

Newsletter n° 14/2010

Colloquium Dublin, 19 March 2010

Appointments

Editorial

President Griss

In connection with its discussions on its future strategy and development, the Network of Presidents of the Supreme Judicial Courts of the European Union is to hold a working meeting with American judges on procedures for cooperation among the supreme courts at the European University Institute in Florence on 13 and 14 December next. The comparative approach and experience acquired by our American colleagues is sure to make for an instructive working meeting.

The cooperation among supreme courts which is our goal is also prompting us to consolidate and organise our exchanges with other Networks and to closely follow any initiative aimed at creating a community of European jurists. The European Council's initiative in launching the e-Justice site last July (<https://e-justice.europa.eu> [1]), reported in the last Newsletter, is a perfect expression of this need for rapprochement. We will certainly have occasion to return to these matters.

As already announced, this Newsletter presents a summary of the Reports submitted on the occasion of the Colloquium held by our Network in Dublin last March on practical aspects of the independence of justice.

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The first introductory report which was prepared by President Tolksdorf (Germany) on the protection of judicial independence covered five aspects. First: What is the legal basis safeguarding judicial independence? Secondly: How are judges appointed and dismissed? Thirdly: How and for what term of office is the President of the Supreme Court appointed? Fourth: What are the conditions for voluntary suspension of a judicial career? And fifth: How and by whom are the ethics of judges defined? As for the first aspect, the legal basis safeguarding judicial independence, the formal starting point is described relatively easily. Twenty-five out of twenty-nine countries report that their constitution expressly guarantees judicial independence. As far as the applicable constitutional provisions are cited, most of them only contain broad and general principles.

Some countries' constitutions however go very much into details stating explicitly for example how to determine the judges' salary or prescribing if and how far judges may engage in political activities. Only four countries (Luxembourg, Netherlands, United Kingdom, and Norway) have no explicit constitutional guaranty of judicial independence. Nearly all countries report further statutory safeguards, mostly in their procedural laws, court acts or statutes of the Judiciary. Only few reports also mention judicial precedents and customary instruments safeguarding the independence of judges. Regarding the second aspect on the appointment and dismissal of judges, most reports indicate that judges are formally appointed by the Head of State or by the Government. Four countries report that some or all

judges are appointed by Parliament. Another four countries indicated that at least higher level judges are appointed by an independent body like a Council of the Judiciary. No matter who formally appoints judges, there has been reported an enormous variety of selection and nomination procedures. Talking about the termination of judicial function, it seems to be our common acquis that judges are appointed for lifetime instead of limited period. In quite a number of countries, judges or judicial councils have no influence in the appointment of the President of the Supreme Court. In these countries, the President is chosen by the Head of State, the Government, by Parliament, probably acting jointly or after consulting with each other. On the opposite side of the scale, the Council of the Judiciary or the Supreme Court Judges elect the Court's President and somewhere in the middle, between those two approaches, there are systems where Judicial Councils and/or Supreme Court Judges are heard or have some kind of advisory influence. Eleven countries report that the President of their Supreme Courts have unlimited tenure; seventeen countries indicate that the duration of the President's term of office is limited. The limited period of office varies between 3 years and 10 years. It may be renewable without any limits for a maximum of two consecutive terms or not renewable at all. On the fourth point, the conditions for voluntary suspension of a judicial career varies significantly among our jurisdictions. Some reports describe highly detailed and precise sets of rules on this issue; others portray a more discretionary approach and yet many cases, more or less deny any possibility of temporary suspension. Where Codes of Judicial Ethics exist they are issued by all National Judges, by the National Council of the Judiciary, by Union or Association of Judges, by the Judges and the Presidents of the individual courts or by special committees on judicial ethics. Many of these codes may have a non-binding merely advisory character. With or without codes of ethics, most countries indicate that judicial behaviour and ethical principles are dealt with in various legal instruments namely in statutes with regards to disciplinary action. If not, ethics remain a matter of legal and judicial tradition.

The second report delivered by First President Londers (Belgium) on the means and resources given to a judge to perform his duties notably dealt with salaries and pensions and how they are determined, decreased etc. and this is an obvious link between, on the one hand, the means and resources given to a judge to perform his duties and on the other hand, his independence.

Indeed, a judge must be able to work with total peace of mind, which includes peace of mind regarding practical working conditions. There are three main systems used to determine and modulate judges' salaries. In most countries, salaries are fixed by law, following an act of the Legislator. Inversely, in other countries, salaries are determined by the Executive. And, thirdly, there are countries where salaries are determined in more consensual way, after negotiations between the Minister of Justice and the trade unions. Another common feature is that in most countries, salaries actually depend on three factors. First of all, the level of the court; secondly, the rank of the judges within the jurisdiction; and thirdly, of course, seniority in terms of the number of years of service. Regarding additional benefits granted to the Judiciary, the situation differs widely from country to country. Indeed, in certain countries, those benefits or bonuses are granted to judges who perform additional duties which can be managerial duties or possibly specific duties performed (for example, investigating judges or youth magistrates). Regarding benefits in kind paid to Supreme Court Judges, there are wide differences. But, there is one more problem and it is linked to the way in which it may be possible to change or modify judges' salaries. In some countries, a paragraph in the Constitution or a particular Act provides that it is prohibited to reduce a judge's salary once he has taken up his post. However, in practice, recent events show that only recently in some European countries, judges' salaries were reduced to a considerable degree. Regarding the allocation of cases allocated among the Chambers, the Court and the Judges, particular attention is paid in all countries to this issue precisely because it is important to avoid giving the impression that by allocating or distributing those cases, there is an attempt to influence proceedings regarding those cases. The same concern of objectivation is shared when it comes to modifying the distribution of the workload. The relationship between judges and outside partners, their personal and social interaction with other partners which were examined in the third report of President Gaspar (Portugal) must be considered according to the ensuing effects they may have on their independence and their impartiality, in particular regarding objective impartiality. Each category of interactions comes with specific problems and requires different approaches. Personal relations of judges with lawyers is not something which usually creates any difficulties, nor can they per se be regarded as a threat to independence. However, in all occasions, judges must exercise prudence as regards persons with whom they are involved socially and how close those relations are. The level and intensity of such relations in principle depend on each individual judge, and must not, in any circumstances,

affect the appropriate discharge of their duties. One point for discussion relates to the means of safeguarding a reasonable balance between discharge of duties, disciplining and independence of judges. The international organisations of judges, such as our own Network, serve as fora for meetings, studies, analyses, exchanges of knowledge, views and experiences, which are important as regards matters relating to judicial independence.

The involvement of judges in extra-judicial activities, their nature and how they are performed where this is permitted, the exclusivity of the performance of the judicial function or the possibility of combining several offices at once are distinctive features of various systems which, however, are all compatible with the guarantee of independence. The participation of judges in political activities, especially the exercise of a political mandate, and the consequences of such exercise for judicial independence, is an area which calls forth a number of different approaches, viewed as it is quite differently in the various European systems. The exercise of the judicial function, as well as the exercise of other functions or powers of the State, cannot be exempt from controversy and criticism. Relations between judges and the press, critics and their effect on confidence may constitute a strong and intense matter for our analysis. Action or inaction by governments with potential repercussions on the courts may take various forms. Budgetary policy is a central factor, since stable and appropriate funding also helps to guarantee independence of operation. The budgetary aspect influences the work capacity of the courts and their ability to respond, inadequate funding being likely to have an indirect negative effect on independence. The manner in which the Minister of Justice is involved in appointing judges and in the development of their careers, in discipline and in their remuneration is a factor of serious concern in many national systems, as are inappropriate legislative interventions in procedural matters, which may also interfere with the proper, independent exercise of the judicial function.

Appointments

Judge Børge Dahl has been appointed President of the Supreme Court of Denmark on 1st September 2010 in succession to Judge Torben Melchior, former President of the Network, who has retired.

Mr Silvio Camilleri has been appointed President of the Constitutional Court and Court of Appeal of Malta on 9 September 2010 in succession to Judge Vincent A. De Gaetano who was elected to sit on the European Court of Human Rights

Judge Livia Doina Stanciu was appointed President of the High Court of Cassation and Justice on 16 September 2010.

Attached file:

[Newsletter n° 14/2010.pdf](#)^[2]

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