follows the line of the IAJ/EAJ, which again was very effective through the contributions of our IAJ-president Maja TRATNIK and the Opinions of the CCJE, which may show that the very intense work of the members of the EAJ, who participate in the work of the CCJE in a very intense way, in a long term will be very fruitful.
The most interesting amendments of the recommendation should be:
- underlining that independence is one of the preconditions for impartiality
- recommendation to create a Judicial Council
- oppose to remuneration systems with a productivity bonus, where by I succeeded in proposing that remuneration should not only not be based on productivity (what ever this is) but not even on any aspect of the way a judge performs its office. (disciplinary measures falling in another category of cause).
- the issue of initial as well as in-service-training will be included
- participation of the judiciary in budgetary issues
- appointing procedure of judges of the international courts shall follow the rules (Objective criteria and transparent procedure) as they are when the selection of national judges out of a number of candidates takes place.

I had to leave three hours before the end of the meeting caused by a strike of the railway. Before I left I proposed to follow the CCJE according its Opinion 3 on ethics according to the behaviour of the judge out-site his/her office, avoiding every (especially political) activity which may question his/her independence. I do not know the outcome of this debate.

Of cause a draft like this, which is the task of this body, is only the first step. The outcome has then to pass the CDCJ and finally the Committee of Ministers.

Report of the of the 9th Plenary Meeting of the CEPEJ (Strasbourg, 13-14 July 2007)

Gerhard REISSNER

On behalf of the EAJ I participated in the ninth plenary meeting of the CEPEJ (European Commission for the Efficiency of Justice, a commission within the Council of Europe to which the EAJ has an observer status.

There is a summarising „abridged report" available on the website of CEPEJ
www.coe.int/t/dg1/legalcooperation/cepej

The most interesting observations I made during this meeting are the following:

- there is a lot of means and efficiency dedicated to CEPEJ. There exists a new logo separate from that of the Council of Europe. The studies and reports of the CEPEJ are going to be published in a special series of publications. The last Report on the Evaluation of the judiciaries in Europe and two studies have been published so far. In addition two the bureau and the plenary there exist a number of working parties, which meet several times a year: a) a working party on the evaluation , a working party on mediation, a working party on the quality of justice, a working party preparing the new institution of the CEPEJ called SATURN which will deal with judicial time management.

- the evaluation of the judiciaries will be repeated this year for the year 2006 and will be repeated every second year. In the other years there will be a shorter report on some key elements of the comparative evaluation exercise. The schema of the questionnaire should only be changed in some minor points. But a guideline should be elaborated how two collect data in the member states to keep this data comparable.

- the main topic of the next time will be the quality of justice; a working party will elaborate a schema, the secretariat prepared a proposal.

- the former chair of CEPEJ Eberhard DESCH form the German ministry of justice is now member of the steering committee CDCJ (European Committee on Legal Co-Operation) and represented this body at the meeting of the CEPEJ

- the CEPEJ supports a small number of scientific studies by making their (complete) data available and publishing the reports. Among these six studies, which shall be finalised till the end of the year, are „Access to Justice" by the University of Nancy and the International Institute of comparative Law of Lausanne; „Execution of court decision" by the University of Nancy and the International Institute of comparative Law of Lausanne; „Evaluation and monitoring of judicial systems" by the universities of Maastricht, Utrecht and Bologna; „Administration and management of justice" by the University of Limoges and „ Use of information technology in the courts" by the research Institute in judicial systems o Bologna, the University of Utrecht, the London School of economics and the Finnish Ministry of Justice and a study on „Training of judges and prosecutors".

The next plenary meeting will take place in December this year.

Report of the General Assembly of the European Network of Councils for the Judiciary (Brussels, 6-8 June 2007)

Monique DELOS (translation: Pol VAN ISEGHEM)

Theme: The separation of powers in the twenty first century.

Mrs. Edith VAN DEN BROEK[1] welcomed the representatives of 29 European countries and a Turkish representative. The EAJ was present as an observer in the person of Mrs. Monique DELOS[2], who represented the President of EAJ, Mr. Virgilijus VALANCIUS.

In her opening speech, the president emphasized the utility of the cooperation between the different councils of Justice, which strengthens the independence of the Justice and the confidence of the citizen in the institution.

She invited the two new members, Bulgaria and Romania to sign the Charter of the ENCJ.

Mrs. ONKELINX[3], represented by a member of her administration, gave a historic overview of the relation between the judiciary and the two other constitutional powers. This evolution still continues until now and causes questions, which need reflection before being answered.

The modernization of the Belgian judiciary has played and still plays a key role in this historic evolution. Since the foundation of the Belgian Superior Council for Justice, the procedure for selection and nomination of the judges has become far more objective and transparent. Also a Commission for the Modernization of the Judiciary has been installed, which will formulate its proposals to the legislative and executive powers. Another angle of view is certainly the way courts are managed nowadays: new challenges arise for the judiciary…

Mr. Yves BOT[4] continues and asks the attendants the following question: why do we still have to ask the same question about the separation of powers nowadays? For the speaker, the constant reminding of the independence of the judiciary is certainly one of the main reasons. Would this separation of powers be under attack for the moment? Would there be powers at work to limit the judiciary? The conditions of the exercise of the authority of justice, has seriously changed since the end of the 20th century, because of the birth of a fourth power: the press… The relation between the judiciary and the other powers now must take into account this fourth power all the time. It's not enough that a principle is written to be accepted: the legitimacy and the independence must be proven at all times by transparency, without any trace of corporatism. This also shows the constant need of communication with the public.
Also the mission statement of Justice is changing.
Mr. BOT distinguishes two movements in opposite directions:

1. Movement of concentration: by the creation of new jurisdictions which have a national competence in very determined matters. He refers to France, where such institutions already exist for terrorism and heavy crime.

The battle against international crime, which doesn't stop at the national frontiers, proves that also the institutions must be compatibilised, in a way that communication and exchange of information gets possible. Other jurisdictions, which settle conflicts concerning national politics, are also emerging. Here there is the feeling that justice is forced to become an instrument to deal with internal conflicts, with a non desirable international impact. The judiciarisation is at hand.

2. Movement of "atomization"[5]: this subsists in the fact that justice not only works in a repressive way, but also on the preventive level. The establishment of an assistance service to the education, implicates that judiciaries work together side by side with the local politicians. For that, it is not enough that the court-magistrate is independent: this independence must be extended to all judiciaries, even those who don't "judge": the public prosecutors for example… There should at least be an equal statute for them and for the court magistrates.

The conference continues with Mr. Paul VAN ORSHOVEN[6], who indicates that the principle of the separation of powers, denies any authority to appropriate herself a function which belongs to another authority. One of the major issues of this separation of powers is the guaranty of the independence of courts. The functional independence must apply as to the other powers but she also must be visible as to the press or other influencing groups.
Although an absolute independence is impossible in a democratic state, it is only a tool to get to a good justice, far more than goals on itself.
Nowadays, it's common to talk about the menaces towards the independence of the judiciary, although the independence is not threatened in the democratic countries.
The speaker asks himself whether it is possible that judges fear that their "customs" are being threatened.

Mrs. Edith VAN DEN BROEK emphasizes the importance of the creation of the high councils for justice and underlines 3 great principles:

1. No competence without responsibility
2. No responsibility without justification
3. No justification without control.

Afterwards, a debate is organized.

The Italian representative points to the continuous confrontation between the judicial power and the other powers in almost all democracies. The working field of the judiciary has been broadened and judges have been called to express themselves about themes that become more and more complex, such as e.g. ethical questions. Although, it's the executive power which distributes the funding and in many countries, there is a tendency to try to submit the prosecutors to their will.
In England, the system is equally subventioned by the executive power and the same question about the control and the independence is also a very actual one.
In France the question has been asked if the responsibility of a judge can be extended to his jurisprudential activity? The French *Conseil de la Magistrature* has responded in a negative way. This same organ has had the question to elaborate a deontological codex for judges.

On of the topics which returns in the questions, is about the relation between the judiciary and the press. How do we cope with the questions of the press? How far can we go with them?
Justice had not been created to be loved, there will always be one party that is not satisfied. The judge will always be seen as an executor or the responsible of the bad luck of one person. Even the smallest error in judgment is used against the institution itself. Therefore, we must be aware of this danger and we must be ahead of it by a better communication and an open mind…
One of the means to achieve these goals is to be known better. In France, an agreement has been made with the house of parliament, in which the possibility is given to it's members, to assist in the working of a court during 15 days or one month. This operation has been very fruitful and gives the members of the legislative power a better knowledge of the field.

The representatives of the European Commission express their wishes to construct a justice on a European level. Already, with the European Arrest warrant, the procedure to bring over a person, has been simplified a lot. But, there is still a long way to go: let's only think about the exchange of the personal criminal data. There is already a pilot-treaty between Germany, Holland and Belgium. In civil matters, one of the goals is to make disappear the exequatur, so that a judgment in one state is perfectly executable in another state.

The Commission is one of the permanent funders of the ENCJ.

The European Commission waits for projects (limit: 13th of July) which intend to increase the interaction between jurisdictions, e.g., a project to welcome the public in court could be executed in several courts.

There are already two main fields in which the Commission is active:

1. An evaluation forum for justice: the objective is to identify the needs and to measure the degree of satisfaction of judges, jurists, auxiliaries of justice and the civilians. 4 reunions per annum will be held.
2. The mutual reconnaissance of the decisions.

In the afternoon, an interactive debate takes place: 4 working groups of the ENCJ present their reports and everyone is invited to express him/herself by mean of an interactive voting-box. The themes are:

1. Mission and vision: how do we work, how do we evaluate the results?
2. Funding of the courts and responsibility?
3. Management of performance.
4. Mutual confidence.

The last morning, the secretary general of the ENCJ has given his report and a discussion on the activities of the ENCJ has taken place.

The general assembly will take place in Budapest next year.

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[1] Current President of the ENCJ, president of the Superior Council for Justice in Belgium and member of the Belgian Association.

[2] Member of the Belgian Association, Attorney General at the Court of Appeal in Mons and President of the Belgian Consultative Council for the Judiciary.

[3] Belgian Minister of Justice

[4] Attorney General of the European Court of Justice

[5] In France it is called: "la politique de la ville"= "the town politics"

[6] Professor at the K.U.L. (University of Leuven, B)

Assemblé générale du Réseau européen des Conseils de la Justice (Bruxelles, 6-8 juin 2007)

Monique DELOS

Du 6 au 8 juin 2007, s'est tenue à Bruxelles, la 5ème assemblée générale du Réseau européen des Conseils de la Justice (RECJ) sur le thème de la « séparation des pouvoirs au XXIe siècle »

J'ai assisté, en qualité de représentante de Monsieur Valancius, président de l'European Association of Judges(EAJ) à la journée de travail du 7 juin 2007.

En présence des représentants de 29 pays européens et de la Turquie, Madame VAN DEN BROEK, présidente actuelle du RECJ, et présidente du Conseil supérieur de la Justice belge, ouvre la session en soulignant l'utilité d'une coopération des différents conseils de Justice en vue de renforcer l'indépendance de la Justice et la confiance du citoyen dans l'institution.

Elle invite ensuite deux nouveaux membres, la Bulgarie et la Roumanie à signer la Charte du RECJ

Retenue par ses obligations, Madame ONKELINX , Ministre de la Justice, est représentée par un membre de son cabinet. L'orateur évoque l'évolution en Belgique du rôle du pouvoir judiciaire dans ses rapports avec les autres pouvoirs. Depuis la fin du 20ème siècle, la responsabilité de l'Etat peut être engagée pour des fautes commises par le pouvoir juridictionnel, et au 21ème siècle, la Cour de Cassation a consacré le principe de la possibilité de mettre en cause la responsabilité de l'Etat. Il appartiendra, estime la Ministre, au prochain parlement de mener une réflexion sur cette jurisprudence, par exemple sur la question de savoir quelle juridiction serait le mieux à même de connaître de ce contentieux.

La modernisation de l'appareil juridictionnel en Belgique constitue un enjeu fondamental. Depuis l'installation du Conseil supérieur de la Justice, la procédure de nomination et de désignation des magistrats a été rénovée, l'accent est mis sur une plus grande objectivité et une plus grande transparence. La modernisation de l'Ordre Judiciaire a été confiée à une Commission de modernisation de l'Ordre Judiciaire qui adressera ses propositions de réforme aux pouvoirs exécutif et législatif. Enfin les nouvelles exigences posées à la magistrature notamment dans le domaine

de la gestion des cours et tribunaux devraient constituer un autre vecteur de modernisation.

Monsieur Yves BOT, avocat général à la Cour de Justice des Communautés européennes, prend ensuite la parole et pose immédiatement une question à l'assemblée : pourquoi s'interroge-t-on encore à notre époque sur la séparation des pouvoirs ? Pour l'intervenant, la réponse se trouve dans le souci constant de rappeler le principe de l'indépendance du pouvoir judiciaire.
La séparation des pouvoirs, indispensable à la démocratie, serait-elle aujourd'hui menacée ? Y aurait-t-il une volonté de limiter les pouvoirs du judiciaire ?

Monsieur Blot constate que les conditions de l'exercice de l'autorité judiciaire ont changé depuis la fin du 20ème siècle avec la naissance d'un quatrième pouvoir : la presse. Les rapports du judiciaire avec les autres pouvoirs doivent maintenant s'envisager avec ce nouveau pouvoir.

De nos jours, il ne suffit plus qu'un principe soit écrit pour qu'il soit admis. La légitimité, l'indépendance, doivent constamment se démontrer par la transparence, en dehors de tout corporatisme. Cela suppose également d'investir dans la communication vers le public.

Il voit également une transformation des missions assignées à la Justice, par un mouvement dans 2 sens opposés :

- d'une part, dans le sens d'une concentration : par la création de nouvelles juridictions ayant une compétence nationale dans des matières déterminées. Il cite l'exemple de la France, qui s'est dotée de telles juridictions pour le terrorisme ou la grande criminalité.
La lutte contre les trafics internationaux entraîne la nécessite de rendre les systèmes judiciaires compatibles entre eux pour permettre la coopération transnationale. On constate également l'émergence de juridictions internationales pour régler des conflits politiques. La justice ne va-t-elle pas devenir un mode d'apurement, d'intervention dans des conflits nationaux ressentis comme inadmissible au niveau international ? On assisterait en quelque sorte à une judiciarisation des conflits.
- d'autre part, dans le sens d'une atomisation, appelée en France « la politique de la ville ». Il s'agit d'intervenir non seulement dans la répression mais également dans la prévention. La mise en place de l'assistance éducative signifie que les magistrats sont aux côtés des pouvoirs politiques locaux en vue d'une coopération commune.

Il ne suffit plus dès lors que le juge soit indépendant, il faut également que cette garantie soit étendue aux magistrats qui ne jugent pas, qui exercent des missions quasi-juridictionnelles. L'intervenant vise ici les magistrats du parquet. Il doit y avoir, estime-t-il, une homogénéité de statut entre les magistrats du siège et ceux du parquet.

Les travaux se poursuivent ensuite par l'intervention du professeur Paul VAN HORSKOVEN (KU Leuven – Belgique). L'orateur voit dans le principe de la séparation des pouvoirs, l'interdiction pour toute autorité de s'approprier une fonction qui appartient à une autre autorité.
L'un des aspects majeurs de la séparation des pouvoirs, c'est la garantie de l'indépendance des cours et des tribunaux. L'indépendance fonctionnelle s'applique à l'égard des autres pouvoirs mais elle doit également se manifester face à la presse et aux autres influences sociales.
L'indépendance absolue est cependant impossible dans un état démocratique, en réalité, l'indépendance du juge n'est pas un but en soi mais un moyen d'action d'une bonne justice.
Aujourd'hui, on ne constate pas dans les pays démocratiques que l'indépendance du juge soit menacée et pourtant on évoque souvent l'existence d'une telle menace. Se pourrait-il, dès lors, conclut le professeur HORSKOVEN que les juges craignent que leurs habitudes soient menacées ?

Madame Edith VAN DEN BROEK intervient ensuite pour évoquer l'importance de la création des conseils supérieurs de la justice et souligne 3 principes :

- pas de compétence sans responsabilité
- pas de responsabilité sans justification
- pas de justification sans contrôle

La parole est ensuite donnée à la salle pour un débat :

Le représentant de l'Italie souligne que dans presque toutes les démocraties, il y a une confrontation permanente entre le pouvoir judiciaire et les autres pouvoirs. Il y a eu un élargissement de l'intervention judiciaire, le juge est appelé à répondre aux

demandes de plus en plus complexe de la société ,par exemple, sur des questions éthiques. Cependant, c'est le pouvoir exécutif qui accorde les moyens et actuellement on d'assiste à une tentative dans plusieurs pays de soumettre le parquet à ses directives.

En Angleterre, le système judiciaire reçoit également de l'argent du pouvoir exécutif, dès lors la question de l'articulation entre le contrôle et l'indépendance revient régulièrement.
En France, on s'est demandé si le champ de responsabilité du juge pouvait être étendu à son activité juridictionnelle ? Le Conseil de la magistrature français a répondu par la négative. Ce même conseil a reçu la mission d'élaborer un recueil des obligations déontologiques des magistrats

Plusieurs questions sont posées sur les rapports entre le judiciaire et la presse : Comment répondre aux interrogations de la presse ? Jusqu'où peut-on aller ?
La justice n'a pas été créée pour être aimée, il y a toujours une partie qui n'est pas satisfaite. Le juge devient un exutoire, il devient le responsable du malheur subi par une personne. La moindre défaillance d'un juge est utilisée contre l'institution elle-même. Il faut le savoir et il faut lutter contre cette tendance par une meilleure communication, par une ouverture d'esprit
Ce que l'on doit faire, c'est mieux faire connaître la justice. On cite l'exemple de la France, à la suite d'un accord avec le Sénat, des sénateurs peuvent rester pendant 15 jours ou 1 mois dans une juridiction. L'expérience apporte une meilleure connaissance du terrain et est jugée positive.

Les représentants de la Commission européenne expriment le souhait de cette Commission de voir se construire une justice au niveau européen. En matière pénale, le mandat d'arrêt européen a simplifié les procédures de remise d'une personne à l'Etat requérant. Mais il faut aller plus loin, par exemple par l'interconnexion des casiers judiciaires. Il existe déjà un projet pilote entre l'Allemagne, les Pays-Bas, la Belgique. En matière civile, l'objectif est de supprimer l'exequatur pour faire en sorte qu'une décision rendue dans un Etat soit reconnue dans un autre Etat.
La Commission soutient le RECJ en lui assurant une subvention permanente.

La Commission européenne attend des projets (date limite 13 juillet) pour tout ce qui permettra de faciliter les échanges entre les juridictions, par exemple, un projet d'accueil des justiciables pourrait être mené dans plusieurs juridictions.

La Commission européenne a actuellement deux chantiers en cours :

1) un forum d'évaluation de la justice : cette évaluation s'effectuera auprès des magistrats (juges-parquets), des juristes, des auxiliaires de la justice, des citoyens . Il est prévu 4 réunions par an avec la détermination d'un thème par an.
   Les objectifs sont d' identifier les besoins et d'évaluer le niveau de satisfaction.

2) la reconnaissance mutuelle des décisions judiciaires.

Après la pause du déjeuner, la session de l'après-midi se déroule de manière interactive.

Quatre groupes de travail du RECJ présentent leurs rapports et l'assemblée est invitée à prendre position sur quelques thèmes : les questions sont projetées sur un écran géant et nous recevons un boîtier qui permet de transmettre les réponses , en sorte que le nombre et le pourcentage d'opinions majoritaires ou minoritaires s'affichent immédiatement.

Les thèmes suivent sont ainsi abordés :

Mission et vision : comment travaillons-nous, comment évaluons-nous les résultats ? Financement des Cours et responsabilité. Gestion de la performance. Confiance mutuelle.

Je n'ai pas assisté à la dernière matinée de session qui était consacrée au rapport du Secrétaire général du RECJ et aux discussions sur le fonctionnement et les activités du RECJ. L'assemblée générale 2008 du RECJ aura lieu à Budapest.

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The Current Situation in the Council of Europe Member States[1]

Mr Justice Richard AIKENS

Introduction

This presentation is based on the work that has been done by my colleagues in England and France: Sir John Thomas[1] and Mdme Martine Valdes – Boulouque. Sir John and Mdme Valdes – Boulouque[2] have produced Preliminary Reports based on a consideration of the answers to the Questionnaire that was sent out by the Consultative Council to members of the CCJE in November 2006. Sir John's report concentrated on the States which have no High Council of the Judiciary or similar body in place at present. Mdme Valdes – Boulouque's report concentrated on those States that do have a High Council or similar body.

My task this morning is to try and summarise the work in those two detailed reports. I wish to pay tribute to the hard work that my colleagues have put into their reports. I emphasise that my summary cannot do full justice to the work that they have done. Colleagues must study those reports carefully if they wish to discover in detail the position in Member States.

The two reports both start from certain common premises, which must be fundamental to our study of a model structure for the administration of the judicial system in a democracy in the countries that are members of the Council of Europe. The first premise is that no democratic state in Europe either can or does question the fundamental requirement that all states and their citizens must exist under the rule of law. The second premise is that all states accept that there must be a separation of powers, so that the judiciary and the judicial system must be independent of the executive and the legislative arms of the state. The third premise is that it is universally accepted that no judge should be subject to the power of another judge in relation to either the procedure or the determination of the merits of a particular case, save by means of an appellate process.

I would suggest (as does Sir John Thomas in his paper – para 8), that it should follow from those premises that the independence of the judicial arm of the state and its independent working cannot be guaranteed unless five basic requirements are fulfilled. These are: first, that there is an adequate provision of finance and a proper administration for the machinery of justice so as to ensure that cases before the courts – whether criminal or civil or administrative – are heard promptly and without pressure. Secondly, that both the appointment and the promotion of judges are based solely on merit and the proper training of judges. Thirdly, that the judges themselves must observe code of ethical conduct that has been laid down – what my Francophone colleagues would call *déontologie* – and a there is a proper system to ensure that those that transgress this code are disciplined. The fourth requirement is that the manner in which court business is organised and conducted must be decided by the judiciary itself, not the executive. The fifth requirement is that there must be proper security of tenure. Other requirements such as immunity from suit and the safeguard of judicial salaries are really aspects of those five fundamental requirements, particularly the last.

There is no doubt that all countries of the Council of Europe would accept these fundamental requirements in principle. But the way that they have been articulated in the judicial structures that have been set up and in the relations between the judiciary and the legislative and executive arms of the state vary enormously. That is clear from the answers to the questionnaires. I must now try and summarise the present state of affairs.

The Basic Division between countries that have a High Council or similar body and those that do not

The primary division in the structure of the management of the judiciary in the various member states of the Council of Europe is between those countries that have a High Council of the Judiciary (or similar body) and those that do not. This is a practical division. There are some instances where there could be debate on whether the judicial structure fell into one group or the other. In some countries, such as Ireland, there is an express statement that its Court Service is not a Council for the Judiciary.

Bearing in mind that this is a practical division, it would seem that there are 23 countries that do have a High Council or equivalent – I will use the term HCJJ in future for short. There are some 16 countries that do not have an HCJ.[3]

In respect of those countries that have not adopted the HCJ model, the structures that they adopt can be

[1] Presentation made at the 3rd European Conference of Judges Which Council for Justice?" (Rome, 26 – 27 March 2007)

subdivided into three categories. These are: first, those countries that have a Court Service or Court Administration, which provides the Administration of the Courts. Examples are Denmark; Ireland, Norway and Sweden. The second sub – category consists of countries that have a Ministry of Justice that provides the administration of the courts – such as in Austria, the Czech Republic, Finland, the UK and Germany – there are others of course. Thirdly there are those countries where there is a system with distinct features that make it – with respect – difficult to categorise: such as Cyprus, Estonia, Lichtenstein and Switzerland.

In those countries that have an HCJ or equivalent it is noticeable that they have adopted different names; that they have different compositions and different powers and that they vary considerably in the numbers of members and how they are appointed. It is difficult to identify common features in them.

Both reports emphasise that the type of judicial administration model that has been adopted by that country is the result of its political history, traditions and culture. These are facts that we must not forget. I would suggest that they have to be carefully borne in mind when searching for the route to the future.

In the hope that it will be easier to follow the description that I give, I will consider first those countries that have adopted the HCJ model. I will then consider those that have not.

Countries that have adopted the model of a High Council of the Judiciary or a similar body.

The matters that have been considered in Mdme Valdès – Boulouque's paper are, in summary: (i) the size of the HCJ overall; (ii) the composition – in particular whether there is a majority of judges or not; (iii) the method of appointment to membership of the HCJ; (iv) the terms of office of the members of the HCJ; (v) the powers and duties of the HCJ.

At the end of the analysis of the current position in those countries that have adopted the HCJ model, Mdme Valdès – Boulouque has concluded that there are basically two broad "models" of HCJ. First there is the "Northern European" model. The role of such HCJs is more and more centred on the administration of the machinery of justice, in particular in relation to budgets, and the administration of the courts and tribunals. The Netherlands example is perhaps a paradigm case. Secondly there is the "Southern European" model, where the emphasis is more on the administration of the judges themselves – in relation to recruitment, training, promotion and appointment to particular offices. Perhaps France and Italy are prime examples of this type of HCJ.

Membership of the HCJ: On analysis it appears that in the majority of countries with the HCJ model, the HCJ has a majority of members who are judges (or equivalent).[4] Some are composed entirely of judges; some have an equal member of judges and others – what in English we would call "lay" members – that are not qualified as judges. The paper notes that even where the judges are in a minority, it is only by one or two. The size of the HCJs varies from 5 for Turkey to 44 for Belgium. The term of membership is usually between 3 – 6 years. Some countries permit renewal of membership after one term of office; others do not.

In the majority of countries, members are not permitted to engage in activities that are incompatible with membership of the HCJ. Thuse they cannot, at the same time, be politicians; members of the executive or civil service. But that is not universally the case.

Appointment of the Membership: Usually the judge members are appointed by their peers, although in some cases, senior judges are automatically members of the HCJ. In respect of non – judicial members, there are a variety of appointing bodies. Sometimes it is the executive, in which case it is usually either the Head of State or the responsible Minister. Sometimes the legislature appoints and sometimes it is both executive and legislature. In some cases other professional bodies, such as the association of advocates, or academic institutions, are entitled to nominate one or more members of the HCJ.

Roles of the HCJ: The paper notes that there is a great diversity in the roles of HCJs. However, it notes that there are five principle areas in which the HCJs exercise power or influence. It is worth considering these.

First: The power to nominate candidates for posts or to propose candidates for posts as judges. There is no uniformity with regard to this role. Some HCJs have sole responsibility for the nomination of candidates to posts. Some are entitled to propose a candidate but cannot decide who will actually be nominated to the post. Yet others are entitled to

advise. In some cases there is a mixture of powers and the precise nature of the power depends on the particular post under consideration.

Second: **Discipline and ethics (déontologie)**: Some HCJs exercise full control over discipline. Some initiate disciplinary action but then the procedure is carried out by another body. Some HCJs are involved, but they act in conjunction with either the Ministry of Justice or the Head of the Judiciary. In yet other cases, the HCJ is excluded entirely from the question of discipline. However, in all cases the HCJ is responsible for judicial ethics and standards and the production and dissemination of a Code of Standards and Ethics.

Third: **Budget and Administration**: There is great diversity with regard to this most important power. In a small number of cases, Norway, the Netherlands and Denmark, the HCJ is responsible for the budget. In other cases, they are entitled to propose a budget but do not determine it: eg. in the case of Georgia. Others can give advice on the budget, eg. Belgium, Bulgaria, Cyprus. Others are entitled to approve the budget, such as in Estonia or Lithuania.

Those countries that control the budget, ie. Norway, the Netherlands and Denmark, are also responsible for the administration of justice and the use of the budget. In others there may be an indirect influence by giving advice or recommendations.

With regard to the budget of the HCJ itself, in the majority of cases the HCJ does not have a budget that is distinct from that of either the Ministry of Justice or the budget of the courts and tribunals. Examples of this are provided by Portugal, Cyprus, Estonia, Lithuania, Czech Republic, Croatia and Turkey. On the other hand, n the Netherlands and Denmark the HCJ has the power to negotiate its own budget, even if that then comes within the total budge of the Ministry of Justice.

Fourth: **Training of Judges**: The paper notes that, increasingly, the training of judges is not under the control of HCJs but of independent bodies. These bodies are in charge of recruitment and examinations. This trend is explained by the growth of colleges for training judges. However, there is frequently cooperation between the training institutions and the HCJs, particularly in relation to training concerning ethics and professional standards.

Fifth: the right to give advice other institutions such as the executive and legislature: In certain states, HCJs have the power to give advice in relation to the preparation and passage of laws: eg. in Denmark, Belgium, Italy and Roumania. In France, the HCJ is entitled to give advice on all questions concerning the administration of the machinery of justice and in particular if an issue or proposed legislation touches the independence of the judiciary. The advice is given to the President of the Republic and is made public. This power has been used to great effect in recent attempts to change the composition of the HCJ.

Countries that have adopted other means for the administration of the Courts and Judges: the three sub – categories

As I have already pointed out,[5] Sir John Thomas' paper places into three categories the countries that have adopted the non – HCJ model for the administration of justice. The first is where there is an independent and autonomous body such as a Court Service or a Court Administration. This group comprises Denmark, Ireland, Norway and Sweden. In each case the independent body is governed by a Board. The composition of the boards and the method of appointment vary considerably. But the members are appointed for 3 or 4 years in all cases. The staff size varies considerably. There is also considerable variation in the ability of the executive and legislature to interfere with the administration of the courts.

The second sub – category comprises those countries where the court administration is undertaken by the Ministry of Justice itself. This is the system adopted in eight states: Austria, Czech Republic, Finland, Germany, Latvia, Luxembourg, Malta and the UK. It is noticeable that in four of these there are currently discussions or proposals for the formation of an HCJ or equivalent to run the administration of justice in that country.[6]

The report indicates that there are wide variations in how this type of system is run in each case. As I work under the system in England and Wales – not the same as Scotland or Northern Ireland, although they are all part of the UK – I hope you will not mind if I give you the broadest outline of the system there. The Ministry of Justice, called the Department of Constitutional Affairs ("DCA"), is responsible for the administration of justice. It obtains the budget from the Ministry of

Finance – called the Treasury. The DCA runs the courts through Her Majesty's Court Service, ("HMCS"), which is a division of the Ministry. HMCS provides the administration, the staff and the infrastructure of the courts, ie. the buildings, fittings and Information Technology. The Lord Chief Justice is responsible, with the Presidents of various Courts, for the control of and conduct of the business of the courts, but ***not*** their administration. There is a Judges' Council, headed by the Lord Chief Justice, on which there are representatives of all levels of the judiciary.[7] But the role of the Judges' Council is confined to the internal governance of the judiciary and to giving advice to the DCA and HMCS on areas of administration, budget issues and policy on the law concerning the administration of justice. There are separate bodies for the appointment of judges – the Judicial Appointments Commission; for judicial disciplinary matters and for the training of judges. The first two are independent of the DCA. The third is funded by the DCA, but is independently controlled by the judges. You may well think that this is a typical English muddle, without either logic or coherence. I would not be able to disagree with that view, but it is the product of our history and the English emphasis on practicality. The main problem at present is the fact that the judges are responsible for the conduct of the courts, but they have no control over the budget whatsoever. In my person view this is now producing difficulties and tensions within the system.

I return to the analysis in Sir John Thomas' report. It places five states in a third category, where there is a mixture of the HCJ model and other means of administration of the machinery of justice.

I would like to consider a little further the analysis of the non – HCJ countries in relation to four important areas. These are (i) the provision of finance and the administration of the machinery of justice; (ii) the appointment and promotion of judges; (iii) the training and discipline of judges and (iv) relations with the executive, legislature and the public.

Four Aspects of the Administration of Justice and Judges in non – HCJ countries.

Finance and administration: In three countries, Denmark, Ireland and Norway, where there is an autonomous Court Administration or Court Service, the financial provision is made through the Ministry of Justice. That body prepares the budget. In Sweden it is the Court Service itself that prepares the budget. In all four cases the autonomous court administration runs the courts, except that the allocation of cases is undertaken by a judicial body or person.

In relation to these autonomous court administrations, an issue has arisen about who is to examine and report on the efficiency of the courts. Should it be the autonomous body itself; the executive of the government or some other body? This issue remains unresolved.

In countries where the Ministry of Justice is in charge of finance and administration, it is the ministry that will work out the budget, but it will have to submit it to the finance ministry in most or all cases. The responsibility for the administration of the courts varies. In Austria, for instance, the President of each court is given considerable responsibility for the management of the court. But in the Czech Republic it is the administrative officials who manage the resources and the courts, although the staff work under the authority of the President of the Court and he organises the judicial business.

In the third category, the regime as to finance and administration varies. For instance in Estonia, the Supreme Cout makes its own proposals for its budget to the Ministry of Finance, but the lower courts do so through the Minister of Justice. In Japan[8] the Supreme Court Judicial Conference calculates what is needed and submits the budget to the cabinet each year.

The appointment and promotion of judges: The system for the initial appointment of judges and their promotion varies considerably. Some countries have Judicial Appointments Boards, such as Denmark, Finland, the Netherlands and the UK. In other countries, such as Austria, the Czech Republic and Estonia, the executive appoints the judges, but on the advice or recommendation of a council. The latter may consist entirely of judges or have other members, representing (for instance) advocates and the public.

As for promotion, there is, once more, a very considerable variation in the methods used. In some cases the President of a Court has much power or influence on promotion. In others there is a much more formal structure for promotion, similar to the process for initial appointment.

Training and Discipline: Sir John's report notes the statement in the **CCJE's Opinion No 4 of 2003**, at paragraphs 17 and 18, where it recommends that the training and discipline of judges should not be carried out by the same authority. It also recommends that the training authority should have its own budget so that it can devise and implement suitable training programmes in accordance with the needs of the

judges and the administration of justice.

These recommendations have been carried out in many countries, whether they have an autonomous court service or the administration of justice is run by a Ministry.[9] Thus, Ireland has a Judicial Studies Institute for training. England and Wales and Scotland both have Judicial Studies Boards, which are run by judges, although the Ministry of Justice provides the budget in each case. In Germany the provision of training is regulated by law and the administration is shared between the judges themselves, the associations of judges and the Ministry.

As for ethics and discipline, the position remains varied. Not all countries that have the non – HCJ model have a modern written Code of Ethics: eg. Cyprus, Denmark, Ireland, Lichtenstein, Sweden and Finland[10] do not do so. In Estonia, Hungary, Lithuania, Malta and the UK there is a written code of ethics. In others, the development of a written Code is underway.[11]

Some states have special bodies that deal with complaints and discipline, such as the Czech Republic, Denmark, Estonia, the UK. In some countries there are special courts for dealing with disciplinary matters. Thus, in Lithuania disciplinary proceedings are instituted by a Judicial Ethics and Disciplinary Commission before the Judicial Court of Honour.

Relations with the executive, legislature and the public:

In general the rule that neither the executive nor the legislature should be able to investigate individual cases or the conduct of individual judges is kept. There are individual exceptions, which are noted in para 94 of Sir John's report.

An area which is of great importance is the judiciary's relations with the public. Unlike some judges in the United States of America, judges in countries within the Council of Europe are not elected by popular vote. But we as judges must be accountable to our citizens for the quality and performance of the judicial system as a whole. We in our turn must ensure that our fellow citizens can be confident in the ability of the judiciary and machinery of justice to do a proper job. By that expression I mean an ability to hear and determine cases with independence, impartiality and within a reasonable time.[12]

Some states have established a communications unit for dealing with the press, TV and radio and for providing the media with information about the administration of justice. In some cases, this is dealt with through the Ministry of Justice. So far as attacks on the judiciary are concerned, some countries have adopted the recommendations of the CCJE (para 55 of **Opinion No 7**) that there should be a system of support to deal with attacks on a particular judge or the courts by the press or other media. But others have not put special arrangements in place. In others it is the Judges' Associations that deal with this problem. It is a very delicate area.

Conclusion

It will be clear from this short summary of the detailed work of the two reports that have been prepared that there is a very great variety of ways in which countries have approached the issues of: (a) ensuring judicial independence and (b) ensuring an independent, fair and efficient disposal of disputes between citizens and between citizens and the state. It is not for me to comment on whether one particular structure or another should be adopted for countries to use as a model. Ultimately, what we are concerned with is the best way to fulfil the five fundamental requirements that I mentioned at the outset of this paper, upon which rest the independence of the judiciary and the independent provision of justice for the citizens of all democratic states.

I look forward to the debate on how we might better achieve those vital aims.

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[1] Lord Justice Thomas – judge of the Court of Appeal of England and Wales

[2] Inspecteur Général adjoint Insp judiciares français.

[3] Figures taken from para 1 and f Report

[4] In some countries state prosecut judiciary for this purpose

[5] Para 8 above.

[6] Czech Republic; Finland; Latvia; A

[7] There are no representatives of the the legal profession on the Judges' C

[8] The questionnaire was sent to Ja helpful answers.

[9] This may also explain why there ar by separate bodies in most, if not a the HCJ model.

[10] There was a code written in the si the Thomas report, fn 71 on page 3

[11] The Czech Republic, Netherlands

[12] See: Art 6 of the European Conven