Judiciaries in the EU
Prospects for cooperation
The Hague
13-15 November 2003

Conference report

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La Haye
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1. Introduction

Over the past years several new national organisations for the judiciary have been set up in Northern and Western Europe. Similar to their longer established counterparts in Southern Europe, these organisations are in various ways responsible for the support of the judiciary in the independent delivery of justice. Characteristic for all organisations is their autonomy and their independence of the executive and legislative.

The fairly new Dutch, Belgian and Irish organisations thought it could be mutually rewarding to get acquainted with the other European colleagues, to exchange information, to learn about each others accomplishments (and mistakes) and to assess the possibilities for co-operation in various fields. The other European organisations for the judiciary were then approached. Everybody responded quite favourably to the idea of a joint conference to explore the possibilities.
This resulted in a conference in The Hague in November 2003, hosted by the Netherlands Council for the Judiciary. No less than 22 European countries were represented at the conference from EU Member States and candidate Member States (see page 91 for a list of participants).

2. Programme

As it was the first occasion to meet each other, all sessions were plenary in order to get acquainted with as many of the delegates as possible and to create common awareness with regard to the conference themes. In addition ample opportunities were created to socialize and meet colleagues informally in the fringes of the conference.

November 13
The conference programme started with the broader themes like the position of the judiciaries within the European Union, narrowing down to a discussion of the varying constitutional and national arrangements for the European Councils for the judiciary. The economic and social needs for an effective and efficient judiciary from a global perspective were addressed as well, as those needs may to some extent eventually be linked to the overall goal of most organisations. Thereafter the participants discussed in further detail the mandate and organisational structures of the councils as well as possible ways to improve case management. The last session was devoted to discuss the proposal for a European Network of Councils for the Judiciary.

The first keynote speaker of the conference was Mr Antonio Vitorino, European Commissioner for Justice and Home Affairs, thus emphasizing the importance of the conference. In his speech (see page 8) Mr. Vitorino noted the growing significance of the European Union and European Commission in the area of Justice. Although the importance of the national jurisdictions is not questioned, the Commission strives to achieve further cross

border co-operation between judges on the operational level. One could either think of spontaneous informal contacts between judges to exchange information, but also of more formalized collaboration in the field of criminal and civil justice.
Mr. Vitorino pointed out that the developments in the area of justice have not come to an end yet, in the proposed European Constitutional Treaty the differences between the first and third pillar will be abolished. Thus, EU legislation could become directly applicable also in criminal matters. Moreover, the possibility is created for the EU to accede to the ECHR. Evidently, the Councils for the Judiciary will be confronted by the consequences of these developments.

Participants were also addressed by Ms Maria Dakolias, from the Legal Reform department of the World bank in Washington. In her speech (see page 13) she stressed the importance of an effective judiciary for the socio-economic development of a country. Without meaningful and predictable laws, without enforceable contracts, without basic security and access to justice for all, sustainable development is not feasible. There are still more than one billion people who live on less than one dollar a day and nearly three billion who live on less than $2 a day. The poor continue to lack legal rights that empower them to take advantage of opportunities and provide them with security against arbitrary and inequitable treatment. Discriminatory or arbitrarily enforced laws deprive people of their individual and property rights, raise barriers to justice and keep the poor poor. For this reason an effective judiciary is critical. She hoped that collaboration of the European Councils would set an example for developing countries.

In addition to these larger themes, two other presentations focussed on two more directly relevant fields of potential interest for the councils: firstly the formal advisory role and secondly the responsibilities regarding case management.

Mr Eddy Bauw of the Netherlands Council described the advisory role in the legislation process, which was created by law for the Netherlands Council (see page 17). At first there was much debate within the Dutch judiciary about the way the advisory role should be taken up. One does not have to be an expert in constitutional law to realize that – given the doctrine of the separation of powers and the independence of the judiciary – rendering advice to the legislator can be a sensitive matter. Therefore the Netherlands Council has decided to avoid the political debate as much as possible, although such cannot always be avoided, especially when fundamental rights are at stake. The advice will therefore be particularly related to the workload of the courts, the organisational aspects and lastly the way in which the judges do their work. Apart from advice on proposed legislation, the Council is also presenting advice at its own initiative, e.g. on criminal procedure and evidence laws. In Dutch constitutional relations this has been a breakthrough and it was actually not welcomed by all lawyers. Mr. Bauw was however of the opinion that there is more room for the judiciary to be involved in the legislation process than is commonly thought and he thought it might be worthwhile for the ENCJ to consider the possibilities of actively trying to influence decision making at the European level.

Mr. Simon Smith of the Department for Constitutional Affairs impressed participants with his description of the management of case backlogs within the UK (see page 21 for the full slide presentation).

In his opinion, the Justice System can be looked upon as a business, and taking on a more businesslike approach can be very helpful for judiciaries to control backlogs. Who are your customers, are they satisfied, what are your products, are judicial performance measures needed? Some of the measures adapted in the UK involve:

- Ensuring that judges are only involved in progressing cases when they need to be
- Centralising Administrative Case Progression
- Improving Processes without Technology
- Improving Processes with Technology
- Changing Customer Boundaries with Technology
- Removing Work from the Courts
- Having Flexible Resourcing.

Lastly, Mr Smith stressed the importance of measurement: what gets measured gets done.

Next to these keynote presentations, a number of Councils from the Member States was requested to introduce some essential elements of their own organisations. Thus, Denmark, Ireland, Italy, Spain and the UK addressed the conference on the position of the Councils within the constitutional framework of the separation of powers. The Councils of Belgium, France, Portugal and Sweden described the relationship between the judiciary on the one hand and the councils on the other hand. These issues are described in more detail in the questionnaires (see page 35}.

November 14

In order to clarify the various roles, mandates and positions of the European Councils, Professor Vim Voermans of Leiden University in his key note lecture presented the results of his comparative study into the various European for Councils for the Judiciary (see page 24 for the slide presentation).

Professor Voermans distinguished three models for Councils:

- Northern European model (Sweden, Ireland, Denmark, the Netherlands, Lithuania)
- Southern European model (Italy, France, Spain, Portugal, Belgium)
- Mixed model (Bulgaria).

Typical competencies for the Northern European councils include policy and managerial tasks, budget and budgeting procedures, whereas the Southern European councils are competent with regard to career decisions for judges, recruitment and training and disciplinary actions. The ministerial responsibility varies as well: in the Northern European there is a joint responsibility, while there is a full ministerial responsibility far the judiciary in the Southern European model. For both models a number of possible bottlenecks were identified. For that reason he stressed the relevance of more comparative research into the structure, organisation, (constitutional) position, mandate and important current issues.

The remainder of the second day of the conference was dedicated to the possible establishment of the European Network of Councils for the Judiciary (ENCJ).

The Netherlands Council for the Judiciary was appointed by the meeting as provisional Secretary General of the Network.

The meeting also approved of composition of the Steering Committee, consisting of representatives ofBelgium, France, Ireland, Italy, the Netherlands and Spain.

Italy kindly proposed to host the next general meeting in Rome in 2004.

At that occasion the ENCJ will be formally established.

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Rapport de la conference

1. Introduction

Au cours des derrieres annees, plusieurs nouvelles organisations nationales representatrices du pouvoir judiciaire ont vu le jour en Europe du Nord et en Europe occidentale. Tout comme leurs organisations sceurs plus anciennes d' Europe du Sud, elles visent a apporter un soutien au systeme judiciaire afin de garantir l'independance de la justice. Toutes se distinguent par leur autonomie et leur independance vis-a-vis des pouvoirs executif et legislatif.

Les presque toutes nouvelles organisations neerlandaise, beige et irlandaise ont pense qu'une prise de contact avec leurs organisations sceurs europeennes permettant d'echanger des informations, de tirer les lecons des accomplissements (et des erreurs) mutuels et d' evaluer les possibilites de collaboration dans divers domaines pourrait titre benefique a toutes les parties. Les autres organisations europeennes representatrices du pouvoir judiciaire ont ete contactees. Chacune a reagi favorablement a l' idee d'une conference commune permettant d' etudier les diverses options.
Il en est resulte une conference tenue en novembre 2003 a La Haye organise par le Conseil neerlandais de la magistrature. Pas moins de 22 pays europeens, Etats membres de l'UE ou aspirants Etats membres etaient representes a cette conference (voir page 91 pour une liste des participants).

2. Programme

Attendu que cette occasion etait la premiere de se rencontrer, toutes les sessions etaient plenieres afin de permettre aux participants de faire connaissance avec autant de delegues que possible et de Greer une conscience commune au regard des themes de la conference. En outre, plusieurs occasions de discussions et de rencontres informelles avec des collegues avaient ete organisees en marge de la conference.

13 novembre

Le programme de la conference s'est ouvert sur des themes plus larges tels que la position des Organisations judiciaires au sein de l'Union Europeenne, pour se resserrer autour d'une discussion sur les divers amenagements constitutionnels et nationaux des Conseils europeens de la magistrature. Les besoins economiques et sociaux, au niveau global, d'un pouvoir judiciaire effectif et efficace ont egalement ete abordes, attendu que, jusque dans une certaine mesure, ces besoins peuvent titre connectes a l'objectif general de la plupart des organisations. Ensuite, les participants ont discute plus en detail des mandats et des structures organisationnelles des Conseils ainsi que des diverses possibilites d'ameliorer la gestion des proces. La derriere session etait consacree a la discussion de la proposition d'un Reseau Europeen des Conseils de la Justice.

Le premier conferencier a prendre la parole etait M. Antonio Vitorino, Commissaire europeen en charge de la justice et des affaires interieures, afin de souligner l'importance la conference. dans son adresse (voir page 8) M. Vitorino a note l'importance croissante de 1'Union Europeenne et de la Commission Europeenne dans le domain de la justice. Bien que ('importance des juridictions nationales ne soit pas remise en question, la Commission vise a realiser une cooperation transfrontaliere plus importante entre les juges au niveau operationnel. L'on pourrait certes penser a des contacts informels spontanes entre les juges en vue d'un echange d'informations, mais aussi a une collaboration plus formelle en matiere de justice penale et civile-.
Monsieur Vitorino a fait observer que les developpements juridiques en cours sont loin d'etre acheves et que, dans le projet de constitution europeenne, les differences entre le premier et le troisieme pilier seront abolies. Autrement dit, la legislation de 1'Union Europeenne pourrait devenir directement applicable egalement en matiere penale. De plus, la possibilite a ete offerte a 1'Union Europeenne d'acceder a la convention EDH. Naturellement, les Conseils de la Justice se verront confrontes aux consequences de ce developpement.

Madame Maria Dakolias, du Departement de Reforme juridique de la Banque Mondiale a Washington s'est egalement adressee aux participants. Dans son allocution (voir page 13), elle a souligne l'importance d'un pouvoir judiciaire efficace pour le developpement socioeconomique d'un pays. En effet, tout developpement durable est impossible sans lois substantielles et previsibles, sans contrats applicables, sans securite de base et sans acces pour tous a la justice. Plus d'un milliard de personnes vivent encore avec moins d'un dollar par jour et pits de trois milliards vivent avec moins de deux dollars par jour. Les pauvres manquent encore de droits juridiques qui leur permettraient de saisir les opportunites et les protegeraient contre des traitements arbitraires et injustes. Des lois appliquees de maniere discriminatoire ou arbitraire privent les personnes de leurs droits individuels ainsi que de leur droit a la propriete, font obstacle a la justice et maintiennent les pauvres dans la pauvrete. Pour cette raison, un pouvoir judiciaire effectif est d'une importance capitale. Madame Dakolias a emis 1'espoir que la collaboration des Conseils europeens puisse servir d'exemple aux pays en voie de developpement.

Outre ces themes plus larges, deux autres presentations etaient consacrees a deux domaines plus directement pertinents et representant un inter-et potentiel pour les Conseils, a savoir le role consultatif formel et les responsabilites relatives A. la gestion des proces.

Monsieur Eddy Bauw, du Conseil neerlandais [de la magistrature] a donne une description du role consultatif dans le processus de legislation, qui a ete cree par loi pour ce Conseil (voir page 17 pour l' allocution complete). Dans un premier temps, 1' interpretation de ce role consultatif a fait l'objet d'un large debat au sein de la magistrature neerlandaise. II n'est pas necessaire d' titre specialiste de droit constitutionnel pour realiser que – vu la theorie de la separation des pouvoirs et de l'independance de la justice -1'apport de conseils au legislateur peut constituer un theme sensible. Pour cette raison, le Conseil neerlandais a decide d'eviter autant que possible le debat politique, bien que ceci ne soit pas toujours realisable, particulierement lorsque les droits fondamentaux sont en jell. Pour cette raison, les conseils concerneront plus particulierement la charge de travail des tribunaux, les aspects organisationnels et, en dernier lieu, la maniere dont les juges font leur travail. Outre les recommandations relatives a la legislation proposee, le Conseil propose egalement un avis de sa propre initiative, par exemple sur la procedure penale et sur les lois concernant la foumiture de la preuve. Dans les relations constitutionnelles neerlandaises, ce nouveau role represente une petite revolution, qui n' a d'ailleurs pas fait l' unanimite parmi les juristes.

Monsieur Bauw est cependant d'avis qu'il y a plus d'espace pour une implication du pouvoir judiciaire dans le processus legislatif que ce qui est couramment admis, et pense qu'il peut titre interessant pour le Reseau Europeen des Conseils de la Justice (RECJ) d'envisager les possibilites d' influencer les prises de decision au niveau europeen.

Monsieur Simon Smith, du Departement des Affaires Constitutionnelles a fait une grande impression sur les participants par sa description des retards de gestion de proces au Royaume-Uni (voir page 21 pour 1'ensemble de la presentation).
Selon lui, le systeme judiciaire peut titre aborde comme une activite commerciale; en effet une approche plus commerciale pourrait aider les magistrats a maitriser les retards. Queues sont vos clients, sont-ils satisfait, quelles sont vos produits, des mesures de prestations judiciaires sont-elles necessaires ? Certaines mesures adoptees au Royaume-Uni prevoient:

- La garantie qu'il n' est fait appel aux juges pour les proces en cours que lorsque necessaire
- La Centralisation de la progression administrative des proces
- L' amelioration des processus sans technologie
- L'amelioration des processus avec technologie
- Un changement avec technologie de la delimitation de la clientele cible
- Une reduction de la charge de travail des tribunaux
- Des dispositions flexibles de renouvellement du personnel.

Pour finir, M. Smith a souligne l'importance du mesurage: ce qui est mesure est realise.

Suite A. cette allocution, it a ete demande a plusieurs Conseils des Etats membres de presenter certains elements essentiels de leur propre organisation. Ainsi, le Danemark, 1'Irlande,1' Italie, 1'Espagne et le Royaume-Uni ont presente A. la conference les positions des Conseils dans le cadre constitutionnel de la separation des pouvoirs. Les Conseils de Belgique, de France, du Portugal et de Suede ont decrit les relations entre le pouvoir judiciaire d'une part et les Conseils d'autre part. Ces theme sont decrits plus en detail dans les questionnaires (voir page 35 de ce rapport).

14 novembre
Afin d'eclairer des divers roles, mandats et positions des Conseils europeens, le professeur Wim Voermans a l' Universite de Leyde a presente dans son allocution les resultats de son etude comparee des divers Conseils europeens de la magistrature (voir page 24 pour la presentation diapositives).
Le professeur Voermans a distingue trois modeles pour les Conseils :

- Le modele nord-europeen (Suede, Irlande, Danemark, Pays-Bas, Lituanie)
- Le modele sud-europeen (Italie, France, Espagne, Portugal, Belgique)
- Le modele mixte (Bulgarie).

Les competences typiques des Conseils nord-europeens comprennent les taches de politique et de gestion ainsi que les budget et les procedures de budgetisation, tandis que les Conseils sud-europeens sont competents au regard des decisions de carriere concernant les juges, le recrutement, la formation et les actions disciplinaires. Les responsabilites ministerielles different egalement en ce sens que le modele europeen connalt une responsabilite commune, alors qu'il est question d'entiere responsabilite ministerielle du pouvoir judiciaire clans le modele sud-europeen. Plusieurs goulets d'etranglement possibles ont ete identifies pour les deux modeles. Pour cette raison, le professeur Voermans a souligne l'importance d'un accroissement de la recherche comparative sur la structure, l'organisation, la position (constitutionnelle), les mandats et les themes importants actuels.

Le reste de la seconde joum~e de la conference etait consacre a l' eventuelle constitution du Reseau Europeen des Conseils de la Justice (RECJ).
Le Conseil neerlandais de la magistrature a ete design par la reunion comme Secretaire General provisoire du Reseau.
La Reunion a egalement approuve la composition du Comite de Pilotage, represents par la Belgique, la France, l' Irlande, l' Italie, les Pays-Bas et 1'Espagne.
L'Italie a aimablement propose d'accueillir la prochaine reunion generale a Rome en 2004. Lors de cette reunion, le (RECD) sera officiellement constitue.

Speech Mr. Antonio Vitorino, European commissioner for Justice and Home affairs

Ladies and Gentleman,

Thank you for inviting me to this conference. I am glad to witness an interesting initiative for a new activity among the Member States of the European Union launched by the judiciary itself. The fact that initiatives like yours developed at the level of practitioners demonstrates that there is a strong consciousness of European affairs within the judiciary. The EU is no longer considered an affair that mainly concerns politicians and specialised experts.

I understand that the bodies that have come together for this conference mainly deal with issues of administration and management of the judiciary, including staff matters and recruitment of judges and staff in national courts.
These matters are key issues for the functioning and independence of the judiciary and for our citizens' access to justice. Of course, these matters mainly fall within the responsibility of the Member States, but the European Union has an essential interest in them, since they provide the grounding for the rule of law, one of the core principles of the EU Treaty.

The questions and difficulties faced by the judiciaries in the different Member States are often similar, and there are specific aspects which distinguish them from other public bodies. Therefore, I warmly welcome the initiative of this conference to develop closer contacts between the national bodies managing courts and to bring them together for an exchange of views, experience and know-how for possible common activities.

In the draft Charter for your new initiative you mention that the effectiveness of the European area of Justice requires a good understanding by members of the judiciary of legal and judicial systems in other Member States, as well as national, European and international instruments concerning co-operation. You are also saying that co-operation is essential for upholding judicial independence and reinforcing the rule of law. I can only support these statements. However, just as a passing remark, I would like also to note we should not loose sight of the numerous activities and networks already set up within the EU context. We should try to make use of synergy effects and avoid duplication of efforts. I will mention some of these current activities in a minute.

Let me first recall that courts are dealing with highly sensitive questions of fundamental rights and freedoms, which require highly qualified, well trained, independent actors, and the highest degree of responsibility. Beyond national law, the have to apply and interpret Community and Union law and take decisions on cross-border co-operation in civil and criminal matters, including extradition or surrender of persons.

In fact, national courts play a central role in the application and interpretation of Community and Union law and the creation of an area of freedom, security and justice. This role can hardly be over-estimated and will even extend in the future. Community and Union law must be applied equally throughout the Union. Courts have for a long time been familiar with the application of Community law. Since Amsterdam, Community law also includes legislative instruments in the area of judicial co-operation in civil matters. This means, in concrete terms, that for matters such as parental responsibility, service of documents or taking evidence, it is in the Official Journal of the European Union that Member States judges will have to look *firstly for the* relevant provisions to apply.

Furthermore, they will have to deal with the so-called third pillar of the Union, i.e. the co-operation in criminal matters through framework decisions and other instruments. Unlike Regulations, framework decisions cannot entail direct effect and the usual procedures at the European Court of Justice do not fully apply to them. Nevertheless, national courts may and should take them into account when interpreting national law. They can also, under Article 35 TEU, refer certain questions concerning criminal matters to the European Court of Justice for preliminary rulings. Since the body of EU legislating in criminal matters is rapidly growing, this possibility and the case law of the European Court of Justice in this area will become more and more detailed.

There has until now been only one preliminary ruling based on Article 35 TEU. This was earlier this year in the joined cases of Gozutok and Brugge. The Court interpreted the scope of the ne bis in idem rule enshrined in Article 54 of the Schengen Implementing Convention. The Court held that this principle refers not only to court judgements or decisions but applies also to transactions between accused persons and public prosecutors whereby a prosecutor discontinues criminal proceedings once the accuses has fulfilled certain obligations. The ruling has been described as the "Cassis de Dijon" judgement for the third pillar: the Court considered that a necessary implication of Article 54 of the Schengen Convention is that Member States have mutual trust in their criminal law in force to other Member States even when the outcome would be different if its own national law were applied.

This leads me tot the draft Constitution elaborated by the European Convention. If the Member States follow the advice of the Convention, the complex distinctions between the first and third pillar will disappear. Both pillars would be merged, and instead of the various existing instruments, we would only have European laws and European framework laws. EU legislation could become directly applicable also in criminal matters.

The draft Constitutional Treaty also provides for the possibility of the EU to accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms. As envisaged by Article 7, paragraph 2, of the draft Constitutional Treaty "the Union shall seek accession to the European Convention for the Protection of Human Rights and Fundamental Freedoms. Such accession shall not affect the Unions competencies as defined in the Constitution".

In this context, as a preliminary point, I would like to note that the EU's accession to the ECHR, together with the insertion of the Charter into the Constitutional Treaty, will not have an influence on the scope and the division of competencies between the European Union and the Member States. In the system we are working on, the national jurisdiction will not become less important and accession to the ECHR will not affect the national positions of the Member States in Strasbourg. In order to guarantee that, the Council shall decide on the legal form of the accession as well as on the appropriate moment that the EU's accession tot the additional protocols would take place.

In the light of the above mentioned issues I would also like to point out that accession by the Union of the ECHR will certainly result in an essential change in the present Community legal system for protecting human rights, by introducing an external control. We need to ensure respect of the autonomy of the EU judicial system as well as the coherence of the European system in the protection of fundamental rights and freedoms. The aim of this is to avoid any contradiction that could appear between the legal system of the European Community and the system of the ECHR. Accession to the ECHR shall mean extending

judicial protection of fundamental rights in Europe, while guaranteeing homogeneity between decisions of national and European Courts. Therefore, it is important to stress that the recent development of the Community legal order is largely the result of co-operation between the Court of Justice and national courts.

Furthermore, accession to the ECHR raises a very crucial question of how it will affect the Community legal order. At the present moment, the EU cannot be directly called before the European Court of Human Rights. After signing up to the ECHR, we will face a new situation in which the EU will become an integral part of the ECHR. That certainly would result in a whole range of legal and procedural consequences, such as participation of the EU in the proceedings before the Court of Human Rights like any other respondent and the possibility provided for in Article 36, paragraph 2, ECHR to submit written comments and to take part in hearings.

Up to now, the role of the Union and the European Commission in administration of justice was rather limited. However, within the last years, the EU has taken many steps to improve judicial co-operation in the area of freedom, security and justice and to enhance its efficiency. I would like to mention some examples.

As far as criminal matters are concerned, there is a clear need to underline two important branches of the co-operation process as a whole, which should be the target of a simultaneous development: a common level playing field and the day-today co-operation. In this sense, we have witnessed the work of the Convention on Mutual Legal Assistance of May 200 which is only ratified so far by 3 Member States but that provides for and encourages direct contacts between judges of the Member States and provides as well for other means of closer co-operation. One of the most curious and practical means is the possibility of exchanges of information (relating to criminal offences and the infringement of rules of law), done in a spontaneous was and without the formal request to that effect, but within the limits of each Member States national law. Moreover, the principal of mutual recognition is going to be applied progressively to different types of judicial decisions.
The effect of decisions taken by the national judiciary will no longer be limited tot the national territory. Basically, they will have to be executed in any other Member State. This can be considered a new dimension, which goes with an enhanced responsibility. For instance, the European arrest warrant is based on mutual recognition. IN addition, a number of framework decisions approximating substantive national laws on certain criminal offences have been adopted, for example in relation to trafficking of human beings, terrorism, environmental crime and credit card fraud.

Following the importance stressed of an efficient co-ordination, in the field of co-operation among practitioners, many Member States should not hesitate to make use of the Joint Action on liaison magistrates. A good sign already lays in the fact that all Member States, including already the new Member States, are involved in the European Judicial Network in criminal matters. Finally, the possibility given to Investigators and prosecutors to get advice and assistance from Europol and Eurojust goes into this same direction.

In the civil area, legislative activity has been very intense since the entry into force of the Amsterdam Treaty and the Tampere conclusions. We have indeed seen a number of instruments adopted that lay down the foundations of the civil side of the European area of justice. Although much remains to be done, we can already see how the basic principles of such area are taking shape and are implemented in practice.

Mutual recognition is certainly the basic inspiring principle of our work in civil matters. The Tampere conclusions underlined the importance of what we would call the free circulation of judicial decisions, which is the logical and necessary follow-up to the creation of a European market without internal borders where there is free movement for people, goods, services and capital.

As regards mutual recognition, the programme for mutual recognition clearly sets out our objective in the long run: the abolition of exequatur. And work towards this goal is already under way.

The Community has for example • adopted the so-called Brussels I Regulation, which lays down quite a streamlined procedure for granting exequatur in civil and commercial matters. Within that field, the Commission has also proposed to completely do away with exequatur in the area of uncontested claims through a draft Regulation currently under discussion in the institutions.

We have also made dramatic progress as regards mutual recognition in the area of parental responsibility. The Council should in fact soon adopt formally the new Regulation on parental responsibility.

The Regulation mainly aims at solving the problem of parental abduction of children by laying down that the illegal transfer of a child, from the Member State where he or she is habitually resident to another Member State, cannot have as effect the subsequent transfer of the judicial competence to adopt measures on parental responsibility. In other words, and without prejudice to urgency measures, the last word on where the child should live lies with the competent court of the Member State where the child was residing before his or her abduction. The commission hopes this will have a strong deterrent effect on child abduction.

This soon-to-be-adopted Regulation constitutes the proof that the European Community can, through the adoption of legislation in civil matters, solve complex and delicate problems that affect citizens intimately. I should add that the Commission has also carried out preparatory work on how to apply the principle of mutual recognition in the areas of patrimonial consequences of the break up of married and unmarried couples, and successions and wills. Two Green Papers should be presented in these areas in 2005 en 2004, respectively.

The second basic principle of the constructions of a European area of justice in civil matters is direct contact between local judicial authorities. As a matter of fact, the very integrated European area of justice requires new methods of wording. In some civil areas, this implies going beyond the traditional way of cross-border judicial co-operation, that is, a centralised system of central authorities. The community has already adopted two Regulations that implement this principle for the cross-border service of documents and the cross-border taking of evidence.

New ways of judicial co-operation require new solutions to practical problems. In this respect, I would like to highlight the role played by the European Judicial Network in civil matters, whose aim is to ensure smooth cross-border co-operation between local jurisdictions. The network has another important mission: to develop an Internet-based information system for citizens and the legal professions on national and Community law in the area of civil judicial

co-operation. This site is already operational, and I cannot but invite all of you to make use of it.

However, the Networks site is just one of the results of Tampere's emphasis on improving access to justice. The Community has followed up this clear recommendation by adopting a Directive on legal aid for cross-border cases. The institutions are also currently discussing a Commission proposal on State compensation to' crime victims, and, in 2004, the Commission will come forward with an initiative on Alternative Dispute Resolution methods.

All these activities constitute the European Union's contribution to providing citizens with a just, sound, accessible and efficient system of justice. Management of courts and judicial authorities remains a matter solely in national responsibility. It is then up to the Member States to allocate the necessary staff, resources, training and other support to their judiciary and the Union can only encourage and support their efforts.

Where appropriate, the building of networks can be very useful. I have already mentioned the European Judicial Networks in civil matters and in criminal matters. Another example, which is probably of particular interest for you, is the European Judicial Training Network. This network is made up of national schools and institutions of all Member States responsible specifically for the training of professional judges and prosecutors to know each other's judicial systems, to exchange best practices and to acquire a high level of competence in order to improve the efficiency of judicial co-operation. Via this network, the judiciary should be able to get to know each other better and to develop a common culture of efficiency and adequate safeguards.

The European Judicial Training Network can also help make a success of enlargement: the time has certainly come for the development of exchanges between judges and prosecutors in the existing Member States and those in the new Member States. Such exchanges should help strengthen the mutual trust between legal systems, such mutual trust being the basis for the application of the principle of mutual recognition.

Last but not least, both the EU, in the context of its PHARE programme, and the current Member States have provided substantial assistance to the judicial systems of the new Member States in order to make them more efficient and fully independent but also to adapt, where necessary, their legal framework to the EU acquis. We will continue to do so beyond accession with the help of the so-called Transition Facility as defined in Article 34 of the treaty of Accession to the EU. This is a challenging task, but what we have seen so far is promising. I am particularly delighted to hear that many representatives from the new Member States are contributing to this conference.

Ladies and gentleman, thank you for your attention. I wish you a very constructive and successful conference.

Speech Mrs. Maria Dakolias, Legal Reform Section World bank Washington

I always enjoy being in the Netherlands. I spent a year in an LLM program in Amsterdam. Its good to be here at the Hague, the international city of peace and the judicial capital of the world. It makes perfect sense to have peace and justice so perfectly aligned. As Baruch Spinoza, one of the greatest philosophers, wrote peace is not the absence of war, but the presence of justice. In the 21st Century we still see justice tied to peace—perhaps more than ever---but increasingly we see justice tied to matters of economic and social development too. The broadening reach of justice reflects the dynamic advancements in the world today. Advancements in technology. Advancements in communication. We are less compartmentalized, less segmented, and more interdependent than ever before. John Donne's timeless lines "No man is an island, but every man is a piece of the continent" might have been written a long time ago, but it's a way of life today.

This notion of interdependence is not new to you. First there was the development of the EU, and the launch today of your Network of Judicial Councils is a natural outgrowth of that effort. And this notion of interdependence is not new to those of us at the World Bank. Today more than ever the World Bank sees a link between the judiciary, and more broadly the rule of law, and economic and social development.

So I want to focus on two things this afternoon:

- One is the importance of an effective judiciary for economic and social development, and
- Two is the role of the EU judiciaries and Judicial Councils in the development process.

In the 21St Century economic and social development isn't just about the balance of payments or building a road or increasing tax collection. More and more it's about the rule of law. We believe that the rule of law is in effect when there are:

- *Meaningful and enforceable laws: that* means transparency, fairness, and predictability in decisions;
- *When there are enforceable contracts: so* that there's promotion of business and commerce;
- *When there is basic security: That* means personal safety and protection of property, and an independent judiciary that safeguards both;
- . *And finally when there is access to justice:* That means concrete ways to invoke that safeguard.

If we have these elements, the state can regulate the economy and empower private individuals to contribute to economic development by confidently engaging in business, investments, and other transactions. This in turn fosters domestic and foreign investment, the creation of jobs, and the reduction of poverty. If there is to be sustainable development, the rule of law is a must.

Development without attention to the rule of law has resulted in failure:
We only have to look back at the Asian financial crisis of the Nineties to see that. A positive economic situation sometimes masks the need to upgrade substantive laws and may result in weak legal institutions. Argentina, a more recent example, experienced economic progress during the Nineties only to find itself in crisis during the last two years. Many point to corruption and the lack of the rule of law as the main cause. Promoting the rule of law becomes more incumbent on all of us because a financial crisis in one country can spell financial problems in many others.

And when one considers globalization, economic and social development with attention to the rule of law becomes absolutely paramount. All of us have a part to play as the rules governing globalization continue to unfold. While globalization has spurred economic development, its benefits have been uneven, affecting different segments of society. There are still more than one billion people who live on less than one dollar a day and nearly three billion who live on less than $2 a day. The poor continue to lack legal rights that empower them to take advantage of opportunities and provide them with security against arbitrary and inequitable treatment. Discriminatory or arbitrarily enforced laws deprive people of their individual and property rights, raise barriers to justice and keep the poor poor. For this reason an effective judiciary is critical.

And for us at the World Bank it's a priority. We weren't always in the business of the rule of law. For years we concentrated on education, health and infrastructure. We still do those things, but we have made the rule of law a vital part of what we do. And in doing this, it hasn't made our job easier, it's made it harder. Harder in a way that we believe makes our work more useful and overall moves us closer to our goal of reducing poverty around the world.

We have about 500 projects and activities dealing with the rule of law. That means loans and grants to help support Judicial Councils, train judges, improve court management, introduce ADR, provide legal education and legal aid, and more.

And yet while the development community recognizes the need for the rule of law and its importance, we're not there yet. In September 2000 the United Nations unanimously adopted the Millennium Declaration that strives to:

1) eradicate extreme poverty and hunger;
2) *achieve universal primary education;
3) *promote gender equality and empower women;
4) reduce child mortality;
5) improve maternal health;
6) *combat HIV/AIDS, malaria and other diseases;
7) ensure environmental sustainability;
8) develop global partnership for development.

But nowhere is the rule of law mentioned. The rule of law must be included in any conversation about economic or social development. It's up to the World Bank, the UN, the E.0 and other leaders of the world community and every person in this room to make sure that the rule of law is an integral part of that conversation. And that commitment begins in meetings like this with more than 19 judiciaries represented.

You will go along way toward achieving this goal, if you will make the rule of law not just a part of a conversation for the EU countries. But also and, most importantly for the developing world, as others will be looking to you and what you do as a model for their work.

Developing countries are already making the rule of law part of their efforts to attract foreign investment. And doing so means moving toward market economies and overhauling legal and institutional frameworks. All of which helps create *predictability.* Last year aid flows from the OECD donor countries amounted to $56 billion. International investment flows to developing countries- were more than three times this amount at $154 billion. And in countries like Sri Lanka, the rule of law takes on special social meaning where developmental successes have tragically been overshadowed by seemingly intractable, on-going ethnic conflict. Although a peace process has begun, success depends on an effective and trusted judiciary.

As part of their efforts to create an effective judiciary, many countries are following your lead in establishing Judicial Councils, which were adopted in some countries in Western Europe as a means to protect judicial independence. So your influence is not limited to the greater Europe but it's worldwide. For example, Argentina looked to Spain, Italy, and France in its considerations in creating its Judicial Council. And while it is true that reforms must take into account the country's cultural, political, social, and economic environment, some countries think because they adopted elements of your legal system, they can easily transplant your institutions. They are finding that this not easy; in fact it is difficult.

Especially in countries where judicial independence is weak and corruption is rampant, attention to both the real and perceived interference is central to achieving success. One way to promote judicial independence, is as we have seen, a trend of moving budget management to the judiciaries. As you know all too well, Judicial Council's are taking on the role of managing budgets too both in Europe and in other countries such as Colombia, Ecuador, Peru (in addition to appointment, discipline and training of judges).

So as you make reforms in your own countries, remember that they <u>will</u> be transplanted elsewhere. Consider the possible real or perceived effects of those reforms. Do they foster the rule of law and do they contribute to best practices? We're all watching the promising reforms taking place in the U.K. The abolishing of the Lord Chancellor's Department and a clearer statement of institutional roles is enhancing judicial independence and the separation of powers. And The Lord Chief Justice is taking on the role as head of the judiciary. We would expect no less.

You are also expecting the same from countries that await entry into the EU. You are establishing standards for them. For example, "states should consider creating independent judicial councils to administrate the judiciary." As a result, it could be argued that you are moving toward a European justice system, where consistency of laws and interpretation is just as important as the structure and service of the judiciary.

As regionalism and globalization continues, and it will continue, there will be more and more harmonization of laws and judiciaries. Yes, we have civil law and common law jurisdictions, but more and more, we are seeing a convergence of the two systems, and more and more one is borrowing from the other. There is also an increased need for greater cooperation among judiciaries, whether it is for arrest warrants or enforcement of judgments. As interdependence

grows among countries so does the need for greater exchange, whether it is on judicial training, standards of quality, or case management systems.

Your launch of this European Judicial Council Network is an excellent way to start. I am pleased to see that the draft charter includes efforts to reach beyond Europe. I encourage you to do this as you can influence through example. Part of your efforts I hope will be to extend this transfer of know-how and experience to developing countries. We all need to be advocates of the importance of the judiciary in the development process and promoters of the rule of law internationally.

We at the World Bank have been working with the Judicial Council of Denmark on a database of judicial indicators worldwide. Danish Judges have been working and traveling to several eastern European and Former Soviet Union countries to gather key information. This database is one way we are sharing comparative knowledge with countries. Another example, is that the Dutch Judicial Council has kindly agreed to second Judge Reiling to the World Bank for two years. We would welcome the opportunity to cooperate with your new Network as well. We have a vested interest in your success. You are models for many countries around the world, and you are central to our efforts to assist developing countries in sustainable economic and social development.

It is a new world we face when it comes to the judiciary and the rule of the law and its broadening reach. And history tells us that when we discover a new world our sense of our place in the old one changes and our sense of mission changes, too. That's exactly what happened to Spain and really all of Europe when Columbus discovered the Americas. Up until then the motto for the Spanish Royal Court was "there is nothing more beyond." Upon Columbus's return, the motto changed to "there is plenty more beyond."

As I mentioned earlier, our mission at the World Bank also known as the International Bank for Reconstruction and Development has shifted from reconstruction of post WWII countries to one of reducing poverty and the impact of the rule of law has become integral in that effort. In this new world of the law where its reach extends to areas of economic and social development and more, we are all discoverers like Columbus as we come across profound and creative applications for the law. And we are all like the Spanish Royal Court, forever changed by what we've discovered. There is indeed plenty more beyond, and you're exemplifying that spirit today, especially as you launch your network.

Economic and social development depends on an effective legal and judicial system. I noticed that the subject of this discussion was listed as the "economic and social needs for an effective and efficient judiciary". I hope that you agree that more importantly, the judiciary has a critical role to play in development generally. We have some time now for discussion. And speaking of the new world in the Americas, even though this topic is no less important, we have not factored in thirty hours of debate now underway in the U.S. Congress on the appointment of judges.

Presentation Eddy Bauw, Netherlands Council for the judiciary

Ladies and gentlemen,

It is my privilege today to inform you about the way the Netherlands Council for the Judiciary has organized its statutory task of advising the government on proposed legislation which will have an effect on the administration of justice. Whether this will bring you a new perspective, as the title of my contribution suggests, remains to be seen. According to the replies to the questionnaire that was put out in preparation of the meeting of today, an advisory function is, although not common, not totally unique for the Netherlands. I would therefore like to invite delegates of other countries to speak on this subject after me and share their experiences with us. .

But first I want to go back to the Dutch situation. In the short time that I have for my contribution, I can not do more than highlight the main features of the advisory function. First I want to tell you something about the nature, the content and the effectiveness of the advice procedure. Next I will pay attention to the possibility that the Council has, to advice the government at its own initiative. Finally I will spend a few words on the possible role of advice in the context of the European Network of the Councils for the Judiciary

Nature of the advice
Before the modernization of the judicial system, which came into force in 2002, the judiciary played *no formal* role in the legislation process. There was only a modest form of informal advice by the Netherlands Association for the Judiciary, a private organization of which many judges were – and still are - a member. These advises mainly expressed the opinion of a small group of judges who volunteered to prepare them. After the establishment of the Council for the Judiciary there was a clear point of address for the government to seek formal advice from the judiciary. The advisory function can be seen as an expression of the value that the legislator attaches to the efficiency of justice. It shows the legislator is interested to have knowledge of the consequences of new legislation for the workload of the judiciary and for the effectiveness of case handling by judges. After all this will have an effect on the efficiency of the justice system as a whole for which the Minister of Justice bares responsibility. An adequate advice in an early phase of the legislation process can prevent that `things go wrong' at a later stage.

It will not be a surprise to you, that in the beginning there was much debate within the judiciary about the way the advisory function should be taken up. One does not have to be an expert in constitutional law to realize that – given the doctrine of the separation of powers and the independence of the judiciary – giving advice to the legislator can be a sensitive matter. There is the possibility of being drawn into the political debate. For instance, when the legislator proposes that certain criminal cases be handled by a single police court judge instead of a three judge criminal section, this proposal will be subject to fierce political debate on the implications of that proposal for the legal protection of suspects; and rightly so. In such a case the advice of the judiciary, when it expresses approval or disapproval of the proposal, runs the risk of being used for political purposes. The Council is determined to stay out of the political debate as much as possible, but realizes that in some cases this cannot be avoided, especially when fundamental rights are at stake.

Content of the advice
As I said, the Council advises on legislative proposals that have consequences for the judiciary. It does so – as is prescribed by law - "having heard the opinion of the courts". All advises are therefore co-ordinated with the presidents of the courts and in many cases rely to a large extend on the input of judges that are experts in the subject matter that is dealt with in the proposal.

In its advice the Council takes note of the following aspects:

In the first place the effect the proposed legislation will have on the workload of the courts. Will cases have to be handled in a different way and will this take more of less time from the judge? Will the number of cases of a certain type increase or decrease by the introduction of the proposed legislation? To answer these questions the availability of reliable data is vital, for example on the number and types of cases that are handled by the different sections of the courts. Based on the prognosis of the effect of the proposal on the workload of the courts the Council can in its advice formulate a claim for compensation from the government. This claim will be taken up in the budget for the financial year in which the new legislation will come into force.

In the second place the advice will go into the organisational aspects of the proposed legislation. Important in this respect is for example the question whether cases will be handled by all courts or have to be concentrated at one or a few courts, or even at a specialized chamber within a court. This question arises when new legislation demands a high degree of specialized knowledge. Decisions on these matters have important implications not only for the courts in question, but in also for the whole of the judicial system. After all one should avoid to end up with first rate courts that have many specialists and second rate courts that only deal with common cases. It is the responsibility of the Council to secure an outcome that is satisfactory to all courts. The advisory function gives the Council the opportunity to exercise this responsibility.

Finally, the Council considers the consequences the proposed legislation will have for the way in which judges have to do their work. Here question arise like "does the proposed legislation hinder judges in the effectiveness of their work" and "are there alternative ways in which the matter could be regulated that have a more positive effect on the work of the judge". For this purpose in the case of major legislative proposals the Council will establish a working group of judges with experience on the subject matter in question. This working group can, through the Council, make suggestions on amendments or come up with counter proposals.

Effectiveness
Now you will probably ask yourself what the effectiveness is of this advisory function as I just described it to you. It [is] evident that it takes quite an effort to advise adequately on the very many legislative proposals and a realistic question is: "is it worth the effort". When answering this question I can not base myself on the results of an evaluation of the experiences in the two years existence of the Council. A cost-benefit analysis has not yet been made. Nevertheless, it is safe to say that there are several ways in which the advices of the Council can have effect.

Firstly, the advice is given to the minister concerned before the draft proposal is discussed by the Council of Ministers. In this phase there is still enough room for the advice to lead to amendment of the proposal.

Secondly, the legislator is obliged to respond to the advice in the Expose des Motifs (explanatory memorandum) of the draft Bill that is send to parliament. This is meant to ensure that the advice and the reaction from the government thereupon can become part of the discussion in parliament. In this way the arguments that did not convince the government, can still lead to amendments by parliament. Another way to achieve this is to publish the advice on the website of the Council. This is planned for the beginning of next year. On top of this, in some cases the Council can choose to send its advice directly to parliament.

Thirdly, as I said before, the Council will confront the minister of Justice again with the consequences as described in its advice when discussing the budget for the Judiciary.

Finally, it is important to mention that as a spin off of the advisory function, practice shows that Ministries are increasingly inclined to involve the Council in a very early phase of developing new legislative proposals. In those cases the possibilities of influencing the outcome of the legislative process are of course even greater. This development is especially important because of the growing number of European directives and regulations. In that case the phase in which negotiations are still going on is even the only phase in which there is any room to influence the outcome whatsoever. The same goes for other international instruments.

Spontaneous advice: a new Dutch perspective?
After having put into place the advisory function I just described to you, the Council has already taken a step further. Maybe here we can see something of a new Dutch perspective that was promised to you. The case is the following. At the end of last year the Council presented at its own initiative an advice to the Minister of Justice on the way criminal procedure law can be improved. This action was especially triggered by an increase in the number of cases put before the criminal sections of the courts. These sections therefore grappled more and more with backlogs. At request of the Council a committee of judges prepared proposals to increase the efficiency of criminal proceedings and to decrease the backlogs. The advice had mainly an organizational character. It made, for example, suggestions to diminish the number of reasons for a judge to order a stay of proceedings. The Minister of Justice decided to follow the advice and the draft legislation that resulted from this has already been send to parliament.

I don't know what the situation is in other countries, but I can tell you that in Dutch constitutional relations this was a breakthrough. Never before did the judiciary itself take the initiative to come up with legislative proposals. It must be said that not everybody welcomed this development. The Council was criticised by criminal lawyers who were of the opinion that the proposals went too far. This shows the delicacies that are involved here and the caution with which one has to act in these matters.

Nevertheless the Council considered the initiative as a success and a new committee has been installed, consisting of civil court judges, which is now preparing, with the assistance of the Bureau of the Council, the same kind of advice with regard to the law on civil procedure.

A perspective for the ENCJ?
The final question is does this all lead to a perspective in the context of the European Network of Councils for the Judiciary as gathered here today. In my view the lessons that can be drawn from the Dutch experience show that there is more room for the judiciary to be actively involved in the legislation process than is commonly thought. For this reason it is perhaps

worthwhile for the Network to consider at a later date the possibilities of actively trying to influence decision making at the European level. There are numerous subjects that one can think of in this respect. To mention just one: is it not the task of the Judiciary to point at the increasing waiting time at the European Court of Justice for preliminary questions on the interpretation of European Law. As we all know this has detrimental effect on the functioning of the national courts. Wile the number of European regulations is growing rapidly this will become more and more a problem. One could imagine that the Network would consider making a proposal to the European Commission or the European Council to improve this situation. An alternative approach would be to lobby with such a proposal at the national level. This can be just as effective.

It is clearly too early for the Network, that is today not even formally established, to consider activities like these at this meeting and it is not my intention to suggest so. It was my purpose to give you something to think about and come back to at future meetings. Maybe than in a few years time the Network of European Councils for the Judiciary will have developed to be a factor of interest in European decision making. Having listened to mr. Vittorino one can be optimistic about the perspective in this respect. And with this promising thought I end my contribution.

BELGIUM

1. Name

De Hoge Raad voor de Justitie – Beige
Le Conseil superieur de la Justice – Belgique
The High Council of Justice – Belgium

2. Position

Established on November 20th 1998 and come into force on March 1st 2000.
Constitutional basis : art. 151 of the Belgium Constitution.
Annual budget 4 774 850 (2003) decided directly by the House of Representatives. The Minister of Justice has no right of control on the acts of the High Council of Justice
The House of Representatives controls the accounts and decides on the budget of the High Council.
The Senate nominates 22 non-magistrates members of the High Council.
The House of Representatives and the Senate regularly consult the High Council on the project of law on the functioning of the Judiciary, and audits the High Council every year on its annual report.

3. Scope

The High Council includes judges and prosecutors, both categories belonging to the Judicial Power.
The High Council does not include the support staff of the Judiciary.

4. Structure

The General Assembly is composed with 44 members.
Double parity:
22 French-speaking (French-speaking College) and 22 Dutch-speaking (Dutch-speaking College);
22 magistrates (judges and prosecutors) and 22 non magistrates (lawyers, university professors, representatives of the civil society).

The General Assembly meets every month.

The magistrates are elected by the magistrates every four years.
The non-magistrates are nominated by the Senate with a 2/3 majority every four years.

The Board is composed with 4 members (double parity). The two French-speaking members are elected by the French-speaking College and the two Dutch-speaking members are elected by the Dutch-speaking College. The four members are confirmed by the General Assembly. Every Board member is president of the High Council for one year.

The staff is composed with 17 lawyers and 30 administrative assistants.

5. Mandate

The mandate of the members of the High Council has a duration of four years.

The competences of the High Council are:

a. Presentation of candidates for nomination or appointment as judge or prosecutor or president of a court;
b. Training of magistrates;
c. Examination for access to a function of judge or prosecutor;

d. Advices for the Ministry of Justice and parliament on the projects of law concerning the general functioning of the judiciary;
e. Recommandations and proposals about the general functioning of the judiciary.
f. General monitoring of the internal supervision;
g. The follow-up and possible investigation of complaints about the functioning of the judiciary;
h. The institution of investigations into the functioning of the judiciary.

The High Council is based on six permanent Commissions in the High Council:

a. The three Nomination and Appointment Commissions NAC (competent for points a, b and c)•
i. The French-speaking NAC (French-speaking districts)
ii. The Dutch-speaking NAC (Dutch-speaking districts)
iii. The Joint NAC (for functions in Brussels where the knowledge of both languages are required).

b. The three Advisory and Investigation Commissions AIC (competent for points d, e, f, g and h):
i. The French-speaking AIC (for competence g)
ii. The Dutch-speaking AIC (for competence g)
iii. The joint AIC (for the other competencies).

6. Issues

Beyond the regular implementation of its legal competencies, the High Council is dealing with the following main issues:
The development of an overall training policy for magistrates;
An overall project for the magistrates career, including various aspects as such as access, nomination, training and mobility;
The drafting of proposals for fighting against judicial arrears: an national forum on this subject will be organised in June 2004 with the participation of various actors of the justice; The preparation of a national forum on the image of justice which will be organised in June 2004;
The study for the implementation of the principles of quality management in the Judicial.

CYPRUS

1. Name

ΑΝΟΤΑΤΟ ΑΙΚΑΕΤΗΡΙΟ ΚΥΠΡΟΥ
Supreme Court of Cyprus
Cour Supreme de Chypre

2. Position Established

on 16th August 1960.

Under the Constitution of Cyprus the judiciary is established as a separate power, independent from the other two powers of the state and autonomous in its sphere of competence authority and jurisdiction.

The budget, 14 million pounds, is included in the national comprehensive budget; however its budget is controlled by the administrative staff of the courts under the supervision of the Chief Registrar.

Minister of Justice and Public Order has in fact no say in the administration of the courts or in the exercise of judicial authority. His role, in so far as the courts are concerned, is confined to dealing with their material needs such as buildings and equipment. Although he may also usefully take the initiative in introducing legislation usually after consultation with the Supreme Court, in order that the requirements of the system should be better met.

No relation with the Parliament.

3. Scope

The judiciary of Cyprus entails:

a) Assumption and exercise of jurisdiction by the judicial power in all matters naturally pertaining to the sphere of the judicial power;
b) Autonomy of the judiciary in rule making, regulating the exercise of its jurisdictions;
c) Institutionally entrenched independence of judges from the other two powers of the state, the executive and legislative.

Courts are organised on a two-tier system:

a) The Supreme Court (13 members);
b) First instance Courts (79 members).

The Supreme Court is the final appellate court of the Republic. Also it is vested with jurisdiction to determine the constitutionality of laws, rules and regulations and has sole competence and exclusive jurisdiction to review legality of acts, decisions of omissions emanating from the exercise of executive or administrative authority.

Moreover it is vested with original jurisdiction to issue writs known in English Law as prerogative writs that is orders in the nature of habes corpus, mandamus, prohibition, quo warranto and certioari. A law may entrust original jurisdiction to the Supreme Court in a particular field of law and such jurisdiction has been vested in the Supreme Court in admiralty matters.

The principal first instance courts are the District Courts operating in every District of the Republic with the exception of the occupied areas; composed of District Judges, Senior District Judges and President District Courts.

The other first instance Courts are:
- The Assize Courts (four Assize Courts continuously in session); -
The Military Court (one);
The Industrial Disputes Court (having three branches);
The Rent Control Courts (three);
The Family Courts (two operating alternatively in every district of Cyprus).

4. Structure

First instance judges are appointed transferred, promoted and are subject to the disciplinary jurisdiction of the Supreme Council of Judicature (composed of the members of the Supreme Court) whereas Supreme Court Judges are appointed by the President of the Republic.

The qualify for appointment as a District Judge, the first level in the hierarchy of first instance courts, one must be a registered advocate with seven years of practice in the legal profession and of high moral standing. For appointment to the office of President of a District Court, one must be a qualified practising lawyer for at least ten years and of high moral standing. Prior judicial service ranks as practice in law. To be qualified for appointment to the Supreme Court one must have at least 12 years practice as a member of the bar or a member of the judiciary or a combination of the two. The criteria for appointment to the Bench are professional proficiency and high moral standing.

Judicial posts are advertised among members of the Bar and applications are invited. Furthermore the judicial authorities themselves may encourage worthy members of the profession to apply. Before selection there is a wide exchange of views among member of the judiciary in order to elect the suitability of the various candidates to serve on the Bench; candidates are interviewed.

The judges of first instance Courts serve until they attain the age of sixty. Judges of the Supreme Court serve until the attain they age of sixty-eight. Their tenure is predetermined by the Constitution in the case of Judges of the Supreme Court and by The Courts of Justice Law in the case of first instance judiciary.

The secretariat of the Courts is composed of:

a) Chief Registrar (Head of the services of the Courts);
b) Assistant Chief Registrar;
c) Senior Registrars (In charge of the services of District Courts);
d) Registrars (In charge of department of the services of the Courts) (Recourses, Civil and Criminal Appeals, Revisional Appeals, Admiralty, Civil and Criminal cases of District Courts, Administration of Estates and Execution of Judgements);
e) Legal Assistants (in the Supreme Court);
f) Court stenographers;
g) Bailiffs (Execution of Judgements);
h) Accounting Officers;
i), Clerical Staff;
j) Messengers.

The members of the Secretariat of the Court are appointed promoted etc. by the Republic Service Commission, an independent authority of the Republic.

The total number of employees in all Courts is 450.

5. Mandate

The functions of the Supreme Court are purely judicial. It has, under the Constitution, jurisdiction to hear finally cases on appeal from all other courts; it has original jurisdiction in all administrative law-matters, similar to that of the French Conseil d'Etat as well as original jurisdiction to examine legislation pre-emptively and to decide on conflicts between the various authorities in the Republic. It also acts as an Electoral Court. In addition the last may give its jurisdiction in various fields such as admiralty law. But the bulk of its work comprises appeals and administrative law cases.

The Supreme Court also acts, constituted in the same way, as the Supreme Council of Judicature which is responsible for the appointment, promotion, transfer and discipline of all judges of the lower courts.

6. Issues

The main challenges to the system will have to do with the need to establish new structures needed in order to cope with the increasing volume of work and the complexity of many modem day cases. This means expansion of building installations and equipment, including up to date technology, but also new rules and improved methods of work and administration. The strategy is to move simultaneously on all fronts so as to keep a balance because most things are inter-related.

We consider as threats two extremes: either moving too slowly in which case by the time one achieves something it is no longer sufficient; or moving too quickly which may result in breaking with tradition which is important in the image that many people have of the judiciary, and may also weaken some of the essential safeguards of which our present system is proud. Our focus is then in achieving a balanced progress. Our special programs includes the training of judges, organising court work so as to minimise delays, and we are at present working on an ambitions project to revise Court Rules in order to expedite the trial of cases.

DENMARK

1. Name

The official name of the organisation in Danish is "Domstolsstyrelsen".
The name of the organisation in English and French is "The Court Administration" and "La Commission des Tribunaux et Cours" respectively.

2. Position

What is the position within the governmental framework?
Section 3 of the Constitutional Act of Denmark has the following wording:
"Legislative authority shall be vested in the King and the Folketing conjointly. Executive authority shall be vested in the King. Judicial authority shall be vested in the courts of justice".
The above mentioned section express' a fundamental principle of the Danish constitutional basis. The power is divided between the legislative, executive and the judicial power.
The Court Administration was founded on 1 July 1999 pursuant to Act No. 401 of 26 June 1998 on the Court Administration passed by the Danish Parliament.
Prior to that date the Ministry of Justice was responsible for the administration of the judiciary. Since this responsibility has now been conferred on the Court Administration, the administration of the judiciary is consequently separated from the executive and the legislature.
The initial recommendation for establishing the Court Administration was made by the Courts Committee. This committee was set up by the government in March 1993 and it published its final report in June 1996. The members of the Courts Committee were judges, law professors, lawyers and civil servants from the Ministry of Justice.
In its final report the committee stated that since one of the major tasks of the courts is to monitor that the legislative and executive powers act withinthe limits set by the constitution, the courts should not only in fact be independent from the legislative and executive authorities, but should also appear to be independent. According to the committee the tight financial and administrative control which the courts up until that time had been subject to by
the Ministry of Justice, in principle gave cause for concern. However, the committee also stated that it had no reason to believe that the Ministry of Justice had in fact ever abused its position to violate the independence of the courts.
Regarding the independence of the Court Administration, please see section 4.

In the period from 1993 to 2002 the budget of the Danish courts has been as follows:
Final budget (in millions of DKK)

2002	1,187.0
2001	1,1
2000	1,1
1999	1,1
1998	1,(
1997	1,(
1996	992.3
1995	953.0
1994	997.3
1993	918.4

The general budgetary procedure is as follows: The Court Administration negotiates with the Ministry of Justice and the Ministry of Finance about a draft budget for the next year

concerning the Danish courts. In August the Ministry of Finance presents the draft budget to Parliament. If the Court Administration and the Government have not been able to come to an agreement about how to set up a draft budget the Court Administration can present its own draft budget directly to Parliament.
From August to December the draft budget will be discussed in Parliament.
During this period the government or the opposition may propose amendments to the budget. The Budget will normally be passed just before Christmas.
If budgets have to be adjusted during the fiscal year this has to be approved by the Finance Committee of Parliament. When the fiscal year has ended the Parliament will formally pass a bill containing all these supplementary grants.

3. Scope

The scope of the Court Administration is to establish an independent state institution that administrates the economical and administrative affairs of the courts. This includes the administration of appropriations, general personnel administration especially with respect to court clerks, technology support and the administration of premises. Administration of the police and the prosecution is not within the competence of the Court Administration.
The Court Administration is responsible for ensuring a proper and appropriate management of the courts. The Court Administration is responsible for the division and allocation of the appropriation for the courts contained in the Budget. Besides, the administration is supposed to take the initiatives necessary to ensure that the Danish court system appears and functions as a modem organisation.

4. Structure

The Court Administration is headed by a Board of Governors. The Board of Governors is composed of one Supreme Court Judge, two High Court Judges, two District Court Judges, one deputy judge, two court clerks, one practising lawyer and two persons with special managerial experience. The governors are appointed by the Minister of Justice upon recommendations from a number of organisations as specified in the Court Administration Act of 1998.
The Board of Governors is responsible for the administration of the judiciary. In general, the government has no powers to instruct the Board of Governors, to interfere with any decision of the Court Administration or to supervise the activities of the Court Administration. However, if the Auditor-General makes essential critical comments on audit issues and the auditors of public accounts concur in these comments, the Minister of Justice may order
the Court Administration to implement the measures on which the auditors and the Minister of Justice agree. If the Board of Governors does not comply with the order from the Minister of Justice, the Minister can remove the entire Board.
The Board of Governors appoints a Director to head the Court Administration charged with the day to day administration of the judiciary. The Court Administration has about 100 employees and is divided up into the following sections:
The personnel office is dealing with all subjects concerning payment, education, leave, retirement/pension, transfers and decorations in connection to all the personnel in the Danish court system (about 3.000 employees).
Besides, the personnel office is servicing the Judicial Appointments Council.
The technology office is taking care of the functioning and maintenance of the courts' technical equipment and is responsible for developing new software for the computer systems used by the courts.
The office of economy is dealing with all the activities concerning the economic planning and spending of resources. Furthermore, the office is providing all the statistical information about

economic figures and figures concerning the different judicial and administrative activities in the courts. Besides, the office of economy is the accounts department of the Court Administration.
The administrative office is servicing the management and the Board of Governors in connection with the overall planning and coordination of the Court Administrations activities. The office is handling general and concrete legal questions e.g. hearings concerning bills, questions from the Danish Parliament, complaints about the courts and claims for compensation against the courts. Besides, the office is dealing with the overall information tasks in relation to the courts and the public. Furthermore, the office is taking care of the administration of the buildings that are owned by the courts. The office is responsible for securing that both the Court Administration and all the courts work out plans of action specifying exactly what the Court Administration and the courts will do in the coming year in order to contribute to the overall visions and objectives. At regular intervals the administrative office carries out different kinds of user surveys in order to measure whether or not the users of the Danish court system are satisfied with the functioning of the court system.

5. Mandate Please

see section 2, 3 and 4.

6. Issues

Through an intensive process the Court Administration in co-operation with the courts has worked out a set of objectives and values that are to be looked at as guidelines for the work in the organisation in the years to come. The overall vision of the Danish courts has been expressed in the following way:
"The Danish courts have a vision of being a highly respected and trustworthy organisation which resolves its tasks with the highest quality, service and efficiency.
The Danish courts shall protect the legal rights of citizens and be the primary forum for resolving conflicts".

The vision just mentioned should be considered in the context of the challenges that the Danish courts are facing:
At the time the Government is considering whether or not the number of judicial districts are to be reduced. Until a decision has been made and the future number of judicial districts has been determined it is difficult for the Court Administration and the courts to carry into effect important, new reforms concerning the organization of the Danish court system.
The expectations of clients regarding service and quality are generally increasing in line with their experience of improved standards in the private sector or when they are clients of other public institutions.
The courts are not without competition when it comes to resolving conflicts. The press increasingly focuses on the slow handling of cases and other critical issues regarding the courts.
The Danish court system is affected by the savings within the public sector.
The Ministry of Finance and Parliament expect increasingly explicit and unambiguous documentation as to how efficiently resources are used and concerning the results achieved. The courts must provide good management and stimulating jobs if they are not to lose the battle over the scarce workforce of the younger generation.
In order to fulfil the vision and comply with the challenges mentioned above many initiatives have been taken. The following is examples of these initiatives.
In 2001 all courts carried out user surveys. This was in part done in order to gather nformation on what to include in the plans of action. All types of users (plaintiffs, defendants, lawyers,

prosecutors and so on) were asked to give their opinions. More than 12,000 users responded to the survey.
In order to secure the quality and effectiveness of the work done by the Danish courts and the Court Administration, work is done to lay down different kinds of measurements that can show e.g. the productivity regarding the consideration of cases.
Every year both the courts and the Court Administration each work out a plan specifying what the courts/the Court Administration will do in the coming year in order to contribute to the overall vision and objectives.
A "Best Practice"-project has been established. Through an exchange of ideas the scope of the project is to identify the most effective working procedures in relation to the handling of all the different kinds of tasks in the courts.
Guidelines on how to express yourself in writing have been laid down giving the employees advice on how to write in a way so that the recipients understand the content of the writing. The Danish Court Administration is currently in the process of determining to what extent it will be possible to create a data base giving the public access to judgments made by the Danish courts.
The executives in the Court Administration and the judges are offered to attend a management course. The scope of the course is to secure a visible, active and involving management of the Danish court system.
A strategy has been worked out aiming at providing the employees access to the most recent professional knowledge and suitable IT-tools.
Altogether, the Danish Court Administration believes that constant focus on how to improve the quality, service and efficiency of the work done by the Danish courts and the Court Administration is necessary, if the Danish courts want to uphold their reputation as being a highly respected and trustworthy organisation.

Presentation of the Danish Court Administration

First of all I would like to express the appreciation of the Danish delegation of the initiative to this conference.

It seems to be a general trend in European countries that the administration of the courts is made independent. It is my impression that several of the challenges this independency implies are common. I am sure that a conference like this will display different means and ways of managing these challenges. This inspiration will undoubtedly be of great value in the future work with.court administration.

In Denmark it is stated in The Constitutional Act of Denmark, that the power is divided between the legislative, executive and the judicial power.

The Danish Court Administration was founded on the first of July 1999.

Prior to that date the Ministry of Justice was responsible for the administration of the judiciary. Since this responsibility has now been conferred on the Court Administration, the administration of the judiciary is consequently separated from the executive and the legislature.

The initial recommendation for establishing the Court Administration was made by the Courts Committee.

In its final report the committee stated that since one of the major tasks of the courts is to monitor that the legislative and executive powers act within the limits set by the constitution, the courts should not only in fact be independent from the legislative and executive authorities, but should also appear to be independent. According to the committee the tight financial and administrative control which the courts up until that time had been subject to by the Ministry of Justice, in principle gave cause for concern. However, it should be mentioned that the committee also stated that it had no reason to believe that the Ministry of Justice had in fact ever abused its position to violate the independence of the courts.

In 1998 the Danish Parliament unanimously adopted an act on the Court Administration.

The scope of the Court Administration is to establish an independent state institution that administrates the economical and administrative affairs of the courts. This includes the administration of appropriations, general personnel administration especially with respect to court clerks, technology support and the administration of premises.

The Court Administration is responsible for ensuring a proper and appropriate management of the courts. The Court Administration is responsible for the division and allocation of the appropriation for the courts contained in the finance bill. Besides, the administration is supposed to take the initiatives necessary to ensure that the Danish court system appears and functions as a modem organisation.

The Court Administration is headed by a Board of Governors. The Board is composed of 5 judges, one deputy judge, two court clerks, one practising lawyer and two persons with special managerial experience.

The Board of Governors decides which initiatives should be taken as regards to court administration. This implies priorities within the budget, for example funding of education, technology, buildings. It also implies development of the courts as regards to quality, effectiveness, leadership management and so forth. Developing of the courts so they will become modem institutions is one of the pillars and the obligations of the Court Administration.

Also, the Board of Governors appoints the Director to head the Court Administration charged with the day to day administration of the judiciary.

The consequences of the Court Administration being an independent national authority are substantive.

In general, the government, including the Minister of Justice, has no powers to instruct the Board of Governors, no powers to interfere with any decision of the Court Administration or to supervise the activities of the Court Administration. This also means that the Minister of Justice has no authority to consider complaints regarding the administration of the Danish courts.

However, the Court Administration of course has to tolerate interference from society.

First of all the Court Administration shall respect legislation enacted by Parliament. However, it is presumed that the Court Administration has the possibility of suggesting legislation-initiatives to the Government if it is considered necessary to ensure the proper and appropriate operation of the judiciary.

Another interference arises from the fact, that the activities of the courts is financed by the general budget passed by a bill in Parliament. The Court Administration has the influence on the budget in the respect that we negotiate with the Ministry of Justice and the Ministry of Finance. And in the respect that if the Court Administration and the Government can't agree about the budget, The Court Administration can present it's own draft budget directly to Parliament.

However, if the government has majority in Parliament, the Court Administration of course has to comply with the budget the Parliament adopts.

As an independent national authority responsible for the administration of the economical and administrative affairs of the courts the Court Administration is usually asked to comment on legislative proposals that - if enacted by Parliament - can have an influence on the administrative and financial affairs of the court system.

Legislative proposals concerning changes in substantive law are usually send to the Danish Association of Judges and the Association of Deputy Judges in order for them to comment on the proposals.

The Board of Governors shall see to the proper and appropriate operation of the judiciary *and shall take any initiatives required to secure this.* On this basis, the Board of Governors from time to time presents legislative proposals to the Government concerning the administrative affairs of the Danish court system.

The main task of the Danish Court Administration is within the existing legislation to ensure the proper and appropriate operation of the judiciary. We have taken several initiatives during our first 4 years of our existence. The time does not allow me to mention them, but I am sure that more are to come in the context of the challenges that the Danish courts are facing.

So, in closing, I think that it is fair to draw the conclusion that the independence of the administration of the Danish courts has been a success.

On the one hand, it is obvious that having an politically independent court administration implies several financial and administrative difficulties.

On the other hand, I think that the independence contributes to secure a well respected court system which is able to adapt it self to meet the continuously changing demands of society.

FRANCE

LE CONSEIL SUPERIEUR DE LA MAGISTRATURE FRANCAIS

organ constitutionnel original, tant par sa composition que par ses pouvoirs et sa place dans les institutions francaises, le Conseil superieur de la magistrature assiste son president de droit, le President de la Republique, clans la mission de garant de 1'independance de 1'autorite judiciaire qui lui est confide par la Constitution.

Les attributions du Conseil superieur de la magistrature en matiere de nomination et de discipline des magistrats du siege et du parquet tendent a mettre le corps judiciaire a 1'abri du risque d'influences 'partisans.

Sa composition mixte permet la rencontre et le travail commun de personnalites designees par les plus hautes autoritds et institutions de 1'Etat et de magistrats elus, sous la prdsidence du chef de 1Etat ou du garde des sceaux, ministre de la justice, vice-president du Conseil.

I Composition et fonctionnement

Le Conseil supdrieur de la magistrature est preside par le President de la Republique. Le garde des sceaux, ministre de la Justice, en est le vice-president.

Le Conseil comprend en outre seize membres. Quatre d'entre eux, qui ne sont pas des magistrats de 1'ordre judiciaire, siegent dans les deux formations du Conseil. Les douze magistrats de l'ordre judiciaire se repartissent en nombre egal dans chaque formation, cinq magistrats du siege et un magistrat du parquet dans la formation competente a regard des magistrats du siege, cinq magistrats du parquet et un magistrat du siege dans la formation competente a regard des magistrats du parquet.

Le President de la Republique, le president de 1'Assemblee Nationale et le president du Senat designeet chacun une personnalite (qui doit n'appartenir ni au Parlement, ni a l'ordre judiciaire) ; l'assemblee generale du Conseil d'Etat elit un conseiller d'Etat.

La formation du siege comprend un magistrat hors hierarchie de la Cour de cassation elu par ses pairs, un premier president de cour d'appel et un president de tribunal elus dans les memes conditions, ainsi que deux magistrats du siege et un magistrat du parquet des cours et tribunaux elus par l'ensemble des autres magistrats.

Parallelement, la formation du parquet comprend un magistrat du parquet hors hierarchie de la Cour de cassation, un procureur general, un procureur de la Republique, deux magistrats du parquet et un magistrat du siege des cours et des tribunaux elus dans les memes conditions.

Le Conseil exerce ses pouvoirs constitutionnels au sein de ces deux formations distinctes, competentes respectivement a regard des magistrats du siege et des

magistrats du parquet. Les reunions de travail de chacune de ces formations (en dehors des seances solennelles presidees par le chef de 1'Etat ou le garde des sceaux), sont presidees par un de ses membres, elu a cette fin pour un an.

En outre, les seize membres du Conseil se reunissent regulierement pour evoquer les sujets d'interet commun, harmoniser les pratiques des deux formations et affirmer tant l'unite du Conseil que celle de la magistrature.

Ces reunions plenieres sont presidees par un des membres du Conseil elu a cette fin pour un an.

Le mandat des membres elus ou designs du conseil est de quatre ans ; it n'est pas immediatement renouvelable.

II Competences

1) Les nominations

L 'article 65 de la Constitution definit les deux competences du Conseil: nominations et discipline des magistrats. Dans ces deux domaines, it convient de distinguer les pouvoirs de la formation du siege de ceux de la formation du parquet.

- La nomination des magistrats du siege

En matiere de nomination, la formation du siege dispose de deux types de pouvoirs distincts.

Elle a un pouvoir de proposition pour la nomination des magistrats du siege de la Cour de cassation, des premiers presidents de cours d'appel et des presidents de tribunaux de grande instance. Pour ces quelque 400 postes, elle dispose donc de l' initiative, recense les candidatures, etudie les dossiers des candidats, procede a l' audition de certains d'entre eux et arrete les propositions qu'elle soumet au President de la Republique, sur le rapport d'un de ses membres, fors d'une seance du Conseil tenue au Palais de 1'Elysee.

Pour toutes les autres nominations de magistrats du siege, la formation dispose d'un pouvoir d'avis conforme. Le garde des sceaux, qui conserve 1' initiative, propose les nominations. La formation du siege etudie les dossiers des magistrats proposes, mais aussi ceux de candidats qui n' ont pas ete retenus par la Chancellerie et notarnment des magistrats qui ont formule des observations sur les projets de nomination ; elle procede, le cas echeant, a des auditions, puis exprime, lors d'une seance tenue soit au siege du Conseil soit au palais de I'Elysee, un avis qui lie 1' autorite de nomination.

La nomination des magistrats du parquet

La formation du parquet dispose quanta elle d'un pouvoir d'avis simple pour toutes les nominations aux postes du parquet, qui sont proposees par le garde des sceaux, a l'exception des procureurs generaux qui sont nommes en Conseil des

ministres. Elle etudie les dossiers des magistrats proposes, ceux de candidats qui n'ont pas ete retenus par la Chancellerie et notamment des magistrats qui ont formule des observations sur les projets de nomination. Elle procede, le cas echeant, a des auditions, puis exprime, lors d'une seance tenue soit au siege du Conseil soft au palais de 1' Elysee, un avis qui ne lie pas 1' autorite de nomination.

2) La discipline des magistrats

En matiere disciplinaire, les deux formations du Conseil siegent a la Cour de cassation.

Le premier president de la Cour de cassation preside alors la formation du siege statuant comme conseil de discipline des magistrats du siege ; le procureur general pres la Cour preside la formation competente a regard des magistrats du parquet. En cas d' empechement, peuvent Pun et 1' autre se faire suppleer par le magistrat du siege ou du parquet de la Cour de cassation membre de la formation competente du Conseil.

Le Conseil superieur de la magistrature est saisi par la denonciation des faits motivant des poursuites disciplinaires contre un magistrat du siege, que lui adresse le garde des sceaux, ministre de la justice. Il peut egalement etre saisi par les premiers presidents de cours d'appel ou les presidents de tribunaux superieurs d'appel.

Le garde des sceaux, ministre de la justice, saisit le procureur general pros la Cour de cassation des faits motivant des poursuites disciplinaires contre un magistrat du parquet. Le procureur general pros la Cour de cassation peut egalement etre saisi par les procureurs generaux pros les cours d'appel ou les procureurs de la Republique pres les tribunaux superieurs d'appel.

Pour ce qui concerne les magistrats du siege, les sanctions disciplinaires sont prises, apres enquete et rapport d' un des membres, par decision motivee de la formation du siege du Conseil .

Pour ce qui concerne les magistrats du parquet, c'est le garde des sceaux qui decide des sanctions, mais apres avis, rendu dans les memes conditions, de la formation du parquet.

Le siege du ministere public est tenu par le directeur des services judiciaires du ministere de la justice, ou son representant. La loi du 25 juin 2001 a introduit la publicite de l'audience.

3) Garantir I'independance de 1'autorite judiciaire

Ces deux prerogatives essentielles du Conseil, nominations et discipline des magistrats, ne constituent pas I' integralite de sa mission telle que definie a Particle 64 de la Constitution : assister le President de la Republique clans son role de-garant de I' independance de I' autorite judiciaire.

A cette fin, le Conseil doit bien connaitre la situation de l'institution judiciaire : d' ou l' importance des missions d' information aupres de la Cour de cassation, des cours d'appel, des tribunaux et de 1'Ecole nationale de la magistrature que le Conseil pent diligenter en mandatant pour les accomplir un ou plusieurs de ses membres.

En outre, dans 1'exercice de sa mission, le Conseil superieur de la magistrature a emis a plusieurs reprises des avis adresses au President de la Republique.

Le Conseil rend compte de 1'activite de ses deux formations dans un rapport annuel public.

HISTORIQUE

Si le Conseil superieur de la magistrature apparait pour la premiere fois en France avec la loi du 31 aout 1883 relative a l'organisation judiciaire - la Cour de cassation, statuant en matiere de discipline des magistrats, toutes chambres reunies, recevant alors cette denomination-, ce n'est qu'en 1946 que la Constitution de la IV erne Republique cree un Conseil superieur de la magistrature, organe constitutionnel autonome.

Le titre IX de la Constitution du 27 octobre 1946 institue un Conseil preside par le President de la Republique, dont le vice-president est le garde des sceaux. Il est alors compose de six membres elus par 1'Assemblee nationale, quatre magistrats elus par leurs pairs et deux membres designs, au sein des professions judiciaires, par le President de la Republique. Les pouvoirs de ce Conseil sont etendus : it propose au President de la Republique la nomination des magistrats du siege ; it assure la discipline et l'independance de ces magistrats, ainsi que l'administration des tribunaux judiciaires. Il n'a pas exerce, en fait, cette derniere competence.

La Constitution du 4 octobre 1958 reforme l'institution. Sa composition est modifee : autour du President de la Republique et du garde des sceaux, qui restent president et vice-president, neuf membres sont designs par le President de la Republique, soit directement (deux personnalites qualifiees), soft sur proposition du bureau de la Cour de cassation (six magistats) ou de 1'assemblee generate du Conseil d'Etat (un conseiller d'Etat). Ses pouvoirs sont limites : it ne propose plus au President de la Republique que la nomination des conseillers A. la Cour de cassation et des premiers presidents de cour d'appel ; it donne un avis simple sur le projet de nomination des autres magistrats du siege ; confirme comme conseil de discipline des magistrats du siege, it statue sous la presidence du premier
president de la Cour de cassation.

La loi constitutionnelle du 27 juillet 1993 et la loi organique du 5 fevrier 1994 ont profondement remanie le Conseil issu de la Constitution de 1958 : retour au principe de l'election pour les magistrats membres du Conseil, creation de deux formations distinctes, competences rune a regard des magistrats du siege et I'autre des magistrats du parquet, nomination de membres communs a ces deux formations par les hautes autorites et institutions de dEtat (President de la Republique, presidents des deux assemblees du Parlement, assemblee generale du Conseil d'Etat), competences nouvelles en ce qui concerne son pouvoir de proposition etendu aux presidents des tribunaux de grande instance,. et son pouvoir consultatif exprime desormais par des avis conformes pour les magistrats du siege et simples pour ceux du parquet.

Le Conseil ainsi reforme a ete constitue au debut du mois de juin 1994, puis renouvele en juin 1998 et en juin 2002.

La loi organique du 25 juin 2001 a modifie le mode d'election des magistrats autres que les membres de la Cour de cassation et les chefs de cour et de juridiction, en adoptant le scrutin de liste a la representation proportionnelle suivant la regle du plus fort reste, sans panachage ni vote preferentiel. Elle a en

Republic of the Minister of Justice) are chaired by one of the CSM's members elected for this purpose for a non-renewable term of one year.

The sixteen members of the CSM meet regularly in plenary session to discuss subjects of common interest, standardize practices of the two formations within the CSM and support a united body of magistrates both within the Council and among all Judges.

The term of office of all CSM members, both those elected and appointed, is four years and is non-renewable.

Duties and powers

Article 65 of the Constitution defines the two duties entrusted to the CSM: appointing and disciplining members of the judiciary. In these two areas, there is a difference between the powers given the formation sitting to deal with sitting judges and those granted to the formation dealing with public prosecutors. These powers are part of the general scope of the CSM's mission.

1) APPOINTMENT

Appointment of sitting judges

When it comes to appointments of sitting judges, the CSM formation sitting to deal with these Judges has two separate types of power.

The CSM recommends nominations for the sitting judges at the *Cour de Cassation,* the first Presidents of the *Courts of Appeals* and the Presidents of the *Tribunaux de Grande Instance.* For the 350 positions available, the CSM thus has the power to take the initiative, list the candidates, study the candidate's applications, interview them and decide on the recommendations it will submit to the President of the Republic based on the report drawn up by one of its members presented during a CSM Session held at the Presidential Elysee Palace.

For all other appointments of sitting judges, this formation has the power to issue an opinion which is binding on the Minister of Justice. In this case, the Minister of Justice takes the initiative to nominate candidates and the CSM formation dealing with sitting judges studies the applications of the recommended judges, the applications of candidates who were not retained by the Minister of Justice's staff and especially studies any complaints submitted by judges about the recommended nominations. After this procedure is completed, a session is held at the Alma Palace where the CSM issues an opinion which is binding on the Minister of Justice.

Appointment of public prosecutors

When it comes to appointments of public prosecutors, the CSM formation sitting to deal with these members of the judiciary has the power to issue a simple consultative opinion about their appointment which is not binding on the Minister of Justice. (Chief Public Prosecutors *(Procureurs Generaux)* the Courts of Appeals are appointed directly by the Council of Ministers, without opinion of the CSM.)

The CSM presents its opinion in the same way it does for sitting judges, at a session held at the Alma Palace after having examined the applications and giving a report.

2) DISCIPLINARY

The CSM also acts as a Disciplinary Council for *Magistrats du Siege* (sitting judges) and gives its opinion on disciplinary measures against *Magistrats du Parquet* (prosecutors).

When dealing with disciplinary matters, the two CSM formations sit at the *Cour de Cassation.*

The First President of the *Cour de Cassation* presides over the formation dealing with disciplinary measures against with sitting judges and the Chief Public Prosecutor of the *Cour de* Cassation presides over the formation dealing with public prosecutors.

The Minister of Justice submits facts which justify disciplinary measures to the CSM.
The First Presidents of the Courts of Appeals and Chief Public Prosecutors may also submit cases to the CSM.

The CSM formation dealing with sitting judges issues a decision to take disciplinary measures against sitting judges after an investigation is conducted and a report is drawn up by one of its members. Grounds for the decision are given.

As for disciplinary measures against the public prosecutors, the Minister of Justice decides on the measures to be taken after the CSM formation dealing with public prosecutors has issued an opinion under the same conditions as above.

3) GUARANTEEING THE INDEPENDENCE OF THE JUDICIAL AUTHORITY

These two essential duties of the CSM - appointing and disciplining members of judiciary - are not the only responsibilities given the CSM as defined under Article 64 of the Constitution. The CSM is also called on to assist the President of the Republic who is the "guarantor of the independence of judicial authority".

To carry out these duties, the CSM must be abreast of the situation of the judiciary, which explains why missions are conducted to gather information from the *Cour de Cassation,* the Courts of Appeals, the various Courts of first instance and the National Training College for the Judiciary *(Ecole Nationale de la Magistrature).* Both CSM formations may appoint one or several members to carry out these missions.

In connection with these duties, the CSM has provided opinions to the President of the Republic on several occasions.

History

Although the Conseil Superieur de la Magistrature was mentioned for the first time in France in the Law enacted August 31, 1883 on judicial organization with a provision for all the Chambers of the Cour de Cassation to sit in order to render decisions on disciplinary matters against Magistrates, it was only in 1946 under the Constitution of the 4^{h} Republic

that the Conseil Superieur de la Magistrature was actually created as an independent constitutional body.

Title IX of the October 27, 1946 Constitution established a Council presided over by the President of the Republic, with the Minister of Justice as Vice President. There were six members elected by the National Assembly, four Magistrates elected by their peers and two members appointed from the judiciary by the President of the Republic. The Conseill was grantedwide-ranging powers. The Council recommended nominations for ***Magistrats du Siege*** to the President of the- Republic, ensured discipline and the independence of these Magistrates and the administration of the private law courts. In actual fact, however, the Council never exercised this last duty falling within its power.

The October 4, 1958 Constitution led to a reform of the Council and changed the composition of its members. The President of the Republic and the Minister of Justice remained President and Vice President respectively, nine members were to be appointed by the President of the Republic, either directly (two qualified prominent figures) or per the nomination of the officers of the ***Cour de*** Cassation (six Magistrates) or the General Assembly of the Conseil d'etat ***(a Conseiller*** appointed by the Conseil d'etat). The Council's powers were limited and it was from then on only allowed to recommend nominations for ***Conseillers*** at the ***Cour de Cassation and the*** First Presidents of the Courts of Appeals to the President of the Republic and to issue a consultative opinion regarding the appointment of other ***Magistrats du Siege.*** The Council as a disciplinary body for ***Magistrats du Siege*** was confirmed and in this case, was presided by the first President of the ***Cour de Cassation.***

The Constitutional Law and Amendment dated July 27, 1993 and February 5, 1994 significantly reorganized the Council compared to how it had been established in the 1958 Constitution. The principle of electing the Magistrates to be members of the Council was reinstated and two separate "formations" were created. One of these formations has jurisdiction over the sitting judges and the other one over the public prosecutors. Members who are common to both formations are appointed by the "high authorities" of the State (President of the Republic, Presidents of the two Parliamentary Chambers, i.e., the Senate and the National Assembly and the General Assembly of the Council of State). The Council was given greater latitude to recommend nominations of Presidents of the ***Tribunaux de Grande Instance as*** well. Its opinion is now binding on the Minister of Justice when dealing with sitting judges and the Council provides a consultative opinion when dealing with public prosecutors.

French Constitution October 4, 1958

TITLE VIII - THE JUDICIAL A UTHORI T Y

Art. 64 - The President of the Republic is the guarantor of the independence of the judicial authority and shall be assisted in this by the ***"Conseil Superieur de la Magistrature".*** The status of Magistrates shall be covered by way of a Constitutional Law. Sitting judges shall be irremovable.

Art. 65 - (Constitutional Law No. 93-952 dated July 27, 1993 amending the Constitution). The President of the Republic shall preside over the ***Conseil Superieur de la Magistrature.*** The Minister of Justice shall be the Vice President as of right and may be deputized to replace the President of the Republic.

The *Conseil Superieur de la Magistrature* is organized in two "formations", one having jurisdiction over sitting judges and the other over public prosecutors.
The formation sitting to deal with sitting judges comprises the President of the Republic, the Minister of Justice, five sitting judges and one public prosecutor, *a Conseiller* appointed by the Council of State and three prominent figures who are not Members of Parliament or Judges, respectively appointed by the President of the Republic, the President of the National Assembly and the President of the Senate.
The formation sitting to deal with public prosecutors comprises the President of the Republic, the Minister of Justice, five public prosecutors and one sitting judge, *a Conseiller* appointed by the Council of State and the three prominent figures mentioned in the above paragraph. In the formation sitting to deal with sitting judges, the *Conseil Superieur de la Magistrature* nominates sitting judges to be members of the *Cour de Cassation,* First Presidents of the Courts of Appeals and Presidents of the *Tribunaux de Grande Instance.* The other sitting judges are appointed subject to its approval via a decision which is binding on the Minister of Justice. The *Conseil Superieur de la Magistrature* acts as a disciplinary body for sitting judges. In this capacity, it is presided over by the first President of the *Cour de Cassation.* In the formation sitting to deal with public prosecutors, the *Conseil Superieur de la Magistrature* gives its opinion on the appointment of public prosecutors, with the exception of those members of the judiciary appointed by the Council of Ministers. It also gives its opinion on disciplinary measures to be taken against public prosecutors. In this capacity, it is presided over by the Public Prosecutor of the *Cour de Cassation.*
A Constitutional Law shall lay down the conditions for the application of this Article.

Art. 66 No one may be arbitrarily detained. The judicial authorities are responsible for safeguarding individual freedom and shall ensure compliance with this principle under the conditions provided for by law.

HUNGARY

1. Name

Orszagos Igazsagszolgaltatasi Tanacs
National Council of Justice, Republic of Hungary
Le Conseil National Judiciaire, Republic Hongrie
Landesjustizrat, Republic van Ungarn

2. Position

The National Council of Justice is a fully independent legal entity established in line with the basic principle of clear separation of the legislative, judicial and executive powers. Therefore the National Council of Justice is not in a subordinate position to the Executive, i.e. the Government. Neither the government, nor the Ministry of Justice has any competence of responsibilities toward the judiciary.
Established on 1 January 1998 with the Act LXVI. Of 1997 on the organisation and administration of the Courts.
The National Council of Justice is responsible only to the Parliament. The Parliament elects with 2/3 majority the President of the Supreme Court, who is at the same time the President of National Council of Justice. The Council submits its own budget-proposal to the Parliament, without consulting the Government.

3. Scope

The National Council of Justice fulfils – with due observation of the constitutional principle of judicial independence – the central duties of administration of the courts and exercises the supervision of the administrative activities of the courts.
The scope of the organisation includes only judges and judicial personal. Public prosecutors in Hungary belong to a different, equally independent body.

4. Structure

The National Council of Justice has 15 members; 9 elected judges, the Minister of Justice, the Attorney General, the President of the Bar Association and two members of the Parliament. President of the Council is always the President of the Supreme Court of Hungary.
The 9 judge members are elected secretly by the meeting of delegates of the judges. The delegates themselves are elected by the full meeting of the Supreme Court and the plenary session of judges of the regional and county courts.

An office of the National Council of Justice is operated to fulfil the responsibilities of the Council. The Office of the National Council of Justice is an independent, central organisation with several Departments and has a staff of approx. 120. The Office of the NCJ prepares the meetings of the National Council of Justice, arrange the execution of its resolutions and perform administrative duties related to the operation of the Council. The Office of the NCJ keeps the personnel registration of the judges.
The head of the Office is a professional judge, appointed by the National Council of Justice on the basis of an application. His assignment as Head of the Office is for an indefinite period.

5. Mandate

The main responsibility of the National Council of Justice is to satisfy the requirements of administering justice with regards to the principles of rule of law, and fully realise the principle of independence of the judiciary.

6. Issues

To implement the Judicial Reform initiated in 1997 and still in progress.
To train judges on community law.
To prepare the Hungarian judiciary to apply and enforce community law.
To develop a comprehensive Information Technology infrastructure for the courts.

IRELAND

1. Name

An tSeirbhis Chuirteanna.
The Courts Service.

2. Position

The Courts Service was established on 9th November 1999.
The Courts Service was established pursuant to legislation enacted by the Irish Parliament (The Courts Service Act 1998).
The annual budget for 2003 is approximately 92,000,000 and the budget is voted by the Irish Parliament.
The courts Service, which is an independent body Corporate, is accountable to the Minister of Justice, Equality and Law Reform and through the Minister to the Parliament.

3. Scope

The Courts Service Board has a majority of judicial members and is chaired by the Chief Justice of by a judge of the Supreme Court nominated by the Chief Justice. The present Chair is the Hon. Mrs Justice Susan Denham.
The organisation includes support staff both in the operational and administrative area.

4. Structure

The Board of the Courts Service consists of 17 members, 9 of which are members of the Irish Judiciary.
The composition of the Board of the Courts Service is set out in Part 3, Section 11, of the Courts Service Act 1998.
There is slightly in excess of 1,000 staff in the Courts Service working in seven different Directorates, two operational Directorates plus five support Directorates. There is an operational Directorate responsible for the operations of the Supreme and High Court, and another Directorate responsible for the operations of the Circuit and District Courts. The five support Directorates are Corporate Services, Human Resources, Finance, Estates & buildings and Reform & development.

5. Mandate

The function of the Courts Service is to:

A) Manage the courts
B) Provide support services for the judges
C) Provide information on the courts system to the public
D) Provide and manage and maintain court buildings
E) Provide facilities for users of the courts

The core business of the organisation is set out in The Courts Service Mission Statement which is "To manage the courts, support the Judiciary and provide a high quality and professional service to all users to the Courts".

6. Issues

The second Three Year Strategic Plan had only recently been launched by the Courts Service and this deals with the challenges, focus, strategies and programmes for the next three years. While our first Three Year Strategic Plan was very much about structures — Management structures, Regional Structures, Unification, Even Year Building Programme, Family Law

Development Programme — our second plan is much more focused no procedures, processes and customer service. Ultimately it is on these issues that we will be judged as an organisation.

See http://www.courts.ie for further information on the Courts Service.

ITALY

1. Name

Consiglio Superiore della Magistratura (C.S.M.)
Italian Council for the Judiciary
Conseil de la Magistrature de 1' Italie

2. Position The Council started
on the 8th of July 1959

The Council is established by law. The constitution of 1948 enabled the establishment of the Council.

In 2003 the C.S.M. had an annual budget of 28.852.000, which includes the budget for the personnel of the C.S.M.
The budget derives from the state by force of a law on budget.

The Minister of Justice is responsible for the organisation of the judiciary and day to day operations of the services. The Minister is also responsible for the approval of the nominations within managerial positions and he has the power to call to disciplinary measures.
The C.S.M is expected to express her point of view on government laws that have an effect on the regulation and management of the judiciary and the administration of justice. The C.S.M can present bills on the modification of judiciary districts and on all matters, which regard the organisation of the services related to justice.
The Parliament contributes to the election of one third of the chosen members of the C.S.M. The C.S.M. is allowed to address the Parliament by sending a record on the actual position of justice, pointing out problems and proposals.

3. Scope

The members of the C.S.M are for one third elected by Parliament (Professors of universities, experts on law and barristers).
The other two thirds are chosen by the judiciary itself (judges, magistrates, public prosecutors, the honorary judges and the legislative power)

The organisation is responsible for the appointments, the promotions, the transfers and disciplinary measures for the magistrates within the Courts and the offices of the public prosecutor.

4. Structure

The President of the republic is the president of the C.S.M.
The C.S.M. is headed by the presidential committee, which consists of the vice president, the president and the prosecutor-general. The committee is responsible for the budget and the activities of 10 Commissions and the Assembly, where all elected members deliberate. The C.S.M. has 10 Commissions, which deal with matters, on which the C.S.M. is competent.
Furthermore there is a disciplinary section.

5. Mandate

The powers of the Commissions are divided by subject in the following order: the First commission deals with the conflicts of interest, the Second deals with proposals on the modification of the regulations, the Third deals with the transfers, the Fourth deals with the career development and the appointments, the Fifth deals with the attribution of directive and semi directive powers, the Sixth deals with the recommendations on bills and questions on the regulation of the judiciary, the Seventh deals with the organisation of the courts of law, the Eight with lay judges, The Ninth deals with the professional formation and the training of candidate judges, the Tenth deals with the recommendations and the proposals on the budget.

The bureau consists of a secretariat for each commission and several departments:

General and personnel department, including the archives and Public affairs (?)

Economic and Financial department

- Department of communication and information

ICT and statistics department

- Research department, documentation and library

The bureau consists of 230 employees.

The 22 magistrates of the secretariats and the research department don't count as employees of the C.S.M. Their employment lasts mostly 5 years.

6. Main issues

The organisation puts a lot of effort into the improvement of the efficiency of the judiciary activities. Especially the duration of the procedures in court is a major problem, to which the C.S.M has drawn the attention of the Parliament in an appeal of October 2001.

The lack of efficiency of the judicial process is particularly visible in the high number of cases that wait for a judicial decision. Until recently reforms did not have the appropriate effect. The efficiency problem jeopardises the bond of trust between the judiciary and the public.

The C.S.M. has dedicated its attention to the efficiency problem in various ways. In the first place the C.S.M has put effort to occupy all vacancies, especially in the regions with a high density of criminality and the selection of managers.

Court managers have been asked to point out measures to accelerate the treatment of urgent cases in their organisational plans.

More attention has been drawn to the theme of efficiency in the formation of the managers of the courts and in meetings seminars open to all magistrates.

LATVIA

1. Name Tiesu administracija (official name of the organisation in the national language); Court Administration (eng.); l'administration de la justice (fr.).

2. Position
Planned to be established in January, 2004;
The establishment of the Court Administration is provided for in the "Court Administration Concept Paper", which is accepted in the government committee meeting, and in the Regulations, drafted by Ministry of Justice. Besides that the legal basis will be provided for in the new Law on Judiciary (entry in force planned for 1 April, 2004);
Will be subjected to the Council of Justice (constitutional, independent organ, planned to be established in January, 2005);
Initially the Court Administration is going to be under monitoring of the Ministry of Justice (till the establishment of the Council of Justice);
Court Administration is going to be an autonomic institution in the relation with the Parliament.

3. Scope The Court Administration is responsible for providing the managerial issues of the judicial work (includes judges and administrative personnel).

4. Structure
The Court Administration shall be directed by Court Administration director;
The Court Administration director shall be appointed by Council of Justice (initially - by minister of Justice);
The structural units of the Court Administration will be departments, their divisions and independent divisions.
Planned to be over 60 employees.

5. Mandate
Performs the managerial direction of the judicial work;
Organises the trainings and improvement of professional skills of the judges and administrative personnel;
Supervises the administration of the court buildings, provides the courts with the necessary equipment.

6. Issues
Currently the Ministry of Justice of the Republic of Latvia is working on establishing a new institution – Court Administration, drafting the necessary legal framework, planning the structure, solving the issues related to the staff and material equipment. The Court Administration would be responsible for providing the managerial issues of the judicial work and would belong to the judicial system. The Court Administration is planned to start its work in January 2004. Initially the Court Administration is going to be under monitoring of the Ministry of Justice, but since January 2005 it will be subjected to the Council of Justice (constitutional, independent organ, planned to be established in January 2005).

NETHERLANDS

1. Name

Raad voor de rechtspraak
Netherlands Council for the Judiciary
Conseil de la Magistrature des Pays-Bas

2. Position

The Council started on January 1st, 2002.
The Council is established by law, there is no constitutional basis.
The total annual budget for the judiciary in the Netherlands is approximately □ 700.000.000.
The budget derives from the Minister of Justice and is allocated by the Council.

The Minister of Justice is responsible for the structure and the budget for the judiciary in general. His main instruments are legislation and the annual negotiations on the budget. The judiciary itself is responsible for the organisation and day to day operation. The Council is part of the judiciary and the counterpart for the Minister of Justice. The Courts are accountable to the Council and the Council is accountable to the Minister of Justice for the judiciary in general. The Minister of Justice speaks in Parliament. There is no formal relationship between the Council and the Parliament, although informal contacts with members of Parliament are frequent.

3. Scope

The scope of the Council is limited to the Courts and all the people working there, judges and staff with the exception of the Supreme Court. The scope does not include the prosecutors and their staff. They have their own organisation, closely related with the Ministry of Justice.

4. Structure

The Council consists of five members, three from within the judiciary and two from outside the judiciary. Members are appointed for six years, one extra term of three years is possible. Appointment is a Cabinet decision based on a list of recommendations. The list of recommendations is made up by the Minister of Justice in agreement with the Council and after consultations within the judiciary.

The Council Secretary is also the director of the supporting bureau.
The bureau consists of five departments:
Cabinet & Information Services (including Public affairs and Legal affairs)
Budget & Financial Control
Strategy & Development (including ICT, innovation and research)
Business Operations (including Human resource management and Housing)
Internal Support Services

The bureau has approximately 135 employees.

5. Mandate

The Council's tasks relate to operational matters (in the broadest sense of the term), budgetary matters and the qualitative aspects of the administration of justice.

The Council has a pivotal role in terms of preparing, implementing and accounting for the judicial system's budget. The budget system is based on a workload-measurement system maintained by the Council. The Council encourages and supervises the development of operational procedures in the day-to-day running of the Courts. The specific tasks in question are personnel policy, accommodation, ICT and external affairs. The Council has a range of formal statutory powers, which enable it to carry out these tasks. For instance, the Council is empowered to issue binding general instructions with regard to operational policy, although it prefers to exercise this power as little as possible.

The Council supports the recruitment, selection and training of judicial and court officials. It carries out its tasks in these areas in close consultation with the governing boards of the Courts. The Council has a significant say in appointing members to these governing boards of the Courts.

The Council's task as it pertains to the quality of the judiciary system involves promoting the uniform application of the law and enhancing judicial quality. In view of the overlap with the content of judicial rulings, the Council has no powers of compulsion in this area.

The Council also has a general advisory task. It advises the government about new laws that have implications for the judiciary system. This process takes place in ongoing consultation with the members of the governing boards of the Courts.

6. Issues

In modern times authority is something one has to earn. Although the judiciary has an important and - in general - unquestioned role in western democracies, this does not mean that the judiciary is immune for major developments in society and the public debate in general. One of the important issues in The Netherlands is how the judiciary can safeguard its role and position by meeting the justified wishes of citizens and professionals who are depending on the judiciary for dispute resolution. For instance in terms of accessibility and timeliness.

With a budget that is and always will be under pressure and a growing workload, efficiency is the only answer. This can be achieved by more focus on court management, innovation, process redesign and the extensive use of ICT solutions. For the judicial professional this is not common ground at all which implies a major change in focus and attitude.

Even more crucial than efficiency is the quality of the work done by the judiciary.
A comprehensive system for quality management for the judiciary is under construction and should be fully operational in the year 2006. An essential part of this system is a quality measuring system for judges. Expected resistance at the start of this project a few years ago has melted away. Ten courts will start implementing this measuring system in 2004.

POLAND

1. Name Krajowa Rada Sgdownictwa Conseil national de la Justice, The National Council of the Judiciary

2. Position

La date de creation - le 7 Avril 1989

Les articles 186 et 187 de la Constitution de la Republique polonaise du 2 avril 1997, selon lesquels le Conseil national de la Justice veille a 1'independance des cours de justices et des juges. L' organisation, le champ d' activite et la procedure du Conseil sont definis par une autre loi adopt&e le 27 juillet 2001 entree en vigueur le 1 er octobre 2001.

Jusqu'a la fin de l'an 2003 les frais de 1'entretien du Conseil sont couverts par la Chancellerie du President de 1'Etat et a partir du 1" janvier 2004 le Conseil aura son budget autonome mis a la disposition du President du Conseil.

Le Ministre de la Justice est l'un des membres du Conseil national de la Justice .

Le Conseil en tant que l'organe consultatif emet son opinion relative a la revocation presidents et des vice-presidents de droit commun et peut &met son opinion relative a la nomination des presidents des tribunaux de droit commun. Cependant, les decisions sur la nomination et la revocation sont prises par le Ministre.

Le Conseil &met son opinion relative aux projets des actes sur la juridiction prepares par le Ministre.

Le Conseil participe a 1'&laboration du projet des revenus et des depenses des tribunaux de droit commun en collaborant avec le Ministre .

Quatre parlementaires et deux senateurs sont les membres du Conseil.

A present, la Diete vote le budget des tribunaux et votera le budget du Conseil pour 2004.

Le Conseil &met son opinion relative aux projets des lois concernant la juridiction et les juges.

3. Scope Le Conseil national de la Justice prend les decisions uniquement a regard des juges et ne s'occupe pas des procureurs et des representans des autres metieurs juridiques.

4. Structure

Le Conseil compte 25 membres et delibere en seance publique convoquee par le president, au minimum une fois tous les deux mois. Pratiquement le Conseil delibere une fois par mois pendant trois ou quatre jours.

Parmi ses membres, le Conseil &lit le presidium se composant du president, de deux vice-presidents et trois membres. Outre cela, au sein du Conseil fonctionnent costamment trois commissions: la commision de la responsabilite disciplinaire des juges, la commision budgetaire et la commision d'ethique professionnelle des juges. Le Conseil peut convoquer d' autres commisions speciales. Le Conseil est represents par le president.

Le Conseil se compose:

a. du Premier President de la Cour supreme
b. du Ministre de la Justice
c. du President de la Haute Cour administrative
d. dune personne nommee par le President de la Republique
e. de quinze membres elus parmi les juges: de la Cour supreme (deux membres), des tribunaux de droit commun (onze membres), de la Cour administrative (un membre) et des tribunaux militaires (un membre) – tous elm pour quatre ans
f. de quatre membres elus par la Diete parmi ses deputes, durant la legislature de la Diete

g. de deux membres elus par le Senat parmi les senateurs

Tous les juges sont elus par les assemblees generates des juges, des courts d'appel et des juges des tribunaux d'arrondissement et de district

Le Conseil realise son objectif a 1'aide du Bureau de Conseil. A present, le Bureau comport la chancellerie, le secretariat et les travailleurs s'occupant du fond de nos affaires. Le pesonnel compte au total 13 salaries. Outre cela, nous avons ausii des travailleurs de la Chancellerie du President de l' Etat charges du service de notre Bureau. Le projet du budget prevoit 71 salaries.

5. Mandate

Les competences generales sont definies par la Constitution

Vu l'article 186 : Le Conseil national de la Justice veille a 1'independance des cours de justice et a l'impartialite des juges.

Outre cela, la Constitution enumere une competence nouvelle et notamment:

Le Conseil peut demander au Tribunal Constitutionnel de statuer sur la conformit& a la constitution des actes normatifs dans la mesure ou its concernent 1' independance des cours de justice et l' impartialit& des juges.

D'autres competences sont definies par la loi du 27 juillet 2001.

Le Conseil:

a. analyse et &value les candidatures des juges pour la Cour supreme, la Haute Cour administrative, les tribunaux de droit commun et les tribunaux militairs;
b. presente au President de la Republique la demande en nomination de ces juges;
c. examine les demandes en autorisation a continuer 1'activite professionnelle par les juges des tribunaux de droit commun ayant fini 65 ans;
d. exerce les fonctions consultatives decrites, mentionnees ci-dessus
e. choisit le representant de l' inter&t public dans une procedure disciplinaire et peut initier cette procedure;
f. prend position dans les affaires relatives aux tribunaux et aux juges presentees par le President de la Republique et par d'autres organismes du pouvoir;
g. vote le code d' ethique professionnelle concemant les juges et veille a son respect.

6. Issues

a. Elaborer le premier budget du Conseil ainsi que celui des tribunaux de droit commun;
b. Prendre des demarches ayant pour but l'adaptation de tribunaux polonais vu l'adhesion a l' Union Europeenne;
c. Veiller au respect des principes du code d'ethique professionnelle vote en 2003.

PORTUGAL

1. Name
Conselho Superior da Magistratura
Portugal
En francais : Conseil Superieur de la Magistrature
En anglais: Superior Council of the Magistrature

2. Position
Constitue en 1976.
Base constitutionnelle : article 218° de la Constitution de la Republique Portugaise
Base legale : Loi n°85/77 de 13 de Decembre de 1977
Budget annuel total : □ 2.800.000
Provenance des moyens du budget: Ministere de la Justice (apr~s le prochain annee sera le Budget de I'Etat)
Relation avec le Ministre de la Justice:
RI it n'y a pas aucune relation organique avec le Ministre de la Justice.
Relation avec le Parlement:
RI Entre les 17 membres qui composent le Conseil ii y a sept membres elus par 1' Assemblee de la Republique (Parlement);
Annuelment le Conseil Superieur de la Magistrature envoi au Parlement un rapport de son activite relative a la derniere annee, que dolt titre publie dans le Journal de 1'Assemblee de la Republique.

3. Scope Comprend juges (pas de procureurs de la Republique) Comprend aussi personnel de soutien (juristes et personnel administratif)

4. Structure
Plenaire du Conseil
Conseil Permanent
President
Vice President
Vocals du Conseil
Juge Secretaire
Section de bureau
Section de comptabilite
Section de Mouvements
Section de Personnel
Section juridique
http://www.conselhosuperiordamagistratura.pt/conselhorag.htrnl

Nombre de salaries: 49

Procedure d'election des membres du conseil:
R/ Le Conseil est compose par 17 membres:
deux nomes par le President de la Republique
sept elus par le Parlement
sept elm d'entre e par les juges
le President du Supreme Tribunal de Justice preside au Conseil.

L'election des juges pour le Conseil est faite de la suivante fawn:
Les juges sont elus au moyen de listes elaborees par urn minimum de vingt electeurs. Chaque liste doit inclure un Juge du Tribunal Supreme, deux juges de la Court d'Apel et un juge de la premiere instance appartenant a chaqune des quatre districts judiciaires.
Le recensement est organize par le Conseil Superieur de la Magistrature; les electeurs sont juges en efectivite de service judiciel
Les juges membres du Conseil sont elus par sufrage direct et universel, segond le principe de la representation proporcionelle et la methode de la moyenne plus haute.
La fiscalization de la regularite des actes electorales et verification finale de la votation compete a une Comission d'elections constitue par le Presidente du Supreme Tribunal de justice et les Presidents des Tribunaux de la 2eme Instance et peut aussi inclure un representant de chaque liste concourante.

5. Mandate

Compete au Conseil:
nomer (meme pour le Supreme Tribunal de Justice), placer, transferer, promouvoir et exonerer les juges;
apprecisr le merite profissionnel des juges;
exercer faction disciplinaire contre les juges;
donner opinion sur les lois relatives a l'organization judiciaire et au Statut des Magistrats Judiciaire et, en general, sur les matieres relatives a 1'administration de la justice;
etudier et proposer au Ministre de la Justice providences legislatives pour rendre efficace et perfectioner les institutions judiciaires;
slaborer le plan annuel des inspections aux juges;
ordonner des inspections, sindicances et enquetes aux services judiciaires;
adopter les providences necessaires a I'organization et bonne execution du proces electoral;
alterer la distribution de proces dans les tribunaux avec plusieurs juges a fin d'assurer 1' egalite et l'operationalite des services;
etablir priorites d'entre les proces pendants dans les tribunaux par temps considers excessif;
proposer au Ministre de la Justice mesures pour ne rendre pas excessif le nombre de proces a charge de chaque juge;
fixer le nombre et composition des sections du Supreme Tribunal de Justice.

6. Issues

ROMANIA

1. Name

Consiliul Superior al Magistraturii
The Superior Council of Magistracy – Romania
Le Conseil Superieur de la Magistrature - Roumame

2. Position

The Superior Council of Magistracy guarantees independence of justice; it is the supreme organ and the sole representative of judicial authority.
The Superior Council of Magistracy was established in 1993.
Constitutional grounds of establishment: Constitution of Romania of 1991, Ch. VI, Section 3 < The Superior Council of Magistracy >, modified by the Revision Law in 2003.
In the Draft Law regarding the organisation and functioning of the Superior Council of Magistracy, to be adopted, it is mentioned that it has own budget, distinct in the state budget. Regarding the relation with Ministry of Justice and Parliament, the Superior Council of Magistracy is independent and is subject only to the Constitution and the law. The Minister of Justice is a rightful member of the Superior Council of Magistracy. Regarding the relation with the Parliament, the Senate validates the 14 members of the Superior Council of Magistracy, elected by the general assemblies of the magistrates. The Senate also elects two members of the Superior Council of Magistracy, representatives of civil society, law specialists, enjoying a high professional and moral reputation.

3. Scope

Composition of the Superior Council of Magistracy is the following:
The Superior Council of Magistracy is made of 19 members, out of which: 14 magistrates elected in their general assemblies; 3 rightful members – the Minister of Justice, The Chairman of the High Court of Cassation and Justice, and the General Prosecutor of the High Court of Cassation and Justice - and 2 representatives of civil society. Of the 14 elected members, 9 are judges and 5 are prosecutors.
In the Draft Law regarding the organisation and functioning of the Superior Council of Magistracy, to be adopted, it is mentioned that it has a functional staff led by a Secretary General that has within its structure: the office of the Secretary General, control body, departments, services and bureaus.

4. Structure

The Superior Council of Magistracy is led by a chairman elected for one–year non-renewable mandate. The Chairman is one of the 14 magistrates, members of the Council.
The structure of the Council includes two sections: one for judges (9 judges), the other for prosecutors (5 prosecutors).
According to the draft law mentioned above, the two representatives of civil society are elected by the Senate from lists with three candidates each, made by the National Rectors Council and the National Union of Lawyers of Romania, selected from proposals brought by the Professorial Councils of Law Faculties and by Bars.
Personnel, structure of departments and the number of employees are established by the Organisation and Functioning Regulation of the Superior Council of Magistracy, which is approved by the plenum.

5. Mandate

The Superior Council of Magistracy guarantees independence of justice; it is the supreme organ and the sole representative of judicial authority; it monitors the way magistrates apply law; defends the magistrates body against any acts that could affect its independence and impartiality; proposes to the President of Romania nominations of judges and prosecutors, except for probationers which are nominated directly; decides regarding the promotion and transferring judges; acts as a court of law through its sections, regarding disciplinary liability of judges and prosecutors; has important attributions regarding the organisation and operation of magistrate admission examination, capacity examinations, promotion, as well as in the evaluations of the professional activity.

6. Issues

Aspects regarding delimitation of the attributions of the Superior Council of Magistracy from those of the Minister of Justice will be detailed in the upcoming Law regarding the Organisation and Functioning of the Superior Council of Magistracy.

These provisions will be detailed in the Organisation and Functioning Regulation of the Superior Council of Magistracy.

SLOVAK REPUBLIC

1. Name

The official name of the organisation is „Sudna rada Slovenskej republiky".
Translation of the name in English is „Judiciary Council of the Slovak republic", in French: Conseil Judiciaire de la Republique Slovaque.

2. Position

The Judiciary Council of the Slovak Republic has been enacted by amendment to the Slovak Constitution of 2001 and it has been created in July 2002 under the Act on the Judiciary Council No 185/2002 Col. of April 16, 2002.

The Judiciary Council of the Slovak Republic is an independent constitutional body endowed with powers relating, in particular, to judicial appointments and promotion.

Total annual budget of the Judiciary Council of the Slovak Republic accounts for 3,6 million slovak crowns in the year 2003 and the proposal of the budget for 2004 accounts for 5,2 million slovak crowns. The Judiciary Council of the Slovak Republic has its own budget as a part of national budget under the law which came into force this year.

Despite the Judiciary Council has powers related to the assignment and transfer of judges to individual courts, the determination of the total number of judges in Slovakia continues to be in the hands of the Minister of Justice.

The chair and the deputy chair of the Judiciary Council are appointed for a 5-year term by the President of the Slovak Republic on a proposal from the Judiciary Council, but the Minister of Justice has competence to appoint and recall presidents and vice-presidents of district and regional courts.
The Judiciary Council defines the substantive content of judicial training in agreement with the Minister of Justice.
In case the Minister of Justice temporarily suspends a judge from office (e.g. in case of disciplinary proceedings), the Judiciary Council may overturn his decision within 30 days.

The Judiciary Council formulates opinions on the proposals of generally binding regulations on the organisation of the judiciary, proceedings before the courts, and status of judges; it also formulates positions on draft conceptual documents concerning the judiciary that are submitted for deliberation to government and to the Parliament.

3. Scope

The Judiciary Council has 18 members and is chaired ex constitution, by the president of the Supreme Court. Eight of its members must be judges and while the remaining members are not required to be judges, they must have legal background with at least 15 years of professional experience. The scope of the Judiciary Council is only for judges.
It is stated under the law which only comes in force on January 1, 2004 that the Judiciary Council will have an Office of the Judiciary Council with its chancellor and in the annual budget for the year 2004 it supposes that the Office will have 7 civil servants.

3. Structure
Chairman of the Judiciary Council is the President of the Supreme Court, 8 members are elected by judges,
3 members are elected by Parliament,
3 members are appointed by Government,
3 members are appointed by the President of the Slovak Republic

Eight members of the Judiciary Council are elected by judges of the Slovak Republic from among their peers by secret ballot. The candidates may be nominated by not less than 10 judges, professional organisation of judges, any Council of Judges. The term of office of the members of the Judiciary Council is 5 years.

This year it has only one civil servant. Next year it is supposed to have 7 civil servants in the Office of the Judiciary Council.

5. Mandate
Under the Constitution, judges are appointed by the President of the Republic on a proposal from the Judiciary Council.
The Judiciary Council transfers judges to higher-instance courts.
The Judiciary Council has responsibility for setting out the principles of ethical conduct of judges and has the responsibility to initiate disciplinary proceedings against any judge. It has the power of submitting nominations of judges who are to represent the Slovak Republic in international judicial bodies.
The Judiciary Council elects and recalls members of disciplinary panels.
It also gives opinion on the draft budget for Slovak Courts during the drafting of the state budget.
The Judiciary Council safeguards the independence and autonomy of judges who are not in any way subjected to the control of the legislative and executive powers.

6. Issues
Strategy – It would be useful to have such independent body – the Judiciary Council – which should cover all important issues of judges function from the beginning to the end of their terms of office including financing of judiciary.

SLOVENIA

1. Name Sodni Svet Judicial Council I
Conseil de la Magistrature

2. Position
Established in 1990

Constitution, article 130: The national Assembly shall elect judges upon the recommendation of the Judicial Council.

Constitution, article 131: There shall be a Judicial Council composed of eleven members. Five members shall be elected by the vote of the National Assembly on the nomination of the President of the Republic from amongst practising lawyers, professors of law and other lawyers. Six members shall be elected from amongst judges holding permanent office. The President of the Judicial Council shall be chosen by the members of the Judicial Council from amongst their number.

Courts Act of the Republic of Slovenia:

Chapter 3: Judicial Council Article 18

Members of the Judicial Council shall be elected for the period of five years and may not be immediately re-elected after the expiration of this term.

The term of office of a Judicial Council member elected at the by-election to fill a vacancy created by the premature termination of the term of office of a previous member shall expire upon the expiration of the term of the Judicial Council.

Article 19

Members shall elect the president of the Judicial Council in a secret, two-thirds majority ballot.

Article 20

President of the National Assembly shall announce the election of the Judicial Council members at least three months before the expiration of the term of office of the Judicial Council members.

If due to the premature termination of office (Article 27, first paragraph, subparagraphs 2 through 4) it is necessary to call the by-election, the President of the National Assembly shall announce it at the latest within a month after the end of the term of office of a Judicial Council member.

The interval between the calling and holding of the by-election shall be at least 50 days.

The list of candidates for the Judicial Council members proposed by the President of the Republic must be submitted to the National Assembly not later than twenty days before the day of voting.

Article 21

On the list of candidates for the election of Judicial Council members elected by the National Assembly upon the proposal by the President of the Republic, the proposed number of candidates must exceed the number of vacant posts, but to a maximum of twice the number of available posts.

Voting shall be secret.

Article 22

The election of Judicial Council members from among the judges shall be in a direct and secret ballot.

All judges who on the voting day perform the judicial office and are registered in the Judicial Electoral Register, which contains the name and surname of the judge and the court at which he/she works, shall have the right to vote.

Judges who exercise a permanent judicial office in the Supreme Court of the Republic of Slovenia, in courts with the position of high courts, in courts with the position of district courts, and in county courts, shall elect one Judicial Council member each. All judges referred to in the previous paragraph shall elect two members of the Judicial Council.

Any judge may be elected a member of the Judicial Council.

In putting up candidates for the Judicial Council members, the even representation of members from the territories of all high courts in the Republic of Slovenia shall be taken into account.

Article 23

Ministry competent for justice shall keep the Judicial Electoral Register (hereinafter: the Register) referred to in the second paragraph of the previous Article. Data for the Register shall be abstracted from the Central Personnel Records or from the acts of appointment.

Ministry competent for justice shall send the Register to the courts within ten days as from the announcement of the election.

A judge shall be entitled to inspect the Register and demand in writing that its contents be corrected if he/she or someone else has been left out of the Register, or if someone not entitled to vote under the provisions of this Act has been entered into the Register, or if personal data has been entered incorrectly. He/she may demand correction no later than ten days before the election.

If the request to correct the Register is justified, the ministry shall correct the Register; if the ministry considers that the request is not justified, it shall issue a decision refusing the request within two days from the receipt of the request to correct the Register.

The decision referred to in the preceding paragraph may be appealed against in an administrative dispute instituted before the competent court within 24 hours as from the decision is served. The court shall be bound to pass the judgement within the further 48 hours.

Article 24

Each list of candidates for Judicial Council members referred to in the third paragraph of Article 22 of this Act shall contain more candidates than there are members to be elected, but no more than four times the number of members to be elected.

Judges shall nominate candidates for Judicial Council members in writing or in assemblies of judges. A candidate shall be entered on the list if proposed by at least three judges. If the number of candidates exceeds the number determined in the preceding paragraph, the candidates proposed by the largest number of judges shall be put on the list.

The lists of candidates shall be confirmed and published by the Electoral Commission at least fifteen days before the day of the voting.

Article 25

The election shall be carried out on the same day in all courts whose judges are entitled to vote for Judicial Council members.

The voting at polling stations shall be subject to the *mutatis mutandis* application of the provisions of Chapter IX of the National Assembly Elections Act (Official Gazette of the RS, No. 44/92), unless otherwise determined by this Act.

Votes shall be cast personally, on a ballot paper, by circling the name of the judge voted for.

The judge who has received most votes shall be considered elected. If two or more candidates have received an equal highest number of votes, the voting regarding them shall be repeated.

Article 26

Electoral Commission appointed by the Judicial Council shall manage the election of Judicial Council members from among the judges.

The Electoral Commission shall have a chairman, four members, and their deputies. The chairman and deputy chairman of the Electoral Commission shall be appointed from among the judges of the Supreme Court of the Republic of Slovenia.

The elections shall be carried out at polling stations. The polling stations shall be opened at the seats of district courts and at the Supreme Court of the Republic of Slovenia. Barring the Supreme Court judges, all judges shall cast their votes at the polling stations in district courts.

Three-member electoral committees appointed by the Electoral Commission shall perform work at the polling stations. A judge of a high court shall chair the electoral committee. A judge of the Supreme Court of the Republic of Slovenia shall chair the electoral committee of the Supreme Court of the Republic of Slovenia.

The Electoral Commission shall determine the forms to be used in the elections pursuant to provisions of this Article, the uniform standards for the election material and other material conditions for the holding of the elections.

Article 27

The term of office of a Judicial Council member shall expire:

1. On the expiration of the period for which he/she has been elected;

2. By resignation;

3. To the member who is a judge, by the termination of or dismissal from the judicial office, and with the appointment to a judicial position in another position than that position of the courts from which judges have elected him;

4. To the member who is not a judge, in the event of permanent inability to perform his/her office, or loss of status on the basis of which he/she has been elected.

A Judicial Council member whose term of office has expired under subparagraph 1 of the previous paragraph shall continue exercising the rights and duties of a Judicial Council member until a new member is elected.

The term of office of a Judicial Council member under subparagraph 2 of the first paragraph of this Article shall expire on the day when the Judicial Council receives his written statement of resignation, and under subparagraph 4 when the National Assembly relieves him of duty.

In the cases referred to in the previous paragraph, the Judicial Council shall immediately inform the President of the National Assembly and the President of the Republic of the resignation or dismissal of a Judicial Council member elected by the National Assembly.

Article 28

The Judicial Council shall propose to the National Assembly the candidates to be elected to judicial office; propose to the National Assembly the dismissal of a judge; decide on the incompatibility of the judicial office; give opinion on the budget proposal for courts and provide the National Assembly with an opinion on the statutes governing the status, rights and duties of judges as well as judicial personnel; may adopt the measures for the expected quantity of work of judges; hear and decide on the justifiability of an appeal of a judge who believes that his/her legal rights, or his/her independent position or the independence of judiciary have been violated; and perform other matters, if so provided by statute.

Unless otherwise provided by statute, a majority vote of all Judicial Council members shall be required for decisions on proposals concerning: the election of judges; the appointment, promotion and classification of judges into salary classes; the dismissal of judges.

On the basis of the judicial job classification act, the Judicial Council shall monitor, ascertain and analyse the effectiveness of the work of judges and courts, on which it shall keep annual records.

The record of the effectiveness of the work of courts shall cover the following data: title of the court, cases in hand, resolved cases, unresolved cases, and total number of cases in progress in the specified period.

The record of effectiveness of the work of judges shall embrace the following data: name and surname of the judge and data necessary for identification from personnel records, date of taking over the office, date of ceasing the office, number of cases in progress, number of resolved cases, number of cases in which an appeal was lodged, number of confirmed, amended or annulled decisions, data on absences, and other data which assists in determining effectiveness.

Data that relates to an individual shall be preserved for fifteen years after the day of ceasing to hold the office.

The Standing Orders, which the Judicial Council shall adopt by a two-thirds majority vote, shall regulate the manner of decision-making on matters not covered by the second paragraph of this Article, as well as other questions pertaining to the work of the Judicial Council.

Article 29

Members of the Judicial Council shall be entitled to payment for attending the Judicial Council sessions.

The professional and administrative tasks for the Judicial Council shall be performed by the professional service of the Judicial Council.

The volume of financial resources for the work of the Judicial Council and its professional service shall be provided within the framework of the state budget of the Republic of Slovenia for the direct budget user - the Judicial Council.

3. Scope
Includes only judges.
One high court judge is assigned to the Judicial Council as a secretary.
Staff: two administrative personnel.

4. Structure See answer
under point 2 – Court act.

5. Mandate See answer under point 2 -
article 28 of the Court Act

6. Issues Right now, the debate in the Parliament is going on and it seems to be focused towards the possible changes of the Constitution regarding the judiciary and Judicial Council (bigger

number of members of the Judicial Council, only half of the members would be judges, the president would be the president of the supreme court).

SPAIN

1. Nom
Consejo General Del Poder Judicial
General Council of the Judiciary Conseil
General du pouvoir judiciaire

2. Position
Constitue en 10 Janvier 1980.
Base constitutionnelle et legale: article 122 de la Constitution Espagnole du 27 decembre 1978.
Loi organique 1/1980 du 10 janvier 1980 du Conseil general du Pouvoir judiciaire.
Loi organique 6/1985 du ler juillet 1985 — sur le Pouvoir judiciaire.
Reglement 1/1986 du 22 avril 1986 sur ('organisation et le fonctionnement du Conseil general du Pouvoir judiciaire.

Budget annuel total et provenance des moyens du budget 56.046.520.
Loi 52/2002 du 30 decembre 2002, des Budgets generaux de 1'Etat pour 1'an 2003.

Relation avec le Ministre de la Justice
Le CGPJ est un organe constitutionnel independant et autonome de gouvernement du Pouvoir judiciaire. Sa position constitutionnelle est equivalente a celle du Gouvemement, du Congres ou du Senat.
Ses relations avec le Ministre de la Justice de 1'Espagne sont de cooperation.

Le CGPJ espagnol, quanta ses fonctions, est l'organe de gouvernement du pouvoir judiciaire de /'Union Europeenne ayant le niveau plus haut de competences.
La tache principale est de veiller au respect de 1'independance des juges et des magistrats Bans l' exercice des fonctions juridictionnelles qui leur sont propres. La nomination des Hauts mandataires de la Justice, attributions en matiere de selection, de formation, de perfectionnement, de postes de destinations, d'avancement, de situations administratives et de regime disciplinaire des juges, des magistrats et des procureurs.
L'inspection des tribunaux et des cours de justice. La fonction consultative envers les projets de Lois et dispositions generates de 1 ?etat en rapport avec le Pouvoir judiciaire.

Relation avec le Parlement
Presentation de la Memoire annuelle sur 1'Etat, le fonctionnement et 1'activite du CGPJ, des Tribunaux et des Cours de justice.

3. Scope
Comprend des Juges, des Magistrats, des Secretaires Judiciaires et des Procureurs.
Comprend personnel de soutien (juristes et/ou du personnel administratif).
D'apres Particle 145 de la Loi organique du Pouvoir judiciaire 6/1985 du 1ei Juillet, outre ses organes propres, le CGPJ jouit du soutien administratif de ses organes techniques (en particulier le Secretariat General et le Service d' Inspection) etant membres de la carriere judiciaire ou des procureurs, des Secretaires judiciaires, des corps des fonctionnaires des Administrations Publiques de 1'Etat , des officiers, des auxiliaires et des agents de ('Administration de la Justice.

4. Structure

Conseil, direction, principaux directeurs :
President
Vice-President
Assemblee Pleniere
Commissions parmi lesquelles on distingue:
Commissions Legales - Celles prevues par la LOPJ
Commission permanente
Commission disciplinaire
Commission de Qualification

Commissions Reglementaires - Celles qui sont creees par le Reglement sur 1'organisation et le fonctionnement interne du CGPJ :
Commission d' Etudes et de Rapports
Commission budgetaire

Celles qui ont ete directement creees par l' Assemblee Pleniere :
Commission de 1'Ecole judiciaire et des Publications
Commission intemationale
Commission de gestion et d'Organisation judiciaire

Et toutes autres Commissions specialement creees pour accomplir une tache determine et vouees a disparaitre une fois accompli leur mission.

Comme organes techniques :
Le Secretariat General – qui Comprend le:
Le Service d' Inspection – Chef de Service L'
Ecole Judiciaire – Directeur de 1'Ecole
Le Centre de Documentation Judiciaire (CENDOJ) – Directeur
Le Service central du Secretariat general - Chef de Service
Le Cabinet technique – Directeur du Cabinet
Le Service du Personnel judiciaire – Chef de Service
Gerance – Gerant
Controle des comptes – Controleur de 1'Etat

Procedure d'election des membres du conseil
Le CGPJ est preside par le President du Tribunal Supreme et comprend vingt membres proposes par la Chambre des Deputes et par le Senat .
Chacune des chambres elit six candidats parmi les juges et magistrats en service actif appartenant a l'un des ordres judiciaires, et quatre candidats parmi les avocats et autres juristes de prestige ayant plus de quinze annees d'exercice dans la profession.

Personnel, sections
Du Service d' Inspection:
Adjoint au Chef de Service
Section d'organisation et de gestion
Section des Rapports
1 8 Unites territoriales

De 1' Ecole Judiciaire : Madrid et Barcelone

Le Service de selection et de formation initiate des candidats a la carriere judiciaire
Section des juges de premiere instance
Section des juges d'instruction
Section des Relations extemes et institutionnelles
Section de selection
Le Service de Formation continue
Section de la Formation de l' Etat
Section de la Formation decentralisee

Du Centre de Documentation Judiciaire (CENDOJ) — a San Sebastian
Section des Publications
Section de la Planification, des Systemes d' informations et de Statistiques
Section de la Documentation et du Droit compare
Section de la Jurisprudence

Du Service Central du Secretariat general
Section des Recours
Section du Registre General, des Archives Section
de la Bibliotheque et de la Documentation

Du Cabinet technique
Service des Etudes et des Rapports — Dont plusieurs Sections et Chefs d'Unite
Service des Relations Internationales — Dont plusieurs Sections et Chefs d'Unite
Service de I'Organisation et de la Modernisation judiciaire — Dont 3 Sections et Chefs de zones
Service de la Planification et d'Analyse judiciaire — Dont 1 Section et 1 Chef d'unite de documentation
Section d'appui aux citoyens
Section des Relations institutionnelles

Du Service du Personnel judiciaire Section
du regime juridique des magistrats Section
du regime juridique des juges Section de
Selection
Section du regime disciplinaire
Chef d'Unite

De la Gerance
Unite de gestion budgetaire et de comptabilite — Dont plusieurs Chefs d'Unite adjoints
Unite de t'Administration du Personnel
Aire Informatique — Dont 3 chefs de zone adjoints (un a Barcelone)
Unite d'entretien et de conservation
Unite des affaires generates de l'Ecole judiciaire a Barcelone
Unite des affaires generales du CENDOJ a San Sebastian
Unite des contrats de fournitures et services et des affaires generates (siege general du CGPJ a Madrid
Unite des affaires generales du siege du CGPJ a Trafalgar (Madrid)

Du' Controle des comptes
Unite du controle des comptes

Nombre de salaries
401 salaries.

5. Mandate

Responsabilites et obligations principales

Le CGPJ est l'organe autonome de gouvernement du Pouvoir judiciaire dont la competence s' etend sur l' ensemble du territoire espagnol c' est-a-dire de 1' ensemble des tribunaux et des cours qui font partie du Pouvoir judiciaire auquel sont subordonnees les Chambre de Gouvernement du Tribunal supreme, de la Cour nationale et des Tribunaux superieurs de justice.

La tache principale du CGPJ est de veiller au respect de l' independance des juges. et des magistrats Bans 1' exercice des fonctions juridictionnelles qui leur sont propres y compris a l'encontre des organes judiciaires de gouvernement du pouvoir judiciaire.

Le CGPJ est un organe constitutionnel semblable au Gouvernement, a la Chambre des Deputes, le Senat, le Tribunal constitutionnel, jouissant des garanties de superiorite et d' independance caracteristiques de ce genre d' institutions.

Cependant, bien que le CGPJ soit un organe de gouvernement du pouvoir judiciaire, it n'est pas un organe juridictionnel et i1 n'en fait pas partie.

Avec la creation du CGPJ on a voulu doter le Pouvoir judiciaire d'un organe autonome de gouvernement qui assumerait en grande partie et de maniere independante les competences traditionnellement assumee par le Gouvernement a travers le Ministere de la Justice. Les competences su CGPJ peuvent titre classifiees selon:

Fonctions relatives a la nomination des postes de haute direction: President du CGPJ, du Tribunal supreme, de deux magistrats du Tribunal constitutionnel; audience pour la nomination du Procureur general de 1'Etat et autres.

Attributions en matiere de selection de formation, de perfectionnement, de postes de destination, d'avancements, de situations administratives et de regime disciplinaire des juges et des magistrats.

Inspection des tribunaux et des cours de justice.

Fonction consultative. Le CGPJ est tenu d'emettre un rapport sur les avant-projets des lois et des dispositions generales de 1'Etat et des communautes autonomes touchant les matieres du Pouvoir judiciaire.

Fonctions envers le Parlement (Chambres legislatives).

Publication officielle de la collection de jurisprudence du Tribunal supreme.

Elaboration et direction de la mise en application de son propre budget et controle de ce dernier.

Pouvoir reglementaire en ce qui concerne le CGPJ.

Comme specificite, face a d'autres Conseils de la justice europeens, et au sein du Cabinet Technique, se trouve un Service des Relations Internationales qui est point de contact des Reseaux Judiciaires europeens en matiere penale et civile, (RJE et RJECM), qui accomplit les travaux de promotion de la cooperation judiciaire intemationale.

~. Issues

SWEDEN

1. Name

Domstolsverket (DV)
Swedish National Courts Administration
Administration nationale suedoise des cours et des tribunaux

2. Position

The National Courts Administration was established on 1 July 1975.
Chapter 11, Art. 6, of the Instrument of Government provides, among other things, that central administrative authorities are subordinate to the Government. They report to the Government as a whole, rather than to the individual ministry concerned (in the case of the National Courts Administration, the Ministry of Justice). This can be regarded as forming the constitutional basis for the National Courts Administration, as in the case of other central government authorities. In more concrete terms, the legal basis for the Administration is provided by the Ordinance (1988:317) concerning the Duties of the National Courts Administration.
The National Courts Administration has an annual budget of some SEK 107 million (□ 11.5 million). This budget is provided out of state funds and is decided by the Parliament.
The Administration falls within the sphere of responsibility of the Ministry of Justice, and its contacts with the Government on various matters are handled through that Ministry. As an authority reporting to the Government, the National Courts Administration has no direct relationship to the Swedish Parliament. However, through its Standing Committee on Justice, Parliament does monitor the work of the Administration to a certain extent. The Administration's Director-General is for example called to appear before this Committee annually. In addition, Parliament has some insight into the operations of the Administration, in that its Board includes two Members of Parliament. Furthermore, some scrutiny of the Administration's activities is undertaken by the Parliamentary Ombudsmen (JO).

3. Scope

The National Courts Administration is the central authority responsible for administrative matters relating to the courts of general jurisdiction, the general administrative courts and, in addition, certain courts of special jurisdiction and certain authorities. Consequently, both judges and other court employees fall within the Administration's sphere of responsibility. Public prosecutors and lawyers in private practice, on the other hand, do not.

4. Structure

The National Courts Administration is headed by a Director-General, who is appointed by the Government for a fixed term, usually of 6 years. The Administration also has a Board, which has certain formal functions, for example to adopt budgetary documents and annual reports. The Board is not responsible, though, for day-to-day management of the Administration's operations.
The Board consists of 10 members who are appointed by the Government. The Government has appointed the Director-General as Chairman of the Board. The Board itself chooses one of its members as Vice-Chairman. As noted above, Board members include a number of MPs. The majority of its other members are chief judges and employee representatives.
The National Courts Administration comprises a number of different departments, with the following functions and responsibilities:

The Finance Department is responsible for the financial and operational information required for planning, monitoring, forecasting and analysis within the judiciary. An important function is the allocation of budgetary resources to the different courts.
The Human Resources Department is responsible for personnel matters relating to court employees *and for* education and training. Its functions also include personnel and salary policies, employment law, health and safety, and employee relations. In addition, the department plays a role in development assistance to other countries in the judicial sphere and in international cooperation on education and training.
The Development Department provides various forms of operational support for the courts and is responsible for developing organizational structures, methods and procedures. A special unit leads projects designed to promote change within the courts.
The IT Department is responsible for IT support to the judiciary and implements development projects in this area. Its responsibilities also include security issues.
The General Services Department is responsible for the procurement and operation of court buildings, and for accounts and payment of salaries.
The Legal Department's responsibilities include giving legal advice within the judicial system, providing information on legislation, and representing the state in legal aid applications. The department also prepares responses to legislative proposals for submission to the Government on behalf of the Administration.
The Information Department is responsible for external information regarding the functions and operations of the Administration and the courts. It produces publications and maintains the Swedish judiciary's web site.
The Administration Department is responsible for certain matters internal to the National Courts Administration, e.g. relating to its personnel and facilities.

The employees of the different departments consist largely of lawyers, economists and other staff, including administrative staff. Most of the lawyers are judges who have not yet received permanent judicial appointments. It is also common, however, for permanently appointed judges to take temporary leave from their judicial posts in order to work at the National Courts Administration. Normally they subsequently return to their regular posts. The majority of staff with legal training work in the Development and Legal Departments. In recent years, a growing number of staff have been appointed to work with IT issues.

The Administration employs a total of some 180 staff.

5. Mandate

The National Courts Administration is the central authority in administrative terms for the courts of general jurisdiction, the general administrative courts and, in addition, certain courts of special jurisdiction and certain authorities. One of its overarching objectives is to ensure that the judicial system operates effectively and in a manner that maintains the rule of law, and thereby to safeguard the legal rights and security of individual citizens. This is to be achieved by a variety of means whereby the Administration acts to lead and coordinate the administration of the courts and to ensure that good conditions are. created for the courts to perform their duties in an effective manner. The means involved include an appropriate allocation of resources, promotion of reforms and involvement in efforts to bring about change in the organisational structures and procedures of the courts. Administrative support of various kinds is an important component of the Administration's work in relation to the courts.
The National Courts Administration is expected to operate in a manner that respects the independence which, under the Constitution, the courts enjoy in the performance of their

judicial duties. The Administration thus has no supervisory role with respect to the courts' activities, its function being purely to support and cooperate with them in their work.

6. Issues

Future challenges:

Generation change

There are many judges, as well as other staff, who were born in the 1940s and who will be retiring over the next few years. A need will therefore arise to recruit a large number of new judges and other officials. One challenge to the judicial system will be to try to attract the best lawyers to the bench, in competition with other employers.

Financial resources

The public sector is under severe financial pressure. The judiciary, too, has been required by the Government and Parliament to make relatively large savings. At the same time, it finds itself in a situation in which far-reaching changes are occurring in a number of areas, including the development *of new forms of support for its* work. Implementing these changes, maintaining quality and ensuring the sound administration of justice, while achieving substantial savings, will represent a challenge in the years to come.

Methods and procedures

The changes within the judiciary mentioned above include a refinement of the role of the judge, specialization, and the introduction of new forms of operational support for the courts. Continuing advances in information technology, too, will result in changes in working methods.

Organisational issues

Sweden is a sparsely populated country with a large number of courts, including many small ones. A process of amalgamating courts is now under way. As a result, the number of courts has decreased in recent years, and the intention is that this process should continue. It is also becoming more common for courts of different types to collaborate, for example for courts of general jurisdiction and general administrative courts to use the same buildings.

Security

In recent years various types of incidents have occurred in the courts, including threatening or violent behaviour in conjunction with trials. This has resulted in a range of measures to enhance court security. These include greater use of security guards at trials where the risk of incidents is judged to be particularly high, and stricter checks at entrances to court buildings.

The relationship between the Swedish judiciary and the Swedish National Courts Administration

Paper presented by Mr Stefan Stromberg, Director-General of the Swedish National Courts Administration, at the conference in The Hague, 13–15 November 2003

Introduction

Let me start by saying that the Swedish National Courts Administatration is not responsible for proposals for positions for judgeships, nor does the administration have anything to do with questions concerning disciplinary actions against judges.

The overarching purpose of the judiciary is to safeguard the security and the legal rights of the individual citizen. In its adjudicating function, it seeks to ensure that the cases and other matters brought before it are determined in an effective manner and in accordance with the rule of law. The role of the Swedish National Courts Administration is to create conditions which enable the courts to achieve these aims. It does this, first of all, by ensuring an efficient and appropriate allocation of resources. In addition, the Administration has the task of promoting and supporting reforms and initiating changes in the organization and working of the courts. Its functions also include promoting cooperation between the courts.

The courts in Sweden, like those of every democracy, occupy a special position in the machinery of public administration. Regular judges are appointed by the Government and, in principle, cannot be removed from office. In administrative terms, the National Courts Administration is the only authority between the courts and the Government. Funding for the judiciary is allocated to the Administration, which is then responsible for apportioning it among the roughly 120 courts across the country. No regional or local structures with general administrative responsibilities exist, and the Courts Administration consequently maintains a direct dialogue with each individual court. In most cases, this dialogue is with the chief judge or president of the court concerned.

Administrative responsibilities

Individual courts appoint their own staff, other than judges, without interference from the Courts Administration or any other authority. Salaries for the staff are also determined locally by each court, within an overall framework established through central negotiations with the trade unions concerned. The salaries of judges are established through central negociations with the judges union. The actual payment of salaries, together with the administration of deductions for tax etc., is looked after centrally by the Courts Administration.

The National Courts Administration is responsible for the premises, furniture and IT equipment used by the courts, which therefore do not receive allocations of their own for these purposes. Through a dialogue with individual courts, the Administration ensures that their requirements in terms of accommodation and equipment are provided for. It is consequently involved in all new construction and alteration work with respect to court buildings, including the installation of technical equipment.

As I have already mentioned, an important function of the Courts Administration is to distribute the funding made available to the judiciary. It does so following consultation with each individual court, which normally involves Administration staff visiting the court or having direct contact with it in some other way. Factors that may be taken into account in

assessing a court's needs – apart from the overall funding available – include how well the court has been able to perform its functions with the resources allocated to it, and what changes can be observed in its caseload. Naturally, the resource requirements identified by the court itself are also taken into consideration. Before the Administration reaches its decision on how resources are to be allocated, in other words, it consults closely with the courts.

The Courts Administration is required to present an annual report on the judiciary as a whole. It is also its responsibility to request funding from the Government each year on behalf of the court system. Furthermore, it administers payments from state funds for legal aid and public defence counsel, on the basis of decisions taken by the courts.

When the judiciary needs to work with other authorities, the National Courts Administration often acts as its representative. On the other hand the Administration often asks judges to take part in that type of work. The need for such collaboration frequently arises in conjunction with studies and other assignments entrusted to several different authorities by the Government or Parliament. Examples of this include a project relating to support for victims of crime, and efforts to promote a more efficient flow of information within the legal system as a whole.

Services

Alongside its formal administrative role, the National Courts Administration has an important part to play as a provider of services to the courts. One area of growing importance is information technology. The Administration sees to it that the courts receive the IT support they need, in terms of both hardware and software. A new computerized support system for the work of the courts is currently being introduced. This system is intended to be used for the entire case management process, from the lodging of a case with a court to notification of the judgment to the parties. The system is run centrally by the Courts Administration, although each court is of course responsible for and controls the information in the system.

The Administration also plays an important role in the area of competence development and training. It arranges courses for both judges and other court staff. Personnel from the courts are often involved as course organizers and tutors, although it is also common to engage the services of external training providers, e.g. for IT courses. Training needs and long-term strategies regarding what educational programmes should be offered are established in consultation with the courts. A special council, including representatives of different courts, has been set up to discuss such matters.

The Courts Administration provides different kinds of information to the courts. Increasingly, an intranet accessible to the court system as a whole is being used to disseminate information, by means of both an intranet site and e-mail. The Administration publishes certain manuals for the work and administration of the courts and a wide range of information booklets and fact sheets aimed at the general public. It can also help individual courts to construct web sites of their own.

Consultancy role

In, addition to the functions already mentioned the National Courts Administration acts in a consultancy role in relation to the courts in matters of organization and administration. Sometimes a court may be faced with a problem that needs solving, e.g. a staff issue. In other

cases, too, it may become necessary to review the overall operation of a court, or some aspect of it. The court in question will then often turn to the Courts Administration for assistance and support of one kind or another. In such situations, the Administration may provide help either *through* members of its own staff, judges and staff from other courts or by making available an outside consultant, whose primary task will be to assist the *court.* The Courts Administration has a good working relationship with a number of consultants who can be called on to undertake assignments relating to different aspects of the judiciary's work.

Reforms

The Swedish judiciary is currently facing a number of reforms, affecting both its internal working and its external organizational structure. On the organizational side, one aim is to create entities that are large enough to meet the challenges of the future. The Courts Administration makes recommendations to the Government who consults with Parliament. So far, this process has resulted in a number of the smallest courts being merged with neighbouring courts to form larger units. Two days ago Parliament voted on changes that will lead to 1 1 courts being merged with other courts.

Sweden faces what we call a generation change of major proportions over the next few years. Many of the people now in employment will be retiring. This presents the courts and the National Courts Administration with a number of challenges, one of which is to try to attract the best qualified lawyers to the bench. It also offers an opportunity to make changes in terms of the qualifications of those holding other positions within the courts. In Sweden we believe that better competence among staff personnel could increase the efficiency of the judge considerably. The Administration is for example encouraging the appointment of a qualified chief administrator for every court, to assist the chief judge or president of the court.

The Courts Administration's contributions to the reform process have been systematized on the basis of four `focus areas'. These four focus areas -- some of which I have already spoken – are: the demands and possibilties of the generation change, the construction and implementation of an efficient computerized support system, the reorganization of the court system and the creation of a well-functioning administrative framework within the courts. A brief outline of these can be found in a paper available at this conference.

Dialogue with the courts

A working dialogue with the courts is critical for an efficient central court administration. With 120 courts without a governing body and with the basic tendency among courts and judges to be independent in all matters even between themselves the task to create good administrative solutions for all the courts can sometimes be complicated. Even if judges almost always participate in our projects we can never be sure that the view they present then are shared by even a majority of their colleagues. We have therefore during recent years taken initiatives to create a structured dialogue with the courts through the presidents of the appeal courts. One of the aims of this dialogue is to strengthen the commitment of the judiciary in the decisions on important administrative matters, stressing the benefits of good uniform solutions.

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