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## Newsletter n° 10/2009

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## Editorial



**President Melchior**

*The Board held its first meeting in 2009 on 18 May at the Danish Supreme Court in Copenhagen. After consulting members of the Network whom we wish to thank for their comments, the Board adopted the topic of the Fourth Colloquium which will focus on the "Practical Aspects of the Independence of Justice" and on which this issue of our Newsletter provides further details through publication of the questionnaire on which our work will be based. The Board also deeply thanked Chief Justice Murray for his invitation to hold the Colloquium in Dublin, which will therefore be held in the Irish capital on Friday, 19 March 2010. I am already looking forward to seeing you there.*

## Reflexions on the preliminary ruling procedure

On 30 and 31 March 2009, a Symposium organised at the invitation of the European Court of Justice brought together in Luxembourg the Presidents of the Constitutional and Supreme Courts of the Member States for a discussion on the preliminary ruling procedure. The studies launched in 2007 at the initiative of the Council of State of the Netherlands and which were conducted in the Association of the Councils of State and Supreme Administrative Jurisdictions of the European Union with the participation of the

members of the Network, as reported in the Newsletter (No. 4 of 2007 and No. 8 of 2009) were taken into account in organizing the Symposium. The three sessions arranged provided an opportunity to consider how to achieve greater efficiency and dispatch in the preliminary ruling procedure, which is the objective set out in the Report prepared in 2008 on conclusion of the studies previously conducted. The first session was devoted to how to make specific improvements or, alternatively, to the need to rethink the system as a whole, the second session was devoted to the possibility of limiting issues referred to the Court of Justice solely to important ones and the third session was devoted to ways of shortening the time it takes to process cases. The President of the Court of Justice, Mr Skouris, after singling out the exhaustiveness of the Report's analysis and the clarity of its proposals, said that a very sharp reduction in the length of preliminary proceedings was being seen, cut to an average of 16 months in 2008. This result was chiefly due to a reform of the European Court of Justice's working methods, to the use of accelerated, simplified proceedings and to the urgent preliminary procedure, which had made it possible to close cases involving basic human rights within two months, and also to the possibility of rulings being made without an advocate general.

## Meeting of the board in Copenhagen



The Danish Supreme Court was the setting for our Network's Board meeting on 18 May 2009. Preparations for the forthcoming Fourth Colloquium to be held in March 2010 in Dublin began with the adoption of the 'Practical Aspects of the Independence of Justice' as topic for discussion and of a questionnaire as basis for the studies. As usual, the Colloquium will be preceded by the General Assembly of the Network, during which the Board

of Administration will have to be elected. Members will be informed in autumn of vacancies arising the Board and invited to present their candidatures.

The Board again expressed its interest in the European Justice Forum launched by the European Commission in May 2008.

In keeping with the objective set out in its Articles of Association to promote consultation of the supreme courts by the European bodies, the Network will continue to bring in experts from the supreme courts on topics of interest which will be discussed by the Forum. The experts will contribute on the basis of their individual areas of expertise.

The Board also discussed ways of increasing use of the Common Portal of Jurisprudence. The creation of a hyperlink between the Portal and the future European Justice Portal called for by the European Council is one of the ways of publicising the jurisprudence of our supreme courts and making it better known. The principle of allowing for the widest possible access to the Portal was also adopted, providing all the translation facilities on the version accessible via Internet. The Board planned to organize a meeting of those in charge of the research and documentation departments in our courts to familiarize them with using the Portal. Some twenty people from more than fifteen supreme courts have already expressed interest in attending such a meeting this year. The Association of the Councils of State and Supreme Administrative Jurisdictions of the European Union also agreed to begin the incorporation of seven of its databases.

Lastly, on a proposal from the French Cour de cassation, the Board decided to send members of the Network a brief questionnaire on legal aid, which is also reproduced in this issue.

## **Questionnaire on ?Practical Aspects of Independence of Justice? - (Colloquium Dublin, March 2010)**

### **I - Protection of Independence**

- 1.What is the legal basis (constitutional, statutory, customary, judicial precedent) of the statutes or other statutory instruments safeguarding the independence of judges?
- 2.What are the requirements applying to the appointment (for example appointment by the Government or by an independent body) and the guarantees regarding termination of the judicial function?
- 3.What are the requirements applying to the appointment of the President of the Supreme Court and what is the duration of his/her term of office?
- 4.What are the conditions for voluntary, temporary suspension of a judicial career and for the return of a judge to court? In particular, may a judge return to the Bench after joining the Bar or after holding a political mandate (for example: as an elected or unelected member of the legislature or the executive) or after working for the prosecution?
- 5.How and by whom are the ethics of judges defined?

### **II - Working Conditions**

- 6.How is the salary, including pensions, fixed, increased or decreased and by whom? Are judges awarded bonuses or any other advantages (car, lodging, etc...) and by whom? What is the annual salary (including pensions and bonuses) of a Supreme Court judge? How does this compare with the salary (including pensions and bonuses) of other state officials?
- 7.How are cases allocated among the different divisions of the Supreme Court and among the judges? What are the conditions or criteria for modifying the allocation of cases?
- 8.Daily working hours, including preparation of cases? Who has the authority to fix working hours for judges and, if so, what is the number of hours? Who controls?
- 9.Has each judge an office of his/her own in the court building?
- 10.Has each judge possibility to use a portable PC, also out of office?
- 11.Is each judge assisted by legally qualified clerks or research assistants?
- 12.Is there a library reserved for judges and other court staff? What are the opening hours? Is the assistance of a librarian possible?
- 13.In case the judge works at home: has he/she access to databases, provided by the court, containing for example the Supreme Court's case-law, legislation and legal periodicals?
- 14.Any further information for assessing the working conditions of judges and court/chambers' presiding judges?

### **III ? Relationship with Outside Partners**

15.To what extent may judges socialize with attorneys?

16.Can complaints against a judge be filed with an ombudsman? Is the judiciary controlled by the ombudsman?

17.Do decisions of international courts have a bearing on the national organisation of the judiciary? Examples?

18.What is the influence of international networking on the protection of the independence of the judiciary?

19.May judges engage in extra-judicial activities such as arbitration? May judges render expert opinions on behalf of clients?

20.May judges engage in politics or run for a political mandate?

21.How is the independence of judges protected in case of criticism or attacks from the outside environment, in particular from the ?Unions?/representative bodies of Judges, the Bar/Law Societies/practising profession legal bodies, politicians and the press?

22.In what way do you think that government action or inaction may risk directly or indirectly undermining the independence of the judiciary?

23.Does criticism from the media, government or parliamentarians made either generally or in relation to particular cases risk compromising the independence of the judiciary?

24.Does the judiciary respond publicly to criticism, and if so, what means and mechanism are used to do so?

25.Is the relationship between the court and the media organised? If yes, in what way?

### **Questionnaire on Legal Aid proposed by the French Cour de cassation**

1.When a person with insufficient means wishes to lodge an appeal before your Court against a decision of a lower court, can they get the State to cover all or some of the costs of a lawyer appointed to represent them?

2.Is the lawyer chosen by the litigant, by the State or in some other way (by a lawyers? association for instance)?

3.As well as the applicant needing to have sufficient financial means, must the appeal also have a strong chance of success?

4.If so, who determines it?

4.1 A legal aid department which is the same for all courts?

4.2 A legal aid department in your own Court?

5.If it is the latter (4-2), who is it made up of?

6.What is the percentage of successful applications?

## Appointments



Judge András Baka has been elected President of the Supreme Court of Hungary by the Hungari



Mr. Ľubomír Harabin has been appointed President of the Supreme Court of the Slovak Republic on



Judge Georgios Kalamidas has been appointed President of the Supreme Court of Greece on 1st  
Vasileios Nikopoulos who has retired.

The Croatian Parliament has re-elected Judge. Branko Hrvatin for a second four-year term of office  
the Republic of Croatia. President Hrvatin has taken his new mandate on Friday, July 17, 2009.

### Attached file:

[Newsletter n° 10/2009.pdf](#)<sup>[1]</sup>

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