European Network of Councils for the Judiciary (ENCJ)

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ENCJ PROJECT TEAM

Development of Minimum Judicial Standards

Report 2010-2011

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INDEX

REPORT

Project Team on Development of Minimum Judicial Standards

0. Abstract .-

This Report describes the proposals on minimum standards regarding the specific topics considered by the Project Team during the meetings held in Brussels, Madrid and Barcelona (judicial recruitment, selection and appointment; judicial training and judicial ethics). The proposals, which have been discussed and agreed upon by the members of the Project Team, have been classified in three chapters depending on the topic to which they refer: a) proposals for minimum standards regarding the recruitment, selection, appointment and (where relevant) the promotion of members of the judiciary, including those related to the competent organ to decide on this field (Chapter 2 divided in two separate sub-chapters); b) proposals for minimum standards in relation to judicial training, which deal with the role assigned to initial judicial training in the process of selection/appointment of members of the judiciary, the role assigned to continuing judicial training in the promotion or specialisation of members of the judiciary and the question whether judicial training (both initial and continuing) should be compulsory or voluntary (Chapter 3 divided in three separate sub-chapters); and c) proposals for minimum standards in the field of judicial ethics (Chapter 4).

The proposals are made in the conviction that mutual confidence in the judiciary of the various European countries may be undermined by a lack of understanding of the minimum standards applied by each country in these areas and that the adoption of minimum standards in these fields will support the development of independent Councils for the Judiciary and contribute to the attainment of a common European judicial culture. Furthermore, when formulating the proposals the Project Team has tried to avoid any overlapping with the goals of other projects currently or already implemented by the European Network of Councils for the Judiciary (ENCJ).

1. Introduction.-

1.1. Background.-

The Project Team on the "Development of Minimum Judicial Standards" was established by the European Network of Councils for the Judiciary (ENCJ) in October 2010 following the implementation plan for the period 2010-2011 approved by the General Assembly held in London on 2-4 June 2010. The members of the Project Team comprised representatives of 13 member countries (Belgium, Bulgaria, England and Wales, France, Hungary, Ireland, Italy, Lithuania, the Netherlands, Poland, Romania, Scotland and Spain) as well as representatives of 5 observer countries (Austria, Finland, Luxemburg, Norway and Sweden). The Working Group was chaired and coordinated by Judge Antonio Monserrat Quintana, a member of the General Council for the Judiciary of Spain.

The Project Team was established as a new ENCJ Project Team but was in reality a continuation of the work carried out by a former ENCJ Working Group, the Working Group on Mutual Confidence, in accordance with the conclusions and proposals made by it in its Report and Recommendations 2009-2010. On the basis of the presentations by experts during its working group meetings, the replies to a questionnaire and the discussions in the working sessions, the Working Group on Mutual Confidence had drafted a set of conclusions, which included, among others, the following:

1. The Judiciary in Europe should understand and accept its role and responsibility in developing minimum standards for the Justice Sector. A set of representative standards should be developed by the ENCJ.
2. The Judiciaries of Europe should also be prepared to take the next step for evaluating compliance with these minimum standards. These common minimum standards and their evaluation will contribute to mutual confidence. Councils for the Judiciary through the ENCJ should take the lead in this (when appropriate in cooperation with others).

3. Subjects that could be taken forward are amongst others competences/judicial appointments criteria, judicial training; process of information; judicial ethics (deontology). The process of developing these common standards is a goal in itself as well. The evaluation of these standards should be on the basis of dialogue and reciprocity recommendations stated above.

The Report of the Working Group on Mutual Confidence also contained some proposals for future action by the ENCJ, including:

1. The ENCJ should develop a set of representative minimum standards for the Justice Sector.
2. The ENCJ should study the feasibility of evaluating the compliance with these minimum standards. These standards should be evaluated on the basis of dialogue and reciprocity.

For the purpose of drawing up the current report and its appendix (questionnaire) the Project Team held a kick-off meeting in Leuven on 11-12 October 2010 (together with other Project Teams established by the European Network of Councils for the Judiciary following the implementation plan for the period 2010-2011) and three additional meetings: in Brussels on 13 December 2010, in Madrid on 18 February 2011 and in Barcelona on 11 April 2011.

During the kick-off meeting, the members of the Project Team discussed the goal of the project and the methodology to be followed. The members of the Project Team agreed to describe the main goal of the Project as the identification of "a set of relevant minimum standards for the Justice Sector in the fields of competences/criteria for judicial appointments, judicial training and judicial ethics in order to make it possible to evaluate these minimum standards at a later date", which would "increase mutual confidence among judges from the different jurisdictions within the EU as a contribution to the achievement of a common European judicial culture". It was agreed that the absence of mutual confidence in the judiciary of the various European countries, stemming from a lack of understanding of the minimum standards applied by each

country in the selection or appointment of judges and/or prosecutors (i.e. admission into the judiciary), in judicial training (both initial and continuing) and in relation to judicial ethics, was the main problem which justified the goals of the Project.
Regarding the methodology and activities to be undertaken by the Project Team it was decided to structure these activities in the following way:

1) The collection of information from Councils for the Judiciary represented in the working group and from other ENCJ members and observers.
2) An analysis of the information collected in relation to each of the topics dealt with by the working group.
3) Discussions during the several meetings of the Project Team about the information collected from the Councils for the Judiciary. The discussions dealt first of all with standards for judicial appointments, then with standards regarding judicial training and finally with standards concerning judicial ethics. 4) The compilation of minimum standards and suggestions about which minimum standards would be desirable.
5) The preparation of a report of the Project Team's findings and proposals

The draft Project Fiche resulting from the discussions of the Project Team was presented by the coordinator of the working group, Judge Antonio Monserrat, during the plenary session of the Project Teams held in the afternoon of Tuesday 12 October 2010.

The Report will be presented at the General Assembly of the ENCJ on 8-10 June 2011.

1.2. The Report

The aim of the Report is to describe the proposals on minimum standards regarding the specific topics considered, which have been discussed and agreed upon by the members of the Project Team during the meetings held in Brussels, Madrid and Barcelona. The

proposals of minimum standards have been classified in three chapters depending on the topic to which they refer.

Chapter 2 describes proposals for minimum standards regarding the recruitment, selection, appointment and (where relevant) the promotion of members of the judiciary. The proposals in this field have been included in two separate sub-chapters. The first sub-chapter (2.1) describes proposals for minimum standards on the criteria, competencies and procedure for the recruitment, selection, appointment and (where relevant) promotion of members of the judiciary, taking into account the two basic models of recruitment procedures for members of the judiciary among European countries which have been identified by the Project Team. The second sub-chapter (2.2) contains the proposals for minimum standards in relation to the competent organ to decide on the recruitment, selection, appointment and (where relevant) the promotion of members of the judiciary. Proposals of minimum standards concerning this topic have been made trying to avoid any overlapping with the goals of other projects currently implemented by the ENCJ, in particular the Project Team on Councils for the Judiciary.

Chapter 3 of the Report explains proposals for minimum standards in relation to judicial training which have been classified in three sub-chapters: minimum standards regarding the role assigned to initial judicial training in the process of the selection/appointment of members of the judiciary (3.1); minimum standards regarding the role assigned to continuing judicial training in the promotion or specialisation of members of the judiciary (3.2) and minimum standards on the question whether judicial training (both initial and continuing) should be compulsory or voluntary. This Chapter of the Report also contains some general remarks stressing the importance of judicial training and some general considerations on the institutions responsible for providing judicial training.

Proposals for minimum standards in the field of judicial ethics have been included in Chapter 4 of the Report. Bearing in mind the fact that the report entitled “Judicial Ethics – Principles, Values and Qualities” (which was drafted by the ENCJ Working Group

2009-2010 on Judicial Ethics and approved by the London Declaration adopted by the General Assembly of the ENCJ in June 2010) amounts in itself to a set of minimum standards concerning the contents of judicial ethics, which can be accepted and shared by all members and observers of the ENCJ as basic guidelines in this field, the work of the Project Team has focused on the need or desireability of the official approval or endorsement of a set, guide or code of principles or rules as regards judicial ethics.

The work of the Project Team has centred on the conviction that mutual confidence in the judiciary of the various European countries may be undermined by a lack of understanding of the minimum standards applied by each country in the selection or appointment of judges (i.e. admission into the judiciary), in judicial training (both initial and continuing) and in relation to judicial ethics. The members of the Project Team are also convinced that the adoption of minimum standards in these fields will support the development of independent Councils for the Judiciary, encourage timeliness and promote public confidence in both national and transnational judicial institutions and increase mutual confidence among judges from the different jurisdictions within the EU, thus contributing to the attainment of a common European judicial culture.

However, in some specific topics subject to the analysis of the Project Team it has not been possible to come to a full agreement on proposals for minimum standards, most notably where the practices of the various countries or jurisdictions significantly differ. This is the case, for instance, in relation to the psychological assessment of candidates for the judiciary as part of the recruitment and selection process (a practice followed in some countries such as Austria, Romania or the Netherlands, albeit with a different scope and approach depending on the jurisdiction), the level of confidentiality applied within the recruitment, selection or promotion process, including the procedure of public hearings of the candidates who apply for judicial appointment or promotion, or the compulsory nature of continuous judicial training linked to the disciplinary responsibility of the judges who fail to undertake any compulsory continuous training. In all these cases either no specific proposals of minimum standards regarding the controversial issues have been included in the report or the proposals have been drafted

in a flexible way so as to reflect the different approaches that apply in the countries represented in the Project Team.

1.3. The Questionnaire

In order to discuss and make proposals for minimum standards the Project Team decided to collect information on relevant national standards in the fields of competences/criteria for judicial appointments, judicial training and judicial ethics from Councils for the Judiciary represented in the Project Team and from other ENCJ members and observers. The information was collected through a questionnaire on a series of topics, which was answered by the members of the Project Team and other ENCJ members and observers. The responses to the questionnaire and the additional documentation provided have been collected in a questionnaire report (where the information provided by each country is classified by topics) and in a questionnaire annex (where the information and the additional documents provided are classified by countries in alphabetical order). Both documents are available on the web-site of the ENCJ and should be considered as a complement to this Report.

The Questionnaire provides detailed information on national standards regarding the different topics subject to analysis and subsequent proposals for minimum standards by the Project Team. The information covers the three main topics analysed by the Project Team (recruitment, selection, appointments and -where relevant- promotion of members of the Judiciary; judicial training and judicial ethics) and responds to the following questions:

a) The criteria and competencies applied in each legal system in the recruitment, selection, appointment and (where relevant) the promotion of members of the Judiciary.

b) The competent organ in each legal system tasked with deciding on the recruitment, selection, appointment and (where relevant) promotion of members of the Judiciary.

c) The role assigned in each legal system to initial judicial training in the process of selection/appointment of members of the Judiciary.

d) The role assigned in each legal system to continuing judicial training in the promotion or specialisation of members of the Judiciary.

e) The nature (voluntary or compulsory) of initial and continuing training for members of the Judiciary in each legal system.

f) Whether the respective Council for the Judiciary has officially approved or endorsed a code or a set of rules or principles in the field of judicial ethics.

g) The consequences envisaged in instances of breach of those rules or principles, as regards, e.g., disciplinary measures, including more serious measures in cases of major breaches.

h) How far the recommendations and conclusions reflected in the Report 2009-2010 of the ENCJ Working Group on Judicial Ethics have been implemented by the respective Council for the Judiciary.

The Questionnaire contained detailed information on these topics, including a description of the current status in each country and -in some cases- of the relevant initiatives already undertaken or to be undertaken in the fields subject to analysis, thus providing an overview of the situation in the countries concerned. Nevertheless, the aim of the Questionnaire was mainly as a guide -an easy reference- for seeking further information and not as a thorough comparison of the position in each jurisdiction on each topic. Furthermore, some contributions contained very detailed information on specific topics whereas others did not. As a consequence the contributions on each issue in the Questionnaire are various in style, length and number. When reading the Questionnaire the reader should keep this in mind, since the fact that some members left out information on an issue in the Questionnaire does not imply that the country in question does not have a regulation or a policy similar to that described in contributions from other countries. Further, more detailed, information regarding the topics subject to analysis by the Project Team could be provided through the relevant national institution (whether the Council for the Judiciary, Court Administration or Ministry of Justice). On the other hand, keeping in mind that the aim of the ENCJ is to share experience between members and observers, the Project Team suggests that the Questionnaire could be

completed with information from members and observers of the ENCJ who have not yet responded and also updated by the responding countries on a regular basis.

2. Proposals of Minimum Standards regarding recruitment, selection, appointment and (where relevant) promotion of members of the judiciary.-

2.1. Minimum Standards for recruitment, selection, appointment and (where relevant) promotion of members of the judiciary.-

As a result of the activities of the Project Team two basic types of recruitment procedures for members of the judiciary among European countries have been identified. The recruitment of judges in Common Law jurisdictions (England and Wales, Scotland, Ireland) and in some Scandinavian countries (such as Norway or Finland) tends to be made from the ranks of experienced legal practitioners (advocates, solicitors, prosecutors, certain categories of civil servants, etc.).

On the other hand, European continental countries in line with the tradition of Civil Law (for instance, Italy, Spain, Bulgaria, Romania and Austria) tend to recruit a large number of judges from among young law graduates with no previous professional experience through a competitive examination organised at a national or regional level, normally followed by a compulsory period of induction training which is part of the recruitment and selection process and which tends to comprise a period of internship at court.

The work of the Project Team has also identified a number of European countries which combine both basic procedures of judicial recruitment, selecting judges among young law graduates (usually for the junior judicial posts) and among experienced legal professionals with a previous period of practice (often defined by statute), who are usually appointed for senior posts within the judicial system. This is, for instance, the

case in the Netherlands, Belgium, Bulgaria, Hungary, Sweden and, to some extent, in Spain.

Nevertheless, irrespective of the recruitment procedure, the need to maintain public confidence in the judiciary, together with the fact that the source of the legitimacy and authority of the judiciary in Europe is not a representative democratic appointment, renders it imperative that any system for the recruitment, selection and appointment of judges should be independent of political influence, fair in its selection procedures, open to all suitably qualified candidates and transparent in terms of public scrutiny. In other words, any system for the recruitment, selection and appointment of judges must be independent, fair, open and transparent.

Appointment to any judicial post should only be based on merit and capability. It is important, furthermore, that both the general public and candidates know against which competencies the latter will be assessed in determining whether they have sufficient merit to be appointed. This requires a clearly-defined and published set of selection competencies against which candidates should be assessed at all stages of the appointment's process. Selection competencies should include intellectual and personable skills of a high quality, as well as the proper work attitude and the ability of the candidate to express himself/herself. The intellectual requirements should comprise the adequate cultural and legal knowledge, analytical capacities and the ability independently to make judgments. In addition, a candidate should have the necessary personal qualities, such as the ability to assume responsibility in the performance of his/her duties as well as qualities of equanimity, independence, persuasiveness, sensibility, sociability, integrity, unflappability and the ability to cooperate.

The assessment of the competencies of the candidates can be conducted on the basis of any professional experience gained prior to their admission to the position of judge or, if the selection is based on a public competitive examination given the lack of any previous professional qualifications, through a sufficiently long period of training under the guidance of expert judges. Both the formal examination or examinations and the

selection process that involves the assessment and interview of candidates should be conducted by an independent judicial appointment body. Assessment of candidates can also be based upon reports and comments from legal professionals (such as practising judges, Bar Associations, Law Societies, etc.). So, serving judges may well be able to comment on the capabilities of an applicant based on that individual's performance in court but any such consultation must remain wholly open, fair and transparent. The views of any serving judge or Bar Association should be based on the relevant competencies, recorded in writing, available for scrutiny and not based on personal prejudice.

Where relevant (i.e. in those jurisdictions where this is also a requirement for legal practitioners) candidates for the Judiciary should have a Master's degree in Law from an accredited university.

Whilst the selection of judges must always be based on merit, anyone appointed to judicial office must be of good character. Each country should have systems in place designed to check that anyone selected for appointment is of good character, i.e. has no criminal record, has a good reputation, and so on. A candidate for judicial office should not have a criminal record, unless it concerns minor misdemeanours committed more than a certain number of years ago.

Each country should have written policies in place designed to encourage diversity in the range of persons available for selection for appointment, avoiding all kinds of discrimination, although that does not necessarily imply the setting of quotas *per se*. On the other hand, any attempt to achieve diversity in the selection and appointment of judges should not be made at the expense of the basic criterion of merit.

The entire appointment and selection process must be open to public scrutiny. The public has a right to know how its judges are selected. Equally, an unsuccessful candidate is entitled to know why he or she failed to secure an appointment. That implies the need for an independent complaints' or challenge process to which any

unsuccessful applicant may turn if he or she believes that s/he was unfairly treated in the appointments' process. The body with jurisdiction to decide on the complaint or challenge by any unsuccessful candidate must be able to examine the appointments' process applied and to determine whether there was any unfairness shown to particular candidates.

In many European states it is common that the Government or the Head of State play a role in the ultimate appointment of members of the judiciary, particularly to higher ranks within the judiciary. The involvement of a Minister or the Head of State does not in itself contend against the principles of independence, fairness, openness and transparency if their role in the appointment is clearly defined and their decision-making processes clearly documented. It should be clear, however, that judges are appointed on the basis of their professional qualifications and not with their political alignment in mind. In addition, appointments should be made from a selection drawn up or approved by the judiciary. Under these conditions, the involvement of the Government or the Head of State in the appointment process does not impact upon the principles of independence, openness, fairness and transparency since they give recognition to decisions taken in the context of an independent selection process. In fact, in some European jurisdictions the involvement of the Head of State in the appointment process is considered to be an expression of judges' independence of the legislative and executive branches of power. Where the Government is not prepared to implement the appointment or recommendation made in the context of an independent selection process it should make known such a decision and state clearly the reason for the decision.

The Project Team has also identified two basic models concerning promotion of members of the judiciary in European jurisdictions. In many continental states in Europe the judicial profession is considered to be a professional career and promotion of judges from lower posts and ranks to higher judicial offices (up to the Supreme Court) is normally applied. In common law and some Scandinavian countries, on the contrary, the judicial profession is not considered a career for life, due to the fact that

judges are selected from experienced, practised lawyers and normally appointed to a specific judicial office, where they will serve until retirement. In these jurisdictions the promotion of judges is less common. Nevertheless, the already mentioned factors should also apply to any model for the promotion of members of the judiciary: the promotion process should be independent, fair, open and transparent.

To this end some countries (e.g. Spain) have introduced public appearances where, hopefully, the candidates might show that they have the necessary qualities relevant to the desired position. An objective assessment of the quality of past judgments pronounced by the judge applying for promotion can be an important factor in any selection process for promotion, but no system for the promotion of judges should be susceptible to the criticism that judges have been promoted on the basis of the likelihood of decisions they will be invited to make in the future. Merit and capability must always be the sole criteria for promotion, since citizens are entitled to expect that only the most able members of the judiciary are promoted to the most senior positions. On the other hand, promotion of members of the judiciary can be based on the periodical assessments of professional performance, which are conducted in some European jurisdictions. The assessment process must be conducted according to the same criteria and with the same guarantees as those provided for the initial selection and appointment process (i.e. it should be independent, fair, open and transparent, and on the basis of merit) and should be based on the judge's past performance, using different sources of reliable information (for instance, the information provided by the Head of Offices / most senior judge where the candidate performed his or her functions, or based on the analysis of the judicial decisions or other data related to the quantity and quality of the individual judge's performance).

2.2 Minimum Standards regarding the competent organ to decide on recruitment, selection, appointments and (where relevant) promotion of members of the judiciary.-

In order to avoid political influence, the procedures for the recruitment, selection or (where relevant) promotion of members of the judiciary ought to be placed in the hands of a body or bodies independent of government in which a relevant number of members of the judiciary are directly involved. The membership of this body should comprise a majority of individuals independent of government influence, but this does not necessarily mean that the judiciary must have an absolute majority membership on such a selection body. In some of the countries of the Project Team (basically in the common law jurisdictions) there is a perception that a selection body on which the existing judiciary have a majority membership leaves itself open to the criticism that it is a self-serving body merely recruiting those prospective judges whom it favours and promoting favoured judges from within its own ranks. In any case, the body in charge of selecting and appointing judges must provide the utmost guarantee of autonomy and independence when making proposals for appointment, guaranteeing that its decision is free from any influences other than the serious and in-depth examination of the candidate's competencies against which the candidate is to be assessed. This body should comprise a substantial participation of legal professionals or experts (including experienced judges, academics, lawyers, prosecutors and other professionals) and could also include independent lay members representing civil society, appointed from among well known persons of high moral standing on account of their skill and experience in matters such as human resources.

The body in charge of judicial selection and appointment could be the appropriate national Council for the Judiciary[1] (or a specific committee or department within the Council for the Judiciary) or an independent national judicial appointments board or committee. The latter proposal would seem appropriate in those jurisdictions where a body such as the Council for the Judiciary does not exist but where other independent and autonomous bodies have the necessary competence for the administration and

[1] Opinion no.10 (2007) of the Consultative Council of European Judges (CCJE) on the Council for the Judiciary at the service of society (adopted in Strasbourg, 21-23 November 2007) at § 48 underlines that "*it is essential for the maintenance of the independence of the judiciary that the appointment and promotion of judges are independent and are not made by the legislature or the executive but are preferably made by the Council for the Judiciary*".

financial management of the courts and/or for the appointment and career of judges. Furthermore, in those systems where the compulsory period of induction training is part of the recruitment and selection process, the relevant Academy, College or School of the Judiciary could play a major role by making recommendations in relation to the candidates which it consdiers should be appointed on the basis of their performance during the induction training.

These proposals are consistent both with the European Charter on the Statute of Judges[2], according to which "*in respect of every decision affecting the selection, recruitment, appointment, career progress or termination of office of a judge (...) the intervention of an authority independent of the executive and legislative powers within which at least one half of those who sit are judges elected by their peers*" is envisaged, and with the Council of Europe recommendation[3] which recognises that "*the authority taking the decision on the selection and career of judges should be independent of the government and the administration*" or in the event of appointments by the government, calls for guarantees for transparency and independence including inter alia "*special independent and competent bodies which give advice to the government, the Parliament or the Head of State which in practice is followed*".

The body in charge of the selection and appointment of judges must be provided with the adequate resources to a level commensurate with the programme of work it is expected to undertake each year and must have independent control over its own budget, subject to the usual requirements as to audit. On the other hand, in order to guarantee that the system for the recruitment, selection and appointment of judges is independent, fair, open and transparent (see § 2.1), the body must publish the competencies against which it determines whether any particular candidate has sufficient merit. It must also have adequate procedures in place to guarantee the confidentiality of its deliberations. Equally, it must create a sufficient record in relation

[2] European Charter on the Statute of Judges, Strasbourg, 8 - 10 July 1998.
[3] Explanatory Memorandum to Recommendation No. R (94) 12 of the Committee of Ministers to Member States on independence, efficiency and role of judges.

to each applicant to ensure that there is a verifiably independent, open, fair and transparent process and to guarantee the effectiveness of the independent complaints or challenge process to which any unsuccessful applicant is entitled if he or she believes that s/he was unfairly treated in the appointments' process. In line with the proposals made in § 2.1 and with the contents of Recommendation No. R (94) 12 of the Committee of Ministers to Member States on the independence, efficiency and role of judges, it has to be stressed that the involvement of the Government or the Head of State in the appointments' process does not interfere with the competence of the relevant independent body as long as this involvement merely implies the recognition in practice of the decisions taken by the competent body in the context of the independent selection process or, where the Government is not prepared to implement the appointment or recommendation made in the context of an independent selection process, if it makes known such a decision and clearly states the reasons for the decision.

3. Proposals of Minimum Standards regarding judicial training.-

The importance of the training of judges is recognised in international instruments such as the UN Basic Principles on the Independence of the Judiciary, adopted in 1985, and Council of Europe texts adopted in 1994 (Recommendation N° R (94) 12 on the independence, efficiency and role of judges) and 1998 (European Charter on the Statute for Judges). It is the specific topic dealt with by the CCJE's Opinion N° 4 on appropriate initial and in-service training for judges at national and European levels (adopted in Strasbourg, 27 November 2003). This document, whilst recognising that "*there are great differences among European countries with respect to the initial and*

in-service training of judges" and that "*these differences can in part be related to particular features of the different judicial systems*" (§ 6) stresses the fact that "*it is essential that judges, selected after having done full legal studies, receive detailed, in-depth, diversified training so that they are able to perform their duties satisfactorily*" and that "*such training is also a guarantee of their independence and impartiality, in accordance with the requirements of the Convention for the Protection of Human Rights and Fundamental Freedoms*" (§§ 3 and 4), asserting at § 7 that "*regardless of the diversity of national institutional systems and the problems arising in certain countries, training should be seen as essential in view of the need to improve not only the skills of those in the judicial public service but also the very functioning of that service*".

Judicial training is also the subject of the Joint Opinion in response to the EC Consultation of stakeholders on European Judicial Training of the Network of Presidents of the Supreme Judicial Courts of the EU, the Association of Councils of State and Supreme Administrative Jurisdictions of the EU and the European Network of Councils for the Judiciary, according to which "*the creation of a Common Area for Justice and the building of Mutual Confidence can only be achieved through a well thought-out programme for judicial training, which includes training in EU law and understanding of national judicial systems*".

Consistent with these international documents the Project Team shares the view that, irrespective of differences in the national judicial training systems in Europe, high quality judicial training both initial and continuing throughout each judge's professional career must be conducted in a manner that is appropriate to a high standard of quality, in order to uphold the independence of the judiciary.

Moreover, judicial training should be under the supervision of the judiciary of the relevant country. Overall responsibility for judicial training should rest with the head of the judiciary or the appropriate national Council for the Judiciary. Responsibility for the content and delivery of judicial training may be assigned to an autonomous national judicial training school or national judicial studies body ("Judicial School", "College" or "Academy") composed of experienced judges from relevant levels or groups of the

judiciary and other scholars or members of the legal professions, which develops its activities in close cooperation with the relevant Council for the Judiciary or Ministry of Justice. Government responsibility for judicial training should be restricted to the provision of adequate resources to ensure that appropriate judicial training can be provided.

3.1. Minimum Standards regarding the role assigned to initial judicial training in the process of selection/appointment of members of the judiciary.-

The question of minimum standards concerning the role of initial training in the process of judicial selection and appointment requires a different approach depending on the legal tradition that applies in a particular country.

In countries where the judges are appointed from the ranks of established professional lawyers, there is usually no connection between the initial judicial training and the process for selection and appointment. In these countries it is assumed that a practising lawyer appointed to the judiciary is sufficiently conversant and competent in those areas of the law in which he would be asked to sit in a judicial capacity. There is therefore no requirement to link any initial judicial training to the process of selection and appointment.

Nevertheless every professional lawyer appointed to become a judge in a common law or similar system requires some initial training focused on the skills and abilities s/he needs to display as a judge (”judgecraft”). This initial training in judicial skills should generally be undertaken before the newly-appointed judge takes up his/her judicial duties and constitutes a minimum requirement to ensure that any newly appointed judge has the basic skills required of any judge to assess the evidence in a case, to keep control his courtroom and to be able to deliver a reasoned judgment. Furthermore in most common law jurisdictions (England and Wales, and Scotland, for instance) a limited period of observation, sitting in with an experienced judge, in addition to the

induction training in judicial skills, is a mandatory requirement before any judge is permitted actually to sit in a judicial capacity.

Given the differences between the judicial selection and appointment procedures in European countries belonging to the civil law tradition, initial judicial training should be considered a prerequisite to selection and/or appointment of judges (and therefore mandatory), although the contents of the initial training programme and the intensiveness of the training should depend on the candidate's qualifications and experience (which are linked to a great extent to the characteristics and traditions of the national judicial system and the recruitment and selection procedure that applies in that system). In any case there should be transparent rules about the type of initial training required. The main goal of initial judicial training as a prerequisite of selection and appointment should be to provide the candidates for judicial office with specific judicial skills. Initial training should comprise both theoretical and practical aspects and cover all fields of law relevant to working at court, whilst providing other skills and knowledge relevant to the judicial activity (such as, ethics, case management, administration of courts, information technologies, foreign languages, social sciences and alternative dispute resolution). Initial judicial training should therefore not be solely focused on the techniques involved in the handling and adjudication of cases by judges, but should also take into consideration the need for social awareness and an extensive understanding of different subjects reflecting the complexity of life in society. Initial training should also include European law, with particular reference to its practical implementation in day-to-day work.

Initial training should be provided mainly by members of the judiciary as well as by qualified external professionals or experts in order to ensure a holistic approach. Trainers should be carefully selected from among the best in their profession by the body responsible for judicial training, taking into account not only their knowledge of the different subjects but also their teaching skills.

Initial training must be fully funded by the state. The judiciary should play a major role in the organisaton and supervision of initial judicial training. These responsibilities could be entrusted to a national institution ("Judicial School", "College" or "Academy"), an autonomous body run by judges for judges which develops its activities in close cooperation with the respective Council for the Judiciary or Ministry of Justice.

Whenever initial judicial training is considered a prerequisite of judicial selection and appointment, the progress in developing the skills and knowledge necessary to fulfil the various duties as a judge should be evaluated by the body in charge of providing the training either on a regular basis during the period of training or by means of an examination at the end of the training period, taking into account the result of the exam in the selection and appointments' procedure.

3.2. Minimum Standards regarding the role assigned to continuing judicial training in the promotion or specialization of members of the judiciary.-

Continuing judicial training (i.e. training during the professional life of judges) is necessary as a result of changes in the law, technology and the knowledge required to perform judicial duties. Every judge, of whatever rank, needs to keep up-to-date with developments in the law, which is not always possible just by reading the reports of cases, new statutes, journals and other written material. Consequently, such training should be made available to all judges, and all judges should be required to receive continuing judicial training. Continuing judicial training should therefore be considered a right of every judge, as well as a duty imposed on judges by judicial ethics, since judges should constantly update their knowledge and develop their proficiency. In this context the Report 2009-2010 by the ENCJ Working Group on Judicial Ethics (approved at the General Assembly held in London, 2-4 June 2010) asserts that "*the judge improves his training in order to avoid any delay in the proceedings caused by a non-professional approach; maintains throughout his life the highest level of professional competence; uses all the legal tools that he learns*".

The amount and nature of continuing training for individual judges should depend on various factors, including the nature of the judicial system and the extent to which judicial career progression or judicial specialisation are features of the system, but the members of the Project Team share the view that, generally speaking, there should be a minimum period of continuing judicial training each year to which every judge should be entitled. Continuing training at all levels of the judiciary should be promoted and the culture of continuing training should be disseminated among members of the judiciary, making available to judges the financial resources, the time and other means necessary for continuing training.

Moreover, there are some European countries where judges can acquire new responsibilities when they take up new posts, assuming a specialised jurisdiction in a specific legal area or assuming new judicial offices such as the presidency of a chamber or court. In those legal systems continuing training programmes should offer the possibility of training in the event of career changes or even impose attendance to an appropriate training course before the required authorisation for the career change is granted. This can also be the case in common law countries which have a system of authorisations (known as "ticketing") whereby a judge is authorised to hear particular types of cases which otherwise s/he would not be authorised to hear. Since public confidence in the judiciary dictates that any judge hearing such cases should have the necessary level of professional expertise, the required authorisation may be made conditional upon attendance on a relevant training programme. Consequently, decisions to promote judges may, at least in part, depend on their record in updating and improving their knowledge and skills, for instance by participating in continuing training activities. In the same vein, judges who want to change to a division dealing with another area of the law may be required to refresh their knowledge and skills necessary to work in that division and extra training may also be required if a judge wants to work in a specialised area of the law.

As in the case of initial training, continuing judicial training should be mainly provided by members of the judiciary and also by qualified external professionals in order to

offer a wider approach. Trainers should be carefully selected from among the best in their profession by the body responsible for judicial training, taking into account not only their knowledge of the different subjects but also their teaching skills. Furthermore, it should cover all fields of law as well as the development of "soft skills" and thereby offer the opportunity for specialisation as well as for gaining knowledge in areas of law in which the judge is not currently working. Continuing training activities should be designed and arranged in such a way that members of different branches and levels of the judiciary may meet and exchange their experiences and views in order to achieve common insights and approaches. Finally, judges' associations can also play a valuable role in encouraging and facilitating continuig training for the members of the judiciary in cooperation with the body responsible for providing judicial training.

3.3. Minimum Standards concerning the nature (compulsory or voluntary) of judicial training (both initial and continuing).-

The question of whether judicial training (initial and continuing) should be mandatory or voluntary has already been indirectly addressed in the previous paragraphs of this report regarding the role of both types of judicial training. In this context it has to be underlined that different considerations should apply to initial induction training and continuing training. As regards common law jurisdictions, and save for the most senir appointments, every professional lawyer appointed to become a judge requires some initial training focused on the skills and abilities he needs to display as a judge, which should generally be undertaken before the newly-appointed judge takes up judicial duties and constitutes a minimum requirement to ensure that any newly appointed judge has the basic skills required of any person to sit in a judicial capacity (to assess the evidence in a case, to keep control over the courtroom and to be able to deliver a reasoned judgment). In civil law jurisdictions, on the contrary, initial judicial training should be considered a prerequisite to selection and/or appointment of judges (and

therefore mandatory), although the contents of the initial training programme and the intensiveness of the training should depend on the candidate's qualifications and experience (which are linked to a great extent to the characteristics and traditions of the national judicial system and the recruitment and selection procedure that applies in that system).

Different considerations apply in respect of continuing training, where the approaches of the countries represented in the Project Team differ. In many of these countries continuing training is voluntary (but expected) for the judges (e.g. Norway, Scotland, Sweden), although the possibility to participate in the training activities is provided. In other countries continuing training is mandatory only in connection with judicial specialisation (e.g. Bulgaria, Spain), or with promotion (e.g. Bulgaria), while in other countries the participation in continuing training is assessed positively in the promotion procedure (e.g. Finland, the Netherlands). In England and Wales continuing training is in effect mandatory and the repeated refusal of a judge to undertake any compulsory continuing training may become a disciplinary matter. In Romania, Italy and Hungary (in this case as from 1 September 2011) it is mandatory for the judge to participate in continuing training at regular intervals defined by statute (for instance, in Romania every 3 years and in Hungary every 5 years); in the event that a judge neglects to participate, his/her professional activities shall be evaluated out of turn and s/he may not apply for promotion to a higher position, but further sanctions may not be applied. In Austria and the Netherlands continuing training in itself is compulsory for members of the judiciary, but, whilst the judge can decide in which seminars and courses he/she would like to participate, there is no obligation to participate in specific training activities.

In some jurisdictions a minimum requirement could apply that all but the most senior and experienced of judges should submit to a specified number of training days each year, ideally delivered on a residential basis. The amount of annual training should be determined by that country's Council for the Judiciary, the Head of the Judiciary or the body in charge of providing judicial training, and the failure by a judge to undertake any

compulsory continuing training might be a disciplinary matter or taken into account in the context of the periodical evaluations of professional performance by the judge. In any case, within reason the judge should be free to elect to pursue those training courses best suited to either his present or anticipated judicial work: s/he ought to be free to choose from a range of options which could ideally be set out in an annual prospectus published by the body responsible for providing judicial training. Exceptions to the principle of mandatory continuing judicial training could be allowed to the extent that judges can show that they have or have acquired the necessary knowledge and skills in other ways or in respect of most senior and experienced holders of judicial offices. In this respect the already cited Joint Opinion in response to the EC Consultation of stakeholders on European Judicial Training of the Network of Presidents of the Supreme Judicial Courts of the EU, the Association of Councils of State and Supreme Administrative Jurisdictions of the EU and the European Network of Councils for the Judiciary expresses the view that ”*in States where sufficient resources are available to train all judges (including sufficient overall judge time to decide cases within a reasonable time and avoid backlogs), it is desirable that continuous training be compulsory for judges and the time for training be guaranteed to the judge*”.

Nevertheless, it is also acceptable for continuing judicial training to be normally based on the voluntary participation of judges. However, even in those legal systems where continuing judicial traning responds to the principle of voluntary participation by the judges, there should be an obligation to undergo mandatory training in some exceptional cases, on the basis of decisions made by the relevant Council for the Judiciary, Head of the Judiciary or body responsible for judicial training. Examples might include the cases of judges who acquire new responsibilities when they take up new posts or a different type of work or functions, assume a specialist jurisdiction regarding specific legal areas, or new judicial offices such as the presidency of a chamber or court, or become authorized to hear particular types of cases which otherwise they would not be authorised to hear (”ticketing”) or in the event of fundamental changes in legislation. In such circumstances failure by a judge to undertake the compulsory continuing training might be a disciplinary matter, be taken into account in the context of the periodical

evaluations of professional performance by the judge or prevent the judge from assuming the new judicial responsibilities directly linked to the compulsory training.

4. Proposals of minimum standards regarding the official approval or endorsement of a code or a set of rules or principles in the field of judicial ethics.-

Judges are entrusted with the exercise of considerable power which can have profound effects upon the lives of all those who appear before a court. Public confidence therefore dictates that there should be standards of conduct, both in and out of court, imposed on the judiciary and designed to maintain that confidence. At an international level, there have been various expressions of the minimum standards of conduct expected of all those holding judicial office. One of the first was what have become known as the Bangalore Principles of Judicial Conduct which were initiated in 2001; this was discussed at several conferences attended by judges of both common law and civil law systems and was also considered by the Consultative Council of European Judges before finally being endorsed at the 59th session of the United Nations Human Rights Commission at Geneva in April 2003. Another expression of the self-same minimum standards has been the London Declaration adopted by the General Assembly of the ENCJ in June 2010 on the subject of Judicial Ethics. Through the London Declaration the General Assembly of the ENCJ approved the report entitled "Judicial Ethics – Principles, Values and Qualities", drafted by the ENCJ Working Group 2009-2010 on Judicial Ethics, as guidelines for the conduct of European judges. Additionally the General Assembly required "*the Steering Committee and the Executive Board to ensure that the distribution of the content of the report to the ENCJ Members and Observers and to the members of the European Judiciaries is as wide as possible*" and proposed "*that ENCJ Members and Observers should promote actively the content of the report on national and the European levels and report back to the General Assembly on their activities in this field with any comments that may have been received*".

The report entitled "Judicial Ethics – Principles, Values and Qualities", drafted by the ENCJ Working Group 2009-2010 on Judicial Ethics, contains a set of principles or guidelines in the field of judicial ethics based on the "*affirmation of principles of professional conduct for judges*" as a way of strengthening "*public confidence*" and allowing "*a better understanding of the role of the judge in society*". The report emphasizes "*the common, founding values of the judge's work, preventive principles and personal qualities*" and, in the view of the Project Team, amounts in itself to a set of minimum standards concerning the contents of judicial ethics, which can be accepted and shared by all members and observers of the ENCJ. The work of the Project Team in the field of judicial ethics has therefore focused on the need or convenience of the official approval or endorsement of a set, guide or code of principles or rules in the field of judicial ethics by the Councils for the Judiciary, Court Administrations or, where relevant, judicial associations or unions.

Apart from the international instruments, many European countries have adopted their own code or guide in relation to judicial ethics. In some countries these codes or guides have already been adopted by the relevant Council for the Judiciary or Court Administration with the aims of establishising standards for ethical conduct of judges and of providing guidance to judges by setting up a framework for regulating judicial conduct (for instance, Bulgaria, England and Wales, Hungary, Norway, Poland, Romania and Scotland). In other European countries Councils for the Judiciary or Court Administrations are currently working on the development of a code or guide to judicial ethics to be adopted at a later stage (Belgium, Ireland or Sweden). In some countries codes or guides in the field of judicial ethics have been adopted by judges' associations or unions (for instance, Austria, Czech Republic and Italy) or by judicial conferences or general meetings of judges (Latvia and Lithuania) or are being currently discussed by judges' associations with a view of its future adoption (Finland and the Netherlands). Finally, there are countries where the relevant Council for the Judiciary or Court Administration has not officially approved or endorsed guides or codes of principles of judicial ethics (Denmark), but indirectly endorsed an international

document in this field (such as Spain regarding the Ibero American Model Code of Judicial Ethics).

Consequently, the Project team shares the view that there should be guidance about judicial ethics promulgated by the relevant national Council for the Judiciary, Court Administration or, where appropriate, judicial associations or unions. Such guidance should consist of the London Declaration on Judicial Ethics of the ENCJ together with any local guidance, which should be consistent with the London Declaration. In particular, any local guidance in the field of judicial ethics should comply with the basic principles affirmed in Part I of the report entitled "Judicial Ethics – Principles, Values and Qualities", which form the minimum standards for any statement of judicial ethics and are necessary prerequisites for any guidance, namely: independence, integrity, impartiality, reserve and discretion, diligence, respect and ability to listen, equality of treatment, competence and transparency.

In this context, in order to guarantee that local guidance about judicial ethics is truly representative of the moral values required for the correct performance of judicial functions, and that they do not provide a means for exerting cultural or political influence on judges, it is necessary that this local guidance be established, whether directly or indirectly, by judges, that is, by those who are primarily concerned with safeguarding the stature of the judiciary and the independence of judges. As already stated, the participation of judges in the establishment of the local guidance could be done through the relevant national Council for the Judiciary, Court Administration or, where appropriate, judicial associations or unions, judicial conferences or general meetings of judges.

Guidance in the field of judicial ethics may not be considered prescriptive, but rather should set out broad principles of what may, or may not, be considered appropriate judicial behaviour. However, it is also possible that non-ethical conduct of a particular judge may be assessed in the context of the professional evaluation or promotion processes. Thus, the assessment of the ethical relevance of a judge's conduct can be

included as part of the overall assessment of professional performance in connection with his/her eligibility to be reappointed to office, but such evaluation must be formulated in a transparent, reasoned and objective manner as part of a guaranteed professional assessment procedure, which provides for the active participation and defence of the judge concerned. In the same vein, serious violations of ethical principles, guidelines or rules may be assessed within a disciplinary procedure if the relevant violation constitutes a disciplinary offence under the applicable disciplinary law. This procedure should be in the hands of an impartial and independent body, free from the influence of any other branches of power, representing, whether directly or at least in part, the interests of the same judges, and should provide full guarantees (including the active participation and defence) to the judge concerned.

Annex - Participants List – 2010/2011

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