European Network of Councils for the Judiciary (ENCJ)

Réseau européen des Conseils de la Justice (RECJ)

ENCJ STRATEGIC PLAN

OPERATIONAL PLAN 2011-2012

SUMMARY OF THE PROJECTS AND RECOMMENDATIONS

PROJECT "JUDICIAL REFORM"

Within the judiciaries of Europe broad consensus exists about the directions judicial reform should take. In nearly all countries judicial maps are being redrawn with the result that the judicial function will be concentrated in fewer courts, and judicial procedures are being redesigned with the aim of simplifying procedures, stricter case management and digitalization. Reduction of the volume of law suits is not in itself a goal, but the incidence of frivolous cases and delay tactics need to be addressed, while maintaining access to justice for all other cases, irrespective of the income of parties. The need is also recognized for better funding systems of the judiciary that guarantee its independence and promotes the efficient adjudication of cases. Finally, in many countries efforts are underway to organize the courts better. Redistribution of tasks, efficient allocation of cases over courts and judges and reduction of overhead are cases in point.

It should be noted that these reforms must be implemented with lower or at the best equal budgets, and that that makes implementation difficult. Fundamental reforms take time, and their costs precede the benefits. Nevertheless, these reforms are the best way forward. Short term cost reductions such as salary cuts do not contribute to necessary reform, and pose a threat to the functioning of judiciaries. Judiciaries should try to convince

governments that long term reforms are needed, despite the fact these reforms only gradually deliver cost savings, which furthermore are difficult to calculate in advance, as the frequent absence of cost-benefit analyses illustrates.

This choice is only possible if the starting point is taken, in the words of the Vilnius declaration, that "Every economic measure, however temporarily it is, and which will affect the Judiciary, must maintain the essential role of law in a democratic society. The Judiciary must guarantee, even under stringent economic circumstances, the right to access of justice, effective protection of fundamental rights and timely and qualitative good judgment of disputes."[1]

To guide judicial reform the following recommendations, which were explained in the previous chapters, are made. We first look at the **content of reform**.

Rationalization and (re)organization of courts, public prosecution offices and administration :

1) Concentration of courts and administration must be motivated by the need to provide high quality justice and more effectively use available resources.

2) Judiciaries should evaluate carefully whether net cost savings can be reached by concentrating courts, and must take into account that it could be many years before the desired savings can be effectively achieved.

3) Concentration of courts should be accompanied by increased utilization of the ICT (information and communication technologies) to reduce the frequency of necessary visits by parties in person to the courts. Also, ICT should be used to increase the visibility of court proceedings

Reduction of the number of cases:

4) All reforming programmes, including reduction of case loads and increases of court fees, must leave access to justice, as guaranteed by art. 6 ECHR, intact. Measures aimed at discouraging unmeritorious cases are useful, providing such measures do not impede meritorious cases going to court.

5) If court fees are increased, the financial circumstances of the parties have to take into consideration, either by differentiating tariffs or by legal aid.

6) Regulating access to appeal should preferably be done by the judiciary, taking the merits of cases into account, and not by mechanical legal rules.

[1] ENCJ, Vilnius Declaration on challenges and opportunities for the judiciary in the current economic climate, 2011, p. 2.

Simplification of judicial proceedings, improvement of case management and introduction of new technologies:

7) Simplification of judicial proceedings, improvement of case management and introduction of new technologies offer the chance to modernize the administration of justice, thereby improving access to justice, quality of justice as well as efficiency. All judiciaries need to adopt innovative programs to reach these goals

8) As these innovations require the modernization of procedural law and these programs require the close cooperation of all stakeholders especially judicial organizations, lawyers and government agencies responsible for the relevant legislation. Judges and prosecutors should proactively engage in developing and implementing new procedures, processes and technologies within the judiciary.

Financing of the judicial system:

As to reduction of salaries:

9) The remuneration of judges and magistrates must remain commensurate with their professional responsibility and high public duty.

10) The remuneration of judges and prosecutors should be constitutionally guaranteed in law, so as to preserve judicial independence and impartiality. All discussions and negotiations on remuneration should involve the judiciary.

As to improving the funding system:

11) The funding system of the judiciary should reflect its needs to be able to manage its caseload properly. Only in this way can timely justice be guaranteed.

12) While it is recognized that funding based on output requires the measurement of output and processing times (workload measurement), such measurement systems need to remain simple and the outcome should be used with caution to safeguard judicial independence. For instance, workload measurement norms should not be applied mechanically to individual cases.

13) To ensure and strengthen the separation of powers, the judiciary should be closely involved at all stages in the budgetary process and should be responsible for the financial management of the courts individually and as a whole, within the budgets allocated to them.

Court management and optimization of the workload of courts and public prosecution offices:

14) Redistribution of tasks within courts to allow judges to concentrate on their core judicial tasks is an important goal in itself, apart from the cost savings that may be reached this way. To be effective, judges must be provided with all necessary support. They must be able to rely on their staff and this requires highly qualified staff.

15) While maintaining a transparent mechanism, the allocation of cases to courts and judges should be made more flexible in order to utilize the deployment of judges better.

16) Reduction in overheads is desirable, but must be carefully balanced with increasing needs to have adequate information about caseload and processing time.

Turning to the process of reform:

17) It is essential that the judiciary, *judicial councils and* in particular judges and prosecutors be involved at each stage of development and implementation of reform plans. This is to ensure the independence of the judiciary, that reforms are effective and instill confidence.

18) The judiciary, under the lead of Judiciary councils, where these exist, should develop sensible proposals for effective reform. The goal of reform should be improvement of the overall excellence of justice. More effective administration results in improvements in timeliness and quality of delivery.

19) It is recommended that such proposals for reform are informed by the general directions outlined in this report. In particular, the combined simplification of procedures, stricter case management and digitalization offer a perspective for judicial excellence.

PROJECT "STANDARDS II"

The Report describes the identified and collected set of indicators referable to the minimum judicial standards defined in the previous Report on Development of Minimum Judicial Standards 2010-2011 drafted by the respective ENCJ Project Team. The Report focuses on indicators of standards regarding the specific topics considered by the Project Team during the meetings held in Vilnius, Brussels, and Palma de Mallorca (recruitment, selection, appointment and -where relevant- evaluation and promotion of members of the judiciary, including those related to the competent body to decide in this field).

The identified indicators of minimum judicial standards, which have been discussed and agreed upon by the members of the Project Team, have been classified in two chapters depending on the topic to which they refer:

a) indicators of minimum standards regarding the recruitment, selection, appointment and (where relevant) the promotion of members of the judiciary;

b) indicators of minimum standards in relation to the competent body to decide on the recruitment, selection, appointment and (where relevant) the promotion of members of the judiciary.

The work of the current Project Team has centred on the conviction that the identification of indicators related to minimum judicial standards in these particular fields provides a tool for self-evaluation of the respective judicial systems, which is also available for the subsequent evaluation of the compliance by the different European judicial systems with the minimum standards previously defined. In the view of the Project Team this will support the development of independent Councils for the Judiciary and contribute to the attainment of a common European judicial culture. Furthermore, when identifying the indicators of minimum standards concerning the topics of recruitment, selection, appointment and -where relevant- evaluation and promotion of members of the judiciary, including those related to the competent body to decide in this field, the Project Team has tried to avoid any overlapping with the goals of other projects already or currently implemented by the ENCJ, in particular the different Project Teams dealing with the topic of Councils for the Judiciary.

I. Indicators of minimum standards regarding the recruitment, selection, appointment and (where relevant) the promotion of members of the judiciary

1. Judicial appointments should only be based on merit and capability.

There requires to be a clearly-defined and published set of selection competencies against which candidates for judicial appointment should be assessed at all stages of the appointment process.

A) Is there a clearly-defined set of selection competencies against which candidates for judicial appointment are to be assessed at all stages of the appointment process?

B) Is the clearly-defined set of selection competencies published, for example by a website, and is an explanation of it available?

C) Is there an information point/office available in order to provide information about the selection competencies to candidates to judicial office and/or to the general public?

2. Selection competencies should include intellectual and personal skills of a high quality, as well as a proper work ethic and the ability of the candidates to express themselves.

A) Do the clearly-defined and published selection competencies include intellectual and personal skills of a high quality, as well as the proper work attitude and the ability of the candidates to express themselves?

3. The intellectual requirement should comprise the adequate cultural and legal knowledge, analytical capacities and the ability independently to make judgments.

A) Do the clearly-defined and published competencies regarding intellectual requirements comprise the adequate cultural and legal knowledge, analytical capacities and the ability independently to make judgments or decisions relating to the functions of the judicial office?

4. There should be personal skills of a high quality, such as the ability to assume responsibility in the performance of his/her duties as well as qualities of equanimity, independence, persuasiveness, sensibility, sociability, integrity, unflappability and the ability to co-operate.

A) Do the clearly-defined competencies regarding personal skills include skills such as the ability to assume responsibility in the performance of his/her duties as well as qualities of equanimity, independence, persuasiveness, sensibility, sociability, integrity, unflappability and the ability to co-operate? B) Is there an effective process for assessing whether candidates possess the relevant personal skills?

5. Whether the appointment process involves formal examination or examinations or the assessment and interview of candidates, the selection process should be conducted by an independent judicial appointment body.

A) Is the selection process conducted by a judicial appointment body that is independent from the Executive?

6. Where the appointment process includes assessment based on reports and comments from legal professionals (such as practising judges, Bar Associations, Law Societies etc) any such consultation must remain wholly open, fair and transparent, adding that **the views of any serving judge or Bar Association should be based on the relevant competencies, should be recorded in writing, available for scrutiny and not based on personal prejudice**.

A) If the appointment process includes assessment based on reports and comments from legal professionals, does any such consultation remain wholly open, fair and transparent? B) Do the arrangements in place for obtaining the views of any serving judge or Bar Association direct and ensure that such views are based on the relevant selection

competencies, that they are recorded in writing, available for scrutiny and are not based on personal prejudice, and that they are reasoned?

7. **Whilst the selection of judges must always be based on merit, anyone appointed to judicial office must be of good character** and **a candidate for judicial office should not have a criminal record, unless it concerns minor misdemeanours committed more than a certain number of years ago**.

A) Generally, is there a system in place designed to check that anyone selected for judicial appointment is of good character, i.e. has no criminal record, has a good reputation, and so on?

B) Is there a particular system in place to ensure that an appointment to judicial office is not made of a candidate with a criminal record, unless the record concerns defined minor criminal offences committed more than a certain, defined number of years ago?

C) Is there any specific system in place to check, where necessary, whether a candidate for judicial office has a good reputation personally, professionally and financially – e.g. through professional bodies or reliable, verifiable references?

8. **Diversity in the range of persons available for selection for appointment should be encouraged, avoiding all kinds of discrimination, although that does not necessarily imply the setting of quotas *per se*,** adding that **any attempt to achieve diversity in the selection and appointment of judges should not be made at the expense of the basic criterion of merit**.

A) Is there in place a written policy (whether in statutory or other form) designed to encourage diversity in the range of persons available for selection for appointment, avoiding all kinds of discrimination, although not necessarily implying the setting of quotas *per se*.
B) Is there any monitoring of appointments to check the operation in practice of the diversity policy?
C) Does the policy for encouraging diversity nonetheless ensure that there is no interference with the basic selection/appointment criterion of merit, albeit that there may be a policy of positive discrimination in relation to candidates of equal merit?

9. **The entire appointment and selection process must be open to public scrutiny, since the public has a right to know how its judges are selected.**

A) Is there a system in place to enable the public to know in general how judges are selected?

B) Is there a system in place to enable the public to know how an individual candidate is selected for judicial appointment, such as through law or a website?

10. An unsuccessful candidate is entitled to know why he or she failed to secure an appointment; and there is a need for an independent complaints or challenge process to which any unsuccessful applicant may turn if he or she believes that he/she was unfairly treated in the appointment process.

A) Is an unsuccessful candidate entitled to know why he/she failed to secure an appointment?

B) Is there a system in place to enable an unsuccessful candidate who wishes to know why he/she failed to secure an appointment to obtain information about the reason for that failure?

C) Is there an independent complaints or challenge process to which any unsuccessful applicant (or interested person in other way) may turn?

D) Is this process regulated by law and is there any legal possibility for an unsuccessful applicant (or an interested person in other way) to appeal the decision of the appointments body before an established court of law?

E) Is the body with jurisdiction to decide on the complaint or challenge by any unsuccessful candidate or interested person (whether or not that body is a court of law) able to examine the appointments process applied and to determine whether there was any unfairness shown to particular candidates, for example by having access to the files or asking for a report?

11. If the Government or the Head of State plays a role in the ultimate appointment of members of the judiciary, the involvement of a Minister or the Head of State does not in itself contend against the principles of independence, fairness, openness and transparency if their role in the appointment is clearly defined and their decision-making processes clearly documented, and the involvement of the Government or the Head of State does not impact upon those principles if they give recognition to decisions taken in the context of an independent selection process. Besides, it was also defined as a Standard in this field that **where whoever is responsible for making the ultimate appointment (the Government or Head of State) has the right to refuse to implement the appointment or recommendation made in the context of an independent selection process and is not prepared to implement the appointment or recommendation it should make known such a decision and state clearly the reason for the decision**.

A) If a Minister or the Head of State plays a role in the ultimate appointment of members of the judiciary, is their role in the appointment clearly defined and are their decision-making processes clearly documented?

B) If a Minister or the Head of State plays a role in the ultimate appointment of members of the judiciary is it clear that judges are appointed on the basis of their professional qualifications and not with their political alignment in mind?

C) If a Minister or the Head of State plays a role in the ultimate appointment of members of the judiciary are appointments made only from a selection drawn up or approved by the independent selection body that includes the judiciary?

D) Where whoever is responsible for making the ultimate appointment (the Government or Head of State) has the right to refuse to implement the appointment or recommendation made in the context of an independent selection process and is not prepared to implement that decision or recommendation, is there a formal constitutional or statutory requirement that it must make known such a decision and state clearly the reason for the decision?

12. Where promotion of members of the judiciary is based on the periodical assessments of professional performance the assessment process must be conducted according to the same criteria and with the same guarantees as those provided for the initial selection and appointment process (i.e. it should be independent, fair, open and transparent, and on the basis of merit and capability) and should be based on the judge's past performance.

A) Are merit and capability stated clearly and without qualification in any relevant legislation, directions or guidance to be the sole criteria for judicial promotion?

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II. Indicators of minimum standards in relation to the competent <u>body</u> to decide on the recruitment, selection, appointment and (where relevant) the promotion of members of the judiciary

13. The procedures for the recruitment, selection or (where relevant) promotion of members of the judiciary ought to be placed in the hands of a body or bodies independent of government in which a relevant number of members of the judiciary are directly involved and that **the membership of this body should comprise a majority of individuals independent of government influence**.

A) Is there an independent national judicial appointments board or committee or is the appropriate national Council for the Judiciary (or a specific committee or department within the Council for the Judiciary) in charge of judicial selection and appointment?

B) Are the judges serving in that body directly elected by other judges or appointed, for example, by Parliament, the Minister of Justice, the President of the State, or the President of the Supreme Court (Chief Justice)?

C) Does the selection of judges to that body by other state institutions (for example, by Parliament) - and not directly by an assembly of judges - ensure their full independence as members of this body?

D) Is this body comprised solely of individuals who are selected in a process that is not influenced by the government?

E) Does the composition of this body consist of any *ex officio* members of government, such as the Head of State or the Minister of Justice?

F) Do the members of this body perform their functions on a permanent and exclusive basis or do they perform their functions along with other activities, such as judicial or parliamentary activities?

14. The judiciary must not necessarily have an absolute majority membership on such a selection and appointment body, since in some of the countries of the Project Team there is a perception that a selection body on which the existing judiciary have a majority membership leaves itself open to the criticism that it is a self-serving body merely recruiting those prospective judges whom it favours and promoting favoured judges from within its own ranks.

A) What is actually the number of members of the body in charge of judicial selection and appointment and what is the proportion of judges serving in that body? Is it an actual majority?

B) Does the composition of this body include representatives of other core legal professions (i.e., representatives of bar associations, law societies, notaries), and the academia (i.e., law professors)?

C) What role do judicial associations play in the process of selecting and/or appointing members of this body?

D) Do the principles regarding the forming of the selection and appointment body imply or predetermine an absolute majority membership of the judiciary in that body?

15. The body in charge of selecting and appointing judges must provide the utmost guarantee of autonomy and independence when making proposals for appointment.

A) Does the relevant statute/regulation envisage any guarantee of independence from government in the appointment of every subject participating in the procedure of selection and appointment of members of the judiciary?

B) Is the procedure for the decisions of the body in charge of judicial appointments legally regulated?

C) Is the regulation regarding the procedure for the decisions of the body in charge of judicial appointments published in any way?

D) Does the regulation of the procedure for the decisions of the body in charge of judicial appointments comply with the principles of legal certainty, efficiency, judicial independence and other basic legal principles?

E) Is membership in the body in charge of judicial appointments limited in time (i.e, only for one term, or a maximum of two terms)?

F) Is the body in charge of judicial appointments assisted by external experts and consultants (such as psychologists, sociologists, lawyers, notaries, academics, etc.) in the framework of the selection process?

16. It must be guaranteed that decisions made by the body are free from any influences other than the serious and in-depth examination of the candidate's competencies against which the candidate is to be assessed.

A) Are the criteria for assessing candidates defined normatively (i.e., set specifically in the statute or regulation of the body in charge of judicial appointments), or in public guidance/resolutions issued by that body?

B) Is the whole selection and appointment process transparent and open to the public?

C) Is every step of the selection and appointment process published (for example, on the internet), including the results of the subsequent stages of the selection and appointment procedure?

D) Are all candidates assessed in accordance with the same criteria that are established beforehand and explicitly?

E) What specific objective and subjective criteria are applied in the judicial selection and appointment process? May additional criteria be applied, apart from the specifically published?

F) What is the quality or degree of reasoning of the decision to select a candidate for judicial appointment among several applicants? Are there clear and objective reasons provided in order to justify that the selected candidates have greater merits and capabilities that other applicants?

17. The body in charge of judicial appointments should comprise a substantial participation of legal professionals or experts (including experienced judges, academics, lawyers, prosecutors and other professionals) and could also include independent lay members representing civil society, appointed from among well known persons of high moral standing on account of their skill and experience in matters such as human resources.

A) What are the number and the proportion of legal professionals or experts in the body in charge of judicial selection?

B) What are the number and proportion of lay members representing civil society in the body in charge of judicial selection?

C) In what manner are the individuals representing legal professions and civil society selected as members of the body in charge of judicial selection?

18. The body in charge of judicial selection and appointment could be the appropriate national Council for the Judiciary (or a specific committee or department within the Council for the Judiciary) or an independent national judicial appointments board or committee and that **in those systems where the compulsory period of induction training is part of the recruitment and selection process, the relevant Academy, College or School of the Judiciary could play a major role by making recommendations in relation to the candidates which it considers should be appointed on the basis of their performance during the induction training**.

A) Is there an independent national judicial appointments board or committee or is the appropriate national Council for the Judiciary (or a specific committee or department within the Council for the Judiciary) in charge of judicial selection and appointment?

B) Is the relevant Academy, College or School of the Judiciary entitled to make any recommendations in relation to the candidates which it considers should be appointed to the judiciary on the basis of their performance during the induction training?

C) Are the recommendations made by the relevant Academy, College or School of the Judiciary in the context of the selection process binding as regards the candidates to be appointed to the judiciary?

D) Is the relevant Academy, College or School of the Judiciary an independent body or is it linked to or under the supervision of the respective Ministry of Justice or Council for the Judiciary?

19. The body in charge of the selection and appointment of judges must be provided with the adequate resources to a level commensurate with the programme of work it is expected to undertake each year and must have independent control over its own budget, subject to the usual requirements as to audit.

A) Are the resources provided to the body in charge of judicial selection and appointment adequate to the activities the body is expected to undertake each year?

B) Does the body in charge of judicial selection and appointment enjoy full budgetary autonomy? Is its budget part of the budget of the general judiciary and court system or part of the budget of the Ministry of Justice?

C) Does the budget of the body in charge of judicial selection and appointment grow in the same proportion as the budget expenditure concerning the activities of government (i.e. government administration) and parliament?

D) Is the audit regarding the expenditure of the body in charge of judicial selection and appointment carried out by auditors independent of government control?

20. The body in charge of judicial selection and appointment must also have adequate procedures in place to guarantee the confidentiality of its deliberations.

A) Are there some standards of confidentiality of the deliberations of the body in charge of judicial selection and appointment (such as secret of the relevant session for deliberation or not allowance of external persons into the deliberation) established and guaranteed in the relevant statute/regulation governing the activities of that body?

B) Are confidentiality issues taken into account in the rules related to publishing minutes of meetings of the body in charge of judicial selection and appointment, during which deliberations about candidates for judicial office take place?

21. The body in charge of judicial selection and appointment must create a sufficient record in relation to each applicant to ensure that there is a verifiable independent, open, fair and transparent process and to guarantee the effectiveness of the independent complaints or challenge process to which any unsuccessful applicant is entitled if he or she believes that s/he was unfairly treated in the appointments' process.

A) Does the body in charge of judicial selection and appointment keep a sufficient record in relation to every candidate to the judiciary and does this record reflect the progress of that applicant's selection procedure?

B) Is the body with jurisdiction to decide on the complaint or challenge by any unsuccessful candidate or interested person (whether or not that body is a court of law) entitled to have access to the record kept in relation to that candidate in the context of the complaint or challenge procedure?

22. The body in charge of judicial selection and appointment should guarantee the effectiveness of the independent complaints or challenge process to which any unsuccessful applicant is entitled if he or she believes that s/he was unfairly treated in the appointments' process.

A) Is there an independent complaints or challenge process to which any unsuccessful applicant (or interested person in other way) may turn?

B) Is this process regulated by law and is there any legal possibility for an unsuccessful applicant (or an interested person in other way) to appeal the decision of the appointments body before an established court of law?

C) Is the body with jurisdiction to decide on the complaint or challenge by any unsuccessful candidate or interested person (whether or not that body is a court of law) able to examine the appointments process applied and to determine whether there was any unfairness shown to particular candidates, for example by having access to the files or asking for a report?

PROJECT "JUDICIARY, SOCIETY AND MEDIA"

1. SPOKESPERSONS ON BEHALF OF THE JUDICIARY: Press Judges and Communication advisors

Main recommendation

All countries should develop and use a system of judicial spokesperson in the form of press judges and communication advisors, who should have a deep knowledge about the judicial system, how to inform the public in an understandable language and who has social and media skills.

1.1. All countries should develop and use a system of judicial spokesperson in the form of press judges and communication advisors, who should have a deep knowledge about the Judicial system, how to inform the public in an understandable language and who has social and media skills

1.2. The press judges and communication advisors should operate at a national level as well as at a local (and in some countries) regional level. These press judges should be judges who are serving at the level of the court and in the jurisdiction which is relevant to the press enquiry to be dealt with.

1.3. The press judge should be appointed by the President of the relevant court or area in which the press judge operated – and the press judge should be answerable to the appointing judge.

1.4. There should be basic guidelines as to the functions and role of a press judge, including rules as on whose initiative the press judge should act and any system for coordinating such action. The relationship between press judges, press officers and communications advisors can be defined in such guidelines. The guidelines should also take into account national press codes, national standards of judicial ethics.

1.5. There should be training available to aid the press judge in the work required. There should also be the full support of the press officer or communication advisor.

1.6. It is suggested that the press judge should have the following duties and responsibilities:

- to inform and instruct the press in law and procedure;
- to explain the public as to the nature and effect of judgments and rulings – this can also include involvement in legal education of the basics of constitutional and substantive law;
- to further the interest of justice in promoting transparency and understanding of the public in the court system and the Judiciary;
- to work with press officers and communication advisers in discharging their functions and monitor contact with the press and media;
- to follow and react upon media through websites and other social media;

- to develop contacts with the media as well as appropriate professional bodies, specialists and academic institutions.

2. AUDIOVISUAL RECORDING IN THE COURTROOM AND THE USE OF SOCIAL MEDIA[2]

A. Audio and Video Recording Courtroom

Main Recommendation
Audio and video recording should be allowed into the courtrooms as long there are special measures taken to protect non-professionals from being filmed and that there is a control system for the judge to stop filming whenever is necessary.

Recognizing the great differences between the legislation and culture in the European countries, it is not possible to have at this moment a common view on audio and video recordings in courts. In some countries such recordings are completely forbidden and in other countries it is basically allowed. However it is still desirable to reduce the gap between the Judiciary in Europe in these matters.

2.1. When allowing video recording there should be taken special measures to protect non-professionals, like suspects, witnesses, lay judges and jurors from being filmed. In some countries there is a general practice to prevent them from being filmed. If exceptions are made from this it is important that non-professionals gives their permission, and even if they do that the court judge independently considers if such recording/broadcasting is appropriate.

2.2. If the legislation allows video recording there is no need for a veto right for professional parties, like judges, prosecutors and lawyers. However, it is good practice to hear their say before the court makes a decision. If recording is generally permitted, and the judge denies such recording the decision should be motivated.

2.3. If recording in principle is permitted, but the court can make exceptions, it is good practice to let media have their say before the court make a decision.

2.4. When audio and video recording is allowed it is recommended to use remote cameras or not to have too many in the courtroom.

2.5. In high profile cases it is advisable to sort out and solve issues before the court hearing starts. This can be done by organizing a meeting with representatives of the courts and the media to discuss practical arrangements concerning audio and video recording (satellite buses, parts of the hearing that can be filmed, number of cameras allowed).

[2] Due to Danish legislation on the relation between the Judiciary and the media, the Domstolsyrensen is not in a position to fully concur with all the views and all the recommendations in this chapter.

2.6. Broadcasting should usually not be allowed live, but preferably with a delay or a control button, so that any information which is not for broadcasting can be cut from the broadcasting before being transmitted.

2.7. It is desirable to have comprehensive and precise guidelines on audio and video recording in each country.

2.8. Some questions must still be solved by an assessment by the judge. This might be the best solution in cases where there is a considerable public or principal interest.

B. Cell phones

Main recommendation It is recommended to make clear guidelines on when use of smart phones and other communication devices are permitted, when not and what the procedure is in event of a breach.

2.9. If cell phones are permitted to be brought into court, they should be turned off or put on silent mode to ensure minimal disruption to the court. Furthermore, it is clear that in the regulation of smart phones, and other communication devices, strict guidelines ought to be issued as to when use is permitted and the procedure in the event of a breach.

C. Social Media

Main Recommendation Social media could be useful for the courts or the judicial bodies in their communication. It is recommended to develop a strategy, including target groups and goals for the use of each social media.

2.10. Social media can be used by the courts or the judicial bodies in their communication. It is recommended to develop a strategy, including target groups and goals for the use of each social media. This strategy should include and define: the target groups for each social media, the goals of each social media, how the media should be followed-up and who has the responsibility to do that. But also the strategy should include how to use the social media proactive. This can be reached by making links to the pages or articles you like, by creating photo and video albums, by posting relevant messages which add value by providing unique, individual perspectives on what is going on. All these posts need to be meaningful and have respectful comments that inform, educate and engage citizens. It is not recommended to just repost press releases on social media.

2.11. Individual judges who use social media shall recognise the general ethical codes and breach of these codes shall be handled with ordinary disciplinary actions. It is recommended to use the highest privacy settings.

3. PUBLICATION OF JUDGMENTS ON THE INTERNET

Main Recommendation
The Judiciary in each country should have a website under the responsibility of the Council for the Judiciary or the Courts Administration. Every court should have its own site on the website of the Judiciary. These websites should contain information for the professional, the press and the general public and should contain a database of judgments which is freely accessible for the public.

3.1. The Judiciary in each country should have a website under the responsibility of the Council for the Judiciary or the Courts Administration. Judgments should be published on the website of the Judiciary.

3.2. Every court should have its own site on the website of the Judiciary. These websites should contain information for the professional, the press and the general public.

3.3. The website of the Judiciary should contain a database of judgments which is freely accessible and free of charge for the public. This database should contain a 'search' facility using keywords.

3.4. All judgments which are in the database should be published in full text together with a short abstract for quick reference.

3.5. All court decisions of the Supreme Court and the higher courts should be accessible on the internet. The remaining courts should publish a selection of the decisions. The criteria on the basis of which the selection is made should be freely accessible for the public and published on the website of the Judiciary. It is recommended that decisions that meet the following criteria should be made public:

- the media is interested in the decision;
- the decision is of general importance for society;
- the decision can have influence upon the interpretation of law or other regulations;
- there is interest of a special group of people;
- the decision is important for the specialized press in the field of justice and law.

3.6. To protect the privacy of non-professional process parties judgments should be anonymised.

3.7. It is recommended that in high profile cases an abstract of the decision written in plain, non-judicial language should be published on the internet.

3.8. In high profile cases it is recommended to hand out a paper print of the court decision immediate after pronouncing the judgment.

4. PRESS GUIDELINES

Main Recommendation
There is a need for regulation of the relations between the Judiciary and the media. Introducing a set of press guidelines, whether they are implemented by law or as a (morally or non legal) binding protocol, is recommended. They can never interfere with existing legal limitations. The press guidelines should be part of a national strategy plan with a planning and reporting cycle on the communication with the media and society. Press guidelines should clarify the different goals and interests of both the Judiciary and the media. It should state what the media may expect of the staff of the courts and how the courts should deal with the needs of the media before, during and after court proceedings.

4.1. There is a need for regulation of the relations between the Judiciary and the media. Introducing a set of press guidelines, whether they are implemented by law or as a (morally or non legal) binding protocol, is advisable. They can never interfere with existing legal limitations. The press guidelines should be part of a national strategy plan with a planning and reporting cycle on the communication with the media and society.

4.2. Press guidelines should clarify the different goals and interests of both the Judiciary and the media. It should state what the media may expect of the staff of the courts and how the courts should deal with the needs of the media before, during and after court proceedings. The press guidelines should also regulate a number of practical matters.

4.3. Press guidelines should work both to the Judiciary and its spokespersons (their task and role) and to the media (their role and ways of conduct in courthouses and courtrooms). Press guidelines should let the judges know their role and the limits of communicating with the media, but it should also let the media know what they could require and expect from the Judiciary. They would not compromise judicial independence.

4.4. Guidelines should be made in consultation with all parties (media, press judges, spokesperson for the prosecutors' office, representatives of the bar association).

4.5. The guidelines should be clear and of strict interpretation.

4.6. Guidelines should be reviewed and updated on a regular basis. There should be a national and European platform to exchange experiences with the stakeholders.

5. PROACTIVE MEDIA APPROACH OF THE JUDICIARY

Main Recommendation
All countries are encouraged to develop a proactive media approach. This approach should be focused on individual court cases as well as the entire judicial system.

5.1. All countries are encouraged to develop a proactive media approach. This approach should be focused on individual court cases as well as the judicial system and principles of law.

5.2. The media should have access to the case lists of the courts in order to select court hearings and be able to attend them. Simultaneously courts can bring a selection of interesting court cases under the attention of the media.

5.3. The Councils for the Judiciary as well as the courts are encouraged to organize at least once a year an informal meeting with the national press to explain the work of the Judiciary and to inform them about recent developments.

5.4. Training in transparency of the Judiciary and explaining the way the media works should be part of the regular education programs of judges and clerks.

5.6. It is recommended that the Judiciary will be involved in the training to (student) journalists about the organization of the Judiciary and the law.

5.7. Individual judges -not being a press judge- should be reluctant of performing as a spokesperson in the media. If they intend to do so it is recommended they thoroughly prepare in cooperation with the press judges, senior judges or public information officers.

5.8. It is recommended that the Judiciary in all the countries develop activities to inform the general public and to educate students of different levels:

a. organizing an 'open day (or week) of the courts' to inform the public about all aspects of the Judiciary;
b. reception and guiding of groups visiting the courts;
c. publishing booklets or information on the internet for the general public on topics as: coming to court, jury duty;
d. developing online teaching materials about the court system for school students and to support the courts in connection with school visits.

PROJECT "REQUESTS FOR COOPERATION"

A summary of the recommendations that the project group proposes for adoption at the ENCJ's General Assembly in Dublin in May 2012

The project group recommends that the ENCJ should in future deal with requests for co-operation received based upon the following principles and criteria.

1. The request for co-operation or assistance

1. Requests for co-operation or assistance will be only be accepted from Members or Observers of the ENCJ or from Councils or equivalent bodies of EU potential candidate Member States.
2. Requests for assistance should be made in writing addressed to the President of the ENCJ, and should include a clear written definition of the problem upon which co-operation is sought, and all relevant information and documentation. The requesting party should make clear whether any other Councils or European agencies or organisations have any current engagement in relation to the matters raised by the request.

2. The ENCJ's consideration of the request

3. Each request for co-operation will be considered and decided upon by the Executive Board of the ENCJ, upon the basis of the following criteria:-
   (1) The ENCJ's objective is to try to assist where the request for co-operation seeks collaboration with a view to resolving an issue relating to:-
      (a) the improvement of a judicial system or the attainment of the ENCJ's recommendations, guidelines and standards; and/or

      (b) the effective and efficient disposal of judicial business.

   (2) The ENCJ is not obliged to provide co-operation or assistance in any case. Each case will be considered on its merits.

3. The appointment of representatives to deal with the request

4. The Executive Board will, if it chooses in its discretion to respond to the request, appoint appropriately qualified expert representative(s) from a Member Council or Councils to deal with a particular request.

4. Financing the delivery of the co-operation or assistanc

5. Unless other funding is available, the requesting party should say in its request whether it is able to pay the out-of-pocket expenses occasioned by the ENCJ's response to the request. Such out-of-pocket expenses will comprise travel and subsistence expenses for the representatives appointed to deal with the request, but not any *per diem* allowances for such persons.
6. If the requesting party is unable to fund the request, it can discuss with the ENCJ's administration the possibility of funding by the ENCJ itself, the EU, or by pro bono bodies or national Governments. The ENCJ will not respond to any request until appropriate funding is in place.

5. Methods of delivery

7. The ENCJ will decide whether to respond and how to respond to each request for co-operation made. It will inform the requesting party of the procedure and process it proposes to adopt.
8. The requesting party should expect to be responsible for the organisation of any visits in country required as part of the response to the request.

6. Reporting on the outcome of the request

9. The representatives appointed to deal with each request for co-operation will make a report to the President and the Executive Board at the conclusion of its work. The reports will be made available to subsequent meetings of the Steering Committee and of the General Assembly. They will be aimed specifically at assisting the ENCJ to deal with future requests more effectively.
10. The requesting party will also be asked to make a report at the conclusion of the project describing from its perspective how successfully the request was handled.