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Editorial

President Melchior

The Board of our Network held its second meeting of the year in London on 15 October 2009 in the premises of the Supreme Court of the United Kingdom, at the invitation of its President, Lord Phillips. Naturally, we discussed preparations for our Dublin Colloquium on the Practical Aspects of Independence of Justice, for which we have already received more than twenty replies. Our immediate thanks go to the general rapporteurs, Mssrs. Tolksdorf (Germany), Londers (Belgium) and Gaspar (Portugal), who have kindly volunteered to take on the major task of seeing to the technical preparations for our discussions, and to Mr Murray (Ireland), thanks to whose generous invitation we will be able to hold our meetings in Dublin on 19 March next. Tradition now has it that the Colloquium will be preceded by the General Assembly of the Network, during which we will have to elect a new Board for the next two years (2010-2012). Lord Phillips, President Testen (Slovenia) and myself will not be seeking re-election. I invite our colleagues to put their names forward. The next two years will be crucial ones for the future of our Network. Since its creation in 2004, we have successfully established a co-operative dialogue between our various members and increased the number of our meetings. We cannot allow the Stockholm Programme, which will determine the action of the European Commission in the field of justice for the next four years, to pass without a reaction on our part. President Koskelo (Finland) has, I believe, made some very interesting comments on several occasions this summer on the quality of justice, which is a matter of European concern and she has made her views known to the Board. Our Newsletter reflects this fact and the debate on this subject will be supplemented by a questionnaire on the Network's future strategy, which has been prepared in co-operation with Messrs Cafaggi (former Advocate-General at the European Court of Justice) and Maduro (Advocate-General at the same Court).

Inauguration of the Supreme Court of the United Kingdom

Historically, the Parliament of Great Britain could be seised of appeals against the decisions of the ministers, but also appeals against decisions of the courts. It was then the House of Lords that gave a ruling, although this did not mean that its Members had any legal training at all. From 1876, appeals on points of law were entrusted to justices appointed

to the House of Lords solely for this task, and playing no part in legislative and parliamentary work. So this was a specialised parliamentary committee, with the functions of a supreme court. This tradition ended with the official inauguration of the United Kingdom Supreme Court on 16 October 2009. The 12 judges of which it is composed continue the jurisdictional activity which had hitherto been the domain of the House of Lords legal committee, but now as justices rather than as members of parliament, with greater transparency in their activities in keeping with the modern concept of the separation of powers. Her Majesty the Queen and His Royal Highness the Duke of Edinburgh inaugurated the Court in the presence of the Prime Minister, the Lord Chancellor, the Minister of Justice, the leader of the opposition and many other prominent figures. The members of the Board, who had held their meeting in the Supreme Court the previous day, were invited to the opening ceremonies of this new and important institution by Lord Phillips, President of the Supreme Court and former President of the Network (2006-2008).

"The Need for a Common Judicial Culture in Europe - a Matter for Judges and Lawyers"

(excerpt from an address by Pauliine Koskelo, President of the Supreme Court of Finland, at the IBA Northern European Conference, Helsinki 3-4 September 2009)

? (...) In the so-called third pillar of EU co-operation, the corner-stone principle is that of **mutual recognition**. That in turn is founded on mutual trust, or ?a high level of confidence?, as the phrase goes in many official documents. Mutual trust is a political premise of the legal instruments in this area. What the system of mutual recognition requires, however, is more: it requires *well-founded* mutual confidence.

The policies and legal instruments in the field of justice affairs highlight the necessity of making sure that the judicial systems in all member states actually meet the high standards that are obligatory under EU law as well as the European Convention on Human Rights. In other words, there is an imperative need to ensure that each national judicial culture within the EU is robust and meets the requirements of independence, impartiality, professional integrity and fairness, in practice as well as in theory.

The European Arrest Warrant (EAW) is the most poignant example of this so far. The Member States have committed themselves to surrendering persons, including their own citizens, for prosecution and conviction on strictly defined grounds. Thereby they have made the quality of each others' criminal justice systems a matter of serious common interest and common concern, even if the competence and responsibility for these systems remain at the national level.

As we all know, many member states, including Finland, have more or less frequent and persistent difficulties in meeting the requirements of a fair trial as set out in Article 6 ECHR, especially in terms of the length of proceedings. In this country, we have in place a system the proper running of which would require more investment than has ever been available. Structural reforms are dawdling etc. The current recession is putting a huge new strain on the public economies throughout Europe, presenting a new threat to the funding and working conditions of the justice systems - and thereby to the legal protection available to our citizens.

It is obvious that when we contemplate cross-border cases in particular, and parties involved in proceedings in a country other than their own, there is a need for various kinds of special measures in support of parties in those situations. We cannot, however, expect our systems of criminal or civil justice to work well for the citizens of other Member States unless and until they work well in general. If the justice systems don't function up to standard in the domestic context, they will hardly function up to standard in cross-border situations either.

Therefore, we simply cannot escape the fact that adhering to the principle of mutual recognition necessarily entails that the justice systems in each and every Member State must be brought up to standard. This is an urgent and serious common concern in the interest of citizens throughout the Union.

I think we can clearly see a need for more political pressure on governments in this area. The justice systems are

generally not at the top of priorities in the domestic political arena. Sure enough, it is hard to find a politician who wouldn't subscribe to the ideas of justice, fundamental rights and so on. But when the crunch comes, investments in this area are often not ?politically competitive?.

What might help is external pressure, in this case from the European level. Such pressure may emerge from individual cases arising sooner or later. But useful and constructive pressure could be brought about through effective external scrutiny. If we had mechanisms of independent, systematic, sufficiently thorough and focussed evaluation of the functioning of the justice systems in the Member States, that type of external scrutiny could help motivate governments to take these matters as seriously as they should be taken. We would need serious evaluations in the form of country reports that should penetrate deeper into the functional aspects of how the justice systems in the various Member States meet the procedural and other standards that are essential from the point of view of the protection of the rights of citizens.

I raised this matter recently at a conference organized by the current Swedish EU presidency in Stockholm. In connection with that occasion, I learned that a similar idea has also been raised within the EU Council by the Dutch Minister of Justice. I think we as legal professionals have every reason to act in support of such measures.

Rule of law and effective legal protection need to be talked about, but will not be ensured by repeating the magic words. It is not a matter of talking the talk but of walking the walk. (?) ?

Information meeting on the Common Portal of Case Law

The Network Secretariat organised a meeting in Brussels on 21 October 2009, which was held in the European Council and opened by Mr. Pereira, Chairman of the Council's Legal Computing Group. The reports and research departments of 12 supreme courts had sent representatives (Austria, Czech Republic Denmark, Finland, France, Germany, Ireland, Italy, Ireland, Lithuania, Luxembourg, Netherlands, Norway, Rumania), those of the supreme courts of Cyprus and Malta ultimately not having been able to attend despite having been registered. The meeting, which lasted the whole afternoon, provided an opportunity to demonstrate how to use the Common Portal of jurisprudence, of which there are two operating versions, one accessible to the public, the other with access restricted to supreme court justices ([http://www.network-presidents.eu/rpcsjeue/\[1\]](http://www.network-presidents.eu/rpcsjeue/[1])).

The Secretariat reminded the meeting that the aims of the Portal were to give access to the on-line databases of the supreme courts of EU Member States, so that they could be searched in one of the European Union's official languages and the solutions found by the jurisprudence of the various courts whose databases had been searched could be compared. The Portal was not limited to creating an on-line digital community but must be a tool for changing working habits and, by providing supreme court justices with an opportunity to inform themselves about the law of other countries, would help to create, develop and strengthen a common judicial culture in Europe. With its current automatic translation facilities, the Portal was no substitute for comparative law research. Co-operation between the research departments in the courts was thus desirable, which this first meeting had also aimed to create.

With that in a view, the meeting, which was the first chance to gather together the representatives of the reports and research departments of the supreme courts, provided an opportunity for dialogue between the participants, which was set to continue through a discussion list which had been drawn up and which would use the technical resources of the Network's website. It was therefore to be followed, in 2010, by a further meeting at the European University in Florence.

Appointments

Mr Gintaras Kryzevicius was appointed President of the Supreme Court of Lithuania on 5 November 2009 in succession to Mr. Vytautas Greicius.

Attached file:

[Newsletter n°11/2009.pdf](#)^[2]

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