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SUMMARY REPORT OF THE MEETING HELD BY THE EUROPEAN  
ASSOCIATION OF JUDGES - REGIONAL GROUP OF THE IAJ  
San Juan (Puerto Rico) - October 12, 1997

The meeting was chaired by Mrs Pâquerette Girard-Thuilier, First Vice President of the IAJ, President of the European Association of Judges - Regional Group of the IAJ. In attendance were the President of the IAJ, Mr Ramon Rodriguez Arribas, the Honorary Presidents Mr Voss and Mr Woratsch, the Vice Presidents of the IAJ, Mr Broekhoven and Mr Markel, the Secretary General, Mr Bonomo, the Deputy Secretaries General, Mr Meriggiola and Mr Oberto, the Assistants to the Secretary General, Mr D'Agostino and Mr Gargiulo, as well as the following delegates, representing their respective associations, which are members of the International Association of Judges and of the European Association of Judges:

Austria	Mr Markel
Belgium	Mr Henkes
Czech Republic	Mr Filemon, Mr Pelikán and Mr Vyklicky
Denmark	Mr Knudsen
Estonia	Mr Jõks
Finland	Mr Kiuru
France	Mr Kriegk and Mr Lernout
F.Y.R.O.M.	Mrs Tsatsa-Nikolovska
Germany	Mr Henning
Greece	Mr Sergakis
Iceland	Mr Magnusson
Ireland	Mr Keane
Israel	Mr Lindenstrauss (observer)
Italy	Mr Cicala
Liechtenstein	Mr Hagen
Lithuania	Mr Valancius
Netherlands	Mr Broekhoven and Mr Njénhof
Norway	Mr Smukkestad
Portugal	Mr Reis Figueira
Romania	Mr Bruder and Mrs Costiniu
Slovakia	Mr Bradac, Mrs Brunovska and Mr Majchrák
Slovenia	Mrs Tratnik and Mr Zalar
Spain	Mrs Atienza
Sweden	Mr Carrick and Mr Francke
Switzerland	Mr Gass and Mr Zappelli
United Kingdom	Mr Fricker and Lord Justice Phillips

1. Welcome of the President and the organisers

2. Information

2.-1 general information of the President

The President opened the session and thanked the Puerto Rican colleagues for their impeccable organisation of the meeting and their hospitality. She then said that Mr Agius (Malta) had apologised for not attending this meeting of the EAJ on account of financial reasons. She



mentioned also that all the delegates had received the agenda, that this time had been assembled in a different way, in order to allow everybody to share all the topics concerning the Council of Europe and the European Union; she had therefore divided this agenda in three parts: general topics, civil law and penal law.

Mrs Girard-Thuilier thanked the Secretariat General for the realisation of a document containing the conclusions of the First Study Commission of the IAJ from 1980 until 1996. Mr Bonomo said that every year the new conclusions would be added to this collection and distributed to all national associations.

The President reminded the participants of the fact that the Honorary President of the IAJ, Mr Abravanel, had sent a questionnaire to all the associations concerning a research on the independence and the organisation of the Judiciary for the International Study Centre on the Judiciary of the Foundation "Justice in the World". The associations of Ireland, F.Y.R.O.M., Norway and Romania were kindly requested to send their replies to the questionnaire.

Mrs Girard-Thuilier said she hoped that all the national associations had received five copies of the first issue of the EAJ Journal "Euroiustitia". She added this was an long-standing wish, shared by herself and by Mr. Voss, which has finally come true. She therefore warmly thanked our colleague Maja Tratnik for having accepted to shoulder the heavy burden of preparing and publishing this journal. She invited all the delegates to write — in the two working languages of the EAJ — short articles for this publication. She suggested also that all the associations write a document concerning their own characteristics and upon the peculiarities of the problems met by the Judiciary in their respective countries. In the next issue a summary of the meeting in Puerto Rico would be published. She added finally that some copies of the journal are also sent to the European Parliament, to the European Commission, to the Council of Europe, as well as to some well known politicians, to the training institutions and centres for judges. She invited the delegates to suggest to Mrs Tratnik the names of other possible addressees of this publication.

The Honorary President Mr Voss thanked the President Girard-Thuilier as well as Mrs Tratnik for the realisation of this journal and invited all the delegates to participate in this work. Mrs Costiniu said that her association had not yet received the journal. Mrs Tratnik said she had sent five copies of the journal to all national associations on 17 September 1997; she had some copies with her, which could be given to all the delegates who still lacked them. The delegates agreed upon considering sufficient for the moment the number of five issues for each association.

## 2.-2 general information of the Secretariat General

The Secretary General Mr Bonomo asked the delegates to communicate to the Secretariat General the e-mail addresses of the associations that have access to Internet. He added that all the documents transmitted by e-mail are also sent through the ordinary mail. Mr Bonomo informed the delegates that Mr Bosseler, head of the delegation of Luxembourg, had recently died.

## 3. Activities upon general and statutory topics

### 3.-1 Justice through figures (table and commentaries)

Mrs Girard-Thuilier distributed a copy of the table containing the replies to the questionnaire "Justice through Figures". She said she had not been able to send it before, as she had to wait for all the replies; the last ones had arrived just three days before her departure for Puerto Rico. She invited the assembly to make comments upon the results of this research. She also asked all the associations to check whether the figures written on the table for each country were correct. The delegates from several countries added specifications and made corrections to the figures on the table.

In short, concerning the proportion between the number of judges and the number of inhabitants, the President remarked that there were roughly three large categories of systems. To the first group belong those countries in which this ratio varies between one judge for 3,000 inhabitants (Germany) and one judge per 10,000 inhabitants (France). In an intermediate situation we find Spain, with a ratio of one judge per 13,000 inhabitants. In the third group there are the Anglo-Saxon and Nordic countries, where the ratio varies between a judge per 16,000 inhabitants (Denmark) and one judge per 20,000 inhabitants (Great Britain and Wales).

If we go a little bit further in the analysis of the first group, we remark that the great majority of the European countries show a ratio which is situated between one judge per 3,000 and one judge per 5,000 inhabitants (Austria, Belgium, Finland, Germany, Greece, Luxembourg, Portugal,



Slovakia, Slovenia, Sweden). At more of a disadvantage are Estonia and Switzerland, with a ratio of one judge per 6,000 inhabitants; finally France is situated very near to the second group, with a ratio of one judge per 10,000 inhabitants. The President remarked that through these figures it was possible to see clearly how much attention governments pay to justice in each country.

The President thanked the delegates and remarked that this was the first time that someone had tried to produce statistics of this kind. She asked the delegates to let her know if they thought it right to publish these figures and to transmit them to the European Commission as well as to the Council of Europe, which is working on the topic of the efficiency of justice. She also invited the delegates to use this table in dealing with their respective governments (a corrected table is enclosed).

### 3.-2 European Judge's Charter (Council of Europe)

The President mentioned that during the month of July 1997 the Council of Europe had organised a seminar on the European Judge's Charter; the EAJ and the MEDEL had been invited. Mr Bonomo, Mr Broekhoven, Mr Carrick and Mr Cornu (Switzerland) had represented the EAJ. The Council would like to draft a recommendation upon this topic, by merging the European Judge's Charter of the EAJ and the Charter drafted by the MEDEL. During this meeting the EAJ delegates had presented the opinions of our association, underlying that the MEDEL charter did not seem to be applicable either to the Common Law systems or to the systems of the Central and Eastern European Countries. It seemed that the Council of Europe wanted to elaborate only very general principles. The next meeting of this working group would take place in Strasbourg.

Mr Broekhoven mentioned the conclusions drawn at the end of the Strasbourg meeting. He said that the participants agreed upon the fact that the recommendation should specify what general principles should be respected in order to grant any citizen the basic right to an upright, competent, independent and impartial judge; the recommendation would be dealing with the conditions for selecting, recruiting, nominating and promoting judges, with the guarantees of independence, impartiality, with rights such as "inamovibilité" (the right not to be transferred against the judge's will), judges' duties and responsibilities, incompatibilities, remuneration and pensions. The minimal qualifications required for the candidates called to exercise judicial functions, as well as the European rules for the judicial training, should also be included. The following step would consist in drafting a blueprint for a European Charter: for that reason a new meeting would be organised in Strasbourg, probably during the spring 1998; the results of this meeting would be presented at the meeting of the presidents of the Supreme Courts which will be held in the autumn of 1998 in Ukraine. In any case these proceedings will take a very long time, and it could also take many years before the Council issues a recommendation.

Mrs Girard-Thuilier asked all the delegates, in case they should be invited — either personally or as representative of their respective national associations — to activities organised by the Council of Europe upon delicate topics, such as the judge's charter, to inform either her directly or the Secretary General.

### 3.-3 CEELI, the new associations of CEEC - conference upon "Judges' associations", Neuchâtel 8-10 September, 97 (Mr Woratsch, Mr Bonomo)

Mr Markel explained the importance and the effectiveness of the action carried on during these last five — six years by the CEELI (Central and Eastern European Law Initiative), which is a branch of the American Bar Association, in the central and eastern European countries, as well as in the Asiatic countries which were part of the Soviet Union. The CEELI organises a wide range of activities and especially of seminars, in which it presents not only the Common Law systems, but also the systems of Continental Europe. Mr Markel has taken part in a lot of these seminars and he is in contact with Mrs Peppys, who is the person in charge for CEELI for the problems of the judiciary of all central and eastern European countries. Within the framework of this activity Mr Markel has participated, on behalf of the EAJ, in a meeting organised in Riga on 3-4 April 1997 by the Latvian Association of Judges and by CEELI on the themes of Judges Associations and of training centres for judges.

Currently the efforts of CEELI are aimed at creating judges associations in the Eastern countries, especially in those countries which were part of the former Soviet Union. As regards the Council of Europe, Mr Markel said he had ascertained a certain disproportion between the number



of judges and experts of MEDEL invited by the Council of Europe in comparison with those of the EAJ.

Mrs Girard-Thuilier said then that on 8-10 September a seminar had taken place in Neuchâtel on the topic of the national judges associations, their role and their statute. Mr Abravanel, Mr Bonomo, Mrs Gambachizde, Mr Woratsch represented there the EAJ. Mr Bonomo remarked that the meeting had been organised by the Council of Europe as well as by the Swiss Association. As regards the relations between MEDEL and the Council of Europe, this body had begun to ensure a larger participation of IAJ representatives. Actually only two MEDEL delegates attended the Neuchâtel meeting. He added that the conference in Neuchâtel was attended also by a remarkable number of delegates from the Eastern countries. The topics dealt with had been very "simple", as for example how to set up judges associations. The opportunity of drafting codes of judicial ethics in the different countries was also discussed.

Mr Woratsch complained that the Council of Europe had organised a meeting for all the central and eastern European countries without any kind of distinction, even though the situations of these countries are very different: this involves the risk that some countries are not at all interested in some of the topics dealt with. He also reported that recently, during a seminar organised by the Council of Europe at Banska Bistriza (Slovakia), the delegates of the Slovakian association of judges had been prevented from participating in the meeting. Mr Kriegk proposed that the reports on this kind of meeting be published in the journal "Euroiustitia".

The assembly decided to charge the President to take official steps with Mr De Vel, following the example of the Banska Bistriza meeting, in order to underline that it is contradictory for the Council of Europe to organise, on one side, meetings upon the setting up of associations of judges and to ignore, on the other side, the very existence of these associations. The President will also write a report to be published in the EAJ journal.

#### 3.-4 Council of Europe's plan for 1998 (S. Gass)

Mrs Girard-Thuilier reminded the assembly about the fact that every year, at this period, the Council of Europe organises a meeting of the NGOs in order to draft an action plan for the next year for the countries of Central and Eastern Europe. Mr Gass said that this meeting had taken place from 29 September to 1 October and that he had attended it on behalf of the EAJ. He explained that during this meeting the representatives of the countries of Eastern Europe had spoken upon the Thémis and Démosthènes programmes carried on during 1997. The programme for 1998 is very similar to that of 1997. Finally he complained that for the seminar in Neuchâtel the Swiss Association, which had organised the meeting, had not received any official invitation. Mrs Girard-Thuilier said that she would speak also about this problem with Mr De Vel and Mrs Wisniewska Cazals.

#### 3.-5 Grotius programme (EU Commission)

Mrs Girard-Thuilier said that on this topic nothing particular had to be added, after the information given in Milan. She remarked that the programme basically suits institutions and training centres; in particular the ERA would be financed for the meeting organised with the MEDEL, which would be mentioned later. She hoped that the working group on the Schengen treaty could organise some form of activity with the subsidy of Grotius programme.

#### 3.-6 universal judges' charter

The President said that after the last meeting Mr Abravanel and she had revised the French version of the draft. The Canadian colleague Mrs Mailhot drew up the English version. The draft had not yet been discussed inside the Presidency Committee; it would probably be approved before the end of the Puerto Rico conference by the Committee and it would be submitted to the Central Council during the meeting of next year.

#### 3.-7 the new Treaty Maastricht II

Mrs Girard-Thuilier said that recently the final version of the Amsterdam treaty had been submitted for the signature of the ministers. She distributed the final French and English versions of Chapter 2, concerning the activity of Justice ("Progressive establishment of an area of freedom, security and justice"). Mrs Girard-Thuilier underlined that it was the first time that an official



document of the European Union speaks of a "justice area", i.e. of an European judicial common space. This topic would also be dealt with in the next meeting.

#### 4. Activities in the field of civil law.

Before beginning with the point of the agenda concerning the community environmental law, the President said that she had been contacted by the French association of the High Courts Experts, which organises, with the help of the European Commission, a seminar on the topic of the relations between court experts and judges, with a round table on comparative law. This association is looking for foreign judges (especially from Germany, Spain and United Kingdom) who are able to prepare reports, in French or in English, upon this theme. The seminar will take place on 6 March 1998 in Paris, in the Senate palace.

##### 4.-1 community environmental law

Mrs Girard-Thuilier told the participants about the seminars which had taken place on the topic of community environmental law in Strasbourg on 18-20 June 1997 in French and in Trier on 4-6 September in English, with the organisation of the EAJ. She also mentioned the conference in Louvain La Neuve (July 1997) and the seminar organised by the Greek government during the month of October. She recommended that the associations inform all the judges concerned about these initiatives. The two sessions organised by the EAJ have been opened also to the countries which are not members of the European Union.

She added that for the moment she had no news either from ERA or from the European Centre of Strasbourg about the dates of the next training activities. Further information would be given as soon as possible.

##### 4.-2 consumer law

The President explained that this file had been "sleeping" for more than one year, following the transfer of the officer who was previously in charge of it. Since another officer, the Portuguese Mr Tenreiro, has been appointed to this post, this file has been resumed. After the Milan meeting Mrs Girard-Thuilier wrote a letter to the European Commissioner, Mrs Bonino, and a meeting with the CCBE (association of the European lawyers) and the European consumer association had been organised. The aim was to put on the table the different ideas and to expose the point of view of the EAJ.

The first objective of the Commission was to simplify the non-judicial settlement of disputes. The second objective was to harmonise judicial proceedings in civil law matters in the field of small claims. If the Commission goes on in this way, it would be necessary to start again the activities of our working group. She mentioned that the group was formed by the associations of France, Germany and the Netherlands; she hoped that it could be opened at least also to a Common Law country and to a country from southern Europe (Italy or Spain).

##### 4.-3 legitimacy and affiliation law (conference in Malta)

Mrs Girard-Thuilier said that a conference on the legitimacy and affiliation law had taken place in Malta. The Council of Europe wants to reach an harmonisation of the legislations of the different countries in this field. Our colleague Agius represented there the EAJ. As this colleague could not attend the meeting in Puerto Rico, the President would ask Mr Agius to send her a written report.

##### 4.-4 convention of Brussels II (European executory title - eurojuris conference, Nov. 97 - ERA/MEDEL conference, Dec. '97 - ERA congress 98)

The President explained that the European Commission thinks by this time that the need of an exequatur for the judgements represents a hindrance to the European single market and consequently the Commission has raised the question whether the exequatur should be abolished. After the enquiry made in the month of January, the Commission has gathered a group of experts, composed of university professors from different parts of Europe. In this group only two professional experts were represented: the EAJ and the association of bailiffs ("huissiers"). The European Commission, after having read the replies and the remarks to the questionnaire, has drawn a certain number of modification drafts of the Brussels convention. The main proposal is to add to



the Brussels convention a sort of "passport" for the decisions, i.e. a certificate in which the judge explains whether his decision is enforceable in his own country. Mrs Girard-Thuilier asked if any colleagues were interested to work upon this theme.

The President said that in November a conference on this theme would take place in Berlin, organised by "Eurojurist", which is an association of lawyers, with the financial aid of the "Grotius" programme.

The same topic would also be treated in the congress organised by ERA (Europäische Rechtsakademie) in co-operation with EAJ, with the French ENM (Ecole Nationale de la Magistrature), the German DRA (Deutsche Richterakademie) and MEDEL, on 3, 4 and 5 December 1997 upon the application of the Brussels convention and on the future perspectives. Regarding this topic the assembly ascertained that no invitation had been yet sent by ERA. The President invited all the interested associations to take contact with her or to directly contact ERA (tel. +49.651.147.100 ; fax +49.651.147.1020), as some places are reserved for EAJ. Mrs Girard-Thuilier said that it is not only a question of civil procedure: this is also a first step in the direction of the unification of the European judicial space. Finally she said she would contact ERA.

Mr Kiuru informed those present that in March 1997 a seminar on the enforcement of judgements had taken place in Helsinki. Mr Kiuru complained that all the replies to the questionnaire, except that of France, had arrived too late. Mr Kiuru distributed a report on this seminar.

#### 4.-5 criteria for judges' activity in civil matters (Council of Europe)

Mrs Girard-Thuilier said that last year the Council of Europe had published a collection of the recommendations already adopted by the Council upon the rule of law and justice. As a conclusion of this document the plans for the activity in the following years had been included. One of these plans concerns the efficiency of justice. This very topic had been debated during a conference in Budapest in June 1996 on the efficiency and equity of civil, penal and administrative justice. The Council of ministers had then decided to set up a working group with the task of proposing measures for the evaluation of the means which could ameliorate the efficiency of justice, in the field of legal aid, "déjudiciarisation" (non-judicial treatment of certain cases), simplification of proceedings, simplification of documents and procedures of appeal. A committee of experts had been created, formed only by officers on behalf of the ministers of justice. Mrs Girard-Thuilier explained that she had asked Mr De Vel for the admission of the EAJ as an observer to the work of this committee of experts, as had happened many times in the past. As she had not received any reply to her request, Mrs Girard-Thuilier had met the officer in charge of this committee, Mrs Killerby. Mrs Killerby said that the members of this working group did not want to have observers. Recently the delegate of the Italian government has however explained to Mrs Girard-Thuilier that this problem had never been submitted to the experts group.

Mr Henkes said that the First Study Commission of the IAJ would debate this very topic during the Puerto Rico congress. He suggested that the EAJ presents the conclusions of this Commission to the Council of Europe. The assembly approved the proposition of Mr Henkes and decided not to create, for the moment, a working group, taking also in the account the fact that no official papers have yet been issued upon which to work.

After a lively discussion on the stand to take vis à vis the Council of Europe, the President remarked that — even though the Council of Europe is an intergovernmental body — it is regrettable that the subject of the efficiency of justice is dealt with without giving voice to the judges. She assured the delegates that she would speak of this topic in the letter she would write to Mr De Vel. Mr Markel suggested to take contact also with the Secretary General of the Council of Europe. This suggestion was approved by the assembly, which delegated the President to contact directly the Secretary General of the Council of Europe.

Upon the suggestion of Mr Henkes the President will contact the Secretariat General with other colleagues, who represent the different geographical elements of our association (delegates from Northern, Southern and Eastern countries).

#### 5. Activities in the field of penal law

First of all, the President said that she had decided to put an additional point on the agenda (No 5-1 bis) as, after she had prepared the agenda, the EAJ received an invitation from the



“Workshop on electronic crime and electronic business”, working group of the European Commission, which held its meeting at the beginning of that week.

#### 5.-1 application of the Schengen Treaty

Mr Markel said that until now two sessions of the working group on Schengen Treaty had taken place in Vienna. Concerning future activities of his working group, there are two possibilities: a) keeping on with this kind of work as a working group of the EAJ only, possibly opening the group up to other countries; b) finding a sort of partnership with other European organisations, such as ERA or the Council of Europe. Until now the member associations had to cope with major expenses. Mr Markel proposed therefore to use the Grotius programme, which brings however the disadvantage that all expenses should be advanced by member associations and that reimbursement would be limited.

Mr Markel proposed to continue the activities of the group under a more general title, as the Schengen Treaty does not form part of the treaty of the European Union. This title could be that of “The co-operation among European judicial powers in the criminal field”. He added that next year the group should organise a meeting and therefore it will be necessary to submit to the Commission the working and budget plan before the end of the month of March 1998.

#### 5.-1 bis electronic crime and electronic business

Mr Markel explained that he had participated as an expert on behalf of the EAJ, with Mr Meriggiola who was there for Italy, in a two days conference concerning electronic crime and electronic business. The European Commission is preparing a directive on this topic. At present the Commission faces the problems posed by the encryption of messages and by electronic signature. He added that on this matter the institution which is in the forefront is the Council of Europe and that the European Commission uses the experts of the Council. The assembly decided not to set up a working group on this topic for the moment.

#### 5.-2 Corpus juris - Mrs Delmas Marty (the European public Prosecutor)

The President distributed a document in French and in English, containing copies of some pages of the work draft under the direction of Mrs Delmas-Marty (Professor at Paris University) under the title “Corpus Juris”, concerning the problem of the creation of an European penal law and of the creation of an European Public Prosecutor, in order to protect the financial interests of the Union. The main objective is to fight against the diversion of funds paid by the Union. The expert group set up by the Commission has worked two years and has made some proposals in the fields of substantive law (definition of offences) as well as in the field of procedural law (especially the creation of an European Public Prosecutor). The President asked the delegates to express their points of view, especially on the necessity of creating a working group.

According to the delegates of Denmark, Iceland and Ireland, it was only a political matter, which had nothing to do with judicial power. They told the assembly that in many European systems the public prosecutor is not part of the judiciary and also the police is fully independent. The delegates from France, Germany and Portugal underlined on the contrary that the creation of a Community public Prosecutor falls under our competence, in order to avoid the fact that the creation of Europol gives birth to a police that is exempt from any form of judicial control. They mentioned that it should also be taken into account that frauds against the European Union are today a very big business, since the diversion of funds reach the amount of U.S.\$ 1,000,000,000 each year.

The assembly, after a lively discussion, decided to create a working group on this topic. The group would be led by the Honorary President Mr Woratsch and formed by the following associations: Austria, Belgium, France, Germany, Italy, Netherlands, Romania and Sweden.

The delegate from Iceland expressed the hope that the President send a written report on her activities and on the subjects on the agenda before the beginning of the meetings, in order to allow a discussion inside the associations before the meetings of the EAJ. The President answered that this was not possible, due to her burden of work. However, for topics such as the European Public Prosecutor, a working group would prepare a document which would be sent to all the delegates before the beginning of the meetings. She assured the assembly that the agenda of the next meeting would be lighter, in order to allow a broader discussion of the topics to be dealt with.

## 7. Miscellaneous.

Mrs Tratnik announced the willingness of the Slovenian Association of Judges to organise next EAJ meeting in Ljubljana (Slovenia) on 20-21 March 1998.

Concluding the meeting the President convened the next meeting to be held in Ljubljana on 20-21 March 1998. She warmly thanked once again the Puerto Rican colleagues for the perfect organisation of the meeting and for their hospitality.

The President of the EAJ  
Mrs Pâquerette Girard-Thuilier