

An Analysis of Magistrates Training in Serbia Findings and Recommendations

Team Leader, Judicial Reform/Rule of Law Cluster
Olivera Puric

Editors
Olivera Puric, Ivana Ramadanovic-Vainomaa

Author
Joanna Brooks

The following have participated
Tamara Belojevic, Biljana Ledenican, Jelena Macura, Mato Meyer, Sinisa Milatovic,

Design and Layout

Printing

DISCLAIMER

“The views expressed in this publication are those of the authors and do not necessarily represent those of the United Nations, including UNDP, or their Member States”

CONTENTS

1. FOREWARD

2. EXECUTIVE SUMMARY

2.1 Context

2.2 Strengthening the System of Misdemeanour and Magistrates' Courts

2.3 Training Components of the Strengthening the System of Misdemeanour and Magistrates' Courts Project

2.4 Complementary Components of the Strengthening the System of Misdemeanour and Magistrates' Courts Project

3. OVERVIEW OF THE SERBIAN JUDICIAL AND MAGISTERIAL SYSTEMS

3.1 Overview of the Serbian Judicial System

3.2 Overview of the Serbian Magisterial System

4. MAGISTRATES TRAINING IN SERBIA

4.1 Current Training Provision for Magistrates in Serbia

4.2 Development of Training Provision

4.3 Absorption of the Magistrates' Training by the Judicial Training Centre

5. EU REQUIREMENTS

5.1 International Conventions and Agreements

5.2 Judicial Education in Serbia as regards EU Requirements

6. CURRICULUM

6.1 Curricula Development

6.2 Competency Framework

6.3 Core Training for New Magistrates – pre-service and initial training

6.4 Core Training for In-Service Magistrates

6.5 Ensuring Training Participation

7. PROPOSAL FOR TRAINING METHODOLOGY

7.1 General Training Methodologies

7.2 Magistrates Training Methodology

7.3 Good Training Practice

7.4 Monitoring and Evaluation of Training

8. CONCLUSIONS AND RECOMMENDATIONS

8.1 Conclusions

8.2 Recommendations

ANNEXES

Annex I: List of Resources Reviewed (English and Serbian versions)

Annex II: Breakdown of Training Sessions June 2005 – December 2006 (English and Serbian versions)

Annex III: Report, Train the Trainers Modules 1 and 2 (English and Serbian version)

Annex IV: Project Document, Strengthening the System of Misdemeanour and Magistrates' Courts (English and Serbian versions)

Annex V: Terms of Reference; Design and Delivery of a Management Training Programme for the Magistrates (English only)

Annex VI: Management Training Curricula and Inter-module Assessment (English and Serbian versions)

Annex VII: Standard Terms of Reference: Magistrates' Trainers (English only)

Annex VIII: Recommendation No R (94) 12, Council of Europe, Committee of Ministers

Annex IX: European Charter on the Statute of Judges (English and Serbian versions)

Annex X: Opinion No 4 of the Consultative Council of European Judges (English and Serbian versions)

Annex XI: Council of the European Union, The Hague Programme (English only)

Annex XII: Communication from the Commission to the European Parliament and the Council on Judicial Training in the European Union (English only)

1. FOREWARD

This paper presents an assessment of Magistrates training in Serbia and forms part of the UNDP project, **Strengthening the System of Misdemeanour and Magistrates' Courts**. The overriding purpose of this report is to lead to the development of a continuous training programme for Magistrates through assessing training needs and developing curricula and training methodology. The report can be used as a basis for developing the strategy for permanent pre and in-service training inline with EU requirements.

This report will present recommendations relating to curricula development for both pre-service and in-service training, the institutionalization of Magistrates training, training methodologies and monitoring and evaluation techniques.

The methodology that has been used in drafting this report has been a combination of review and analysis of documents including project documents and reports, international agreements and conventions and other relevant documents, internet research and personal interviews.

The first part of this publication presents an overview of the Serbian judicial system with a special focus on the current and future system of Magistrates' courts. It goes on to assess the current training provisions for the Magistrates in Serbia and looks at the development of these training provisions and the absorption of the Magistrates' training by the Judicial Training Centre of the Republic of Serbia.

The second part of this publication considers Magistrates' training more broadly and presents EU requirements, curricula development and a proposal for training methodology. In addition, it presents a proposed Competency Framework that can be used as a basis for the further development of curricula. The main body of the research ends with conclusions and recommendations that can be drawn.

Annexed to the report are a number of useful documents and resources related to Magistrates' training such as reports, training statistics, examples of curricula, standard terms of references and International treaties, opinions and recommendations relating to judicial education.

Belgrade, October 2006

2. EXECUTIVE SUMMARY

2.1 Context

The United Nations Development Programme (UNDP) has embarked on assisting Serbia in implementing a comprehensive development framework. The framework focuses on promoting democratic governance, preventing crises and facilitating recovery, and securing the sustainable management of the environment and the sound production and utilization of energy. Cutting across these clusters are four primary themes: (i) human rights and gender equity, (ii) policy reform and consensus building, (iii) constituency empowerment, (iv) e-governance using information technology.

The UN system in Serbia including UNDP, has prioritized the Rule of Law and Access to Justice as one of the three main priority issues for 2005-2009 as reflected in the first United Nations Development Assistance Framework and UNDP's Country Programme Development document.

In December 2001, the Ministry of Justice of the Republic of Serbia and the Serbian Association of Judges established the Judicial Training Centre (JTC) in the Republic of Serbia. UNDP subsequently formulated a project to assist the Government of Serbia in strengthening the institutionalization of the Judicial Training Centre.

Continuing with the development, the Judicial Reform/Rule of Law Cluster entered its second phase incorporating new projects such as Strengthening the Judicial Resource and Support Functions in the Judicial Training Centre, Strengthening Human Rights Protection Mechanisms and Strengthening the System of Misdemeanours and Magistrates' Courts. Furthermore, expansion is on-going in the Transitional Justice Programme.

2.2 Strengthening the System of Misdemeanour and Magistrates' Court Project

UNDP and the Republic of Serbia are implementing the "Strengthening the System of Misdemeanours and Magistrates' Courts" project, financed by the Swedish International Development Agency (Sida). In recognizing that a rule based, predictable and non-discriminatory magistrate system is necessary for equal access to justice, the Project aims at strengthening the system of Misdemeanours and Magistrates' Courts through the provision of training for magistrates and developing a magistrates reform strategy.

The main focus of the project is on professional advancement through the provision of training, defining the legal status of magistrates through legal regulation and developing professional standards and a code of ethics. The project activities are undertaken by the Project Implementation Unit, based within the Ministry of Justice of the Republic of Serbia and the Serbian Association of Magistrates. Please see **Annex IV** for the Strengthening the System of Misdemeanour and Magistrates' Courts Project Document.

2.3 Training Components of the Strengthening the System of Misdemeanour and Magistrates' Courts Project

The training components were designed to cover all categories of persons involved in misdemeanour procedures. Training at local level is undertaken for those categories of persons who are entitled to initiate misdemeanour proceedings. Initial training is provided for all Magistrates with less than three years experience, while the continuous training targets those Magistrates with more than three years experience. The continuous training adopts a twin track approach between general continuous training and specialized management training focused on improving the capacities of the Magistrates in the areas of team building, communication and correspondence, PR, management, professional relationships and diversity issues. To further strengthen the training interventions, a number of

supporting handbooks and manuals have been published together with the new Law on Misdemeanours. For further details about the training components please see **Chapter 4**.

2.4 Complementary Components of the Strengthening the System of Misdemeanour and Magistrates' Courts

a. Benchmark Report

As part of the project implementation an assessment was carried out in October 2005, to develop indicators and benchmarks to measure the project's progress at that date. The result of the mission was the report, **"Developing results, indicators and benchmarks to strengthen Serbia's system of misdemeanour courts"**. The findings of this report were formulated into three short term goals and a fourth, long-term goal. They are as follows:

- (i) **Goal One** – Enhance and Expand Misdemeanour Court Judges Educational Training
- (ii) **Goal Two** – Enhance the Professional Status and Public Perception of Misdemeanour Court Judges
- (iii) **Goal Three** – Streamline and Coordinate Activities among Various Interested Organisations
- (iv) **Goal Four** – Strategically plan for the Continuing Education of Judges

b. Functional Review

An additional component of the project was the undertaking of a Functional Review. The aim of the Functional Review was to provide an in-depth study of the functioning of the Ministry of Justice; its strengths and weaknesses, an all-encompassing profile of its staff and their professional capacities and recommendations on what changes could be made in the short and long term in order to ensure that the Ministry of Justice functions in a more effective manner. The specific focus of the Functional Review was to examine the horizontal linkages between the Ministry of Justice and the Magistrates' Courts.

As an extension to the analysis of the horizontal linkages between the Ministry of Justice and the Magistrates Courts, the Functional Review also encompassed the horizontal linkages between the Ministry of Justice and some of the other key institutions within the Judiciary, for example, the Prosecutor's Office, the District Courts and the prison service. In this way the Functional Review provides a comprehensive, detailed analysis of all elements of the functioning of the Ministry of Justice. Not only will this lead to the greater effectiveness of the Ministry of Justice, it will ultimately assist in the integration of the Magistrates in to the mainstream Judiciary as envisaged by the new Law On The Full Inclusion of Magistrates into the Serbian Judiciary.

c. Annual Meetings

In addition, the Project has also facilitated and supported the organization of the annual meetings of Magistrates. This encompasses all first and second instance Magistrate Judges and provides an open forum for discussion of relevant topics. It has proved particularly important for discussing the reform of the Magistrate system and related issues.

3. OVERVIEW OF THE SERBIAN JUDICIAL AND MAGESTERIAL SYSTEMS

3.1 THE SERBIAN JUDICIAL SYSTEM

The Serbian judicial system consists of courts of general jurisdiction and courts of specialized jurisdiction.

Courts of General Jurisdiction are the Municipal and District Courts. Municipal courts are the principal first instance courts in all criminal and civil cases. District Courts are second instance general jurisdiction courts, and they are also courts of first instance in serious civil and criminal matters.

The Courts of Specialized Jurisdiction are the Commercial Court and the High Commercial Court. The Commercial Court has jurisdiction over a wide range of commercial disputes, including copyright, privatisation, foreign investment, unfair competition, maritime and other matters. The High Commercial Court is the second instance specialized court.

The highest court is the **Supreme Court** as the highest appellate court.

There is also the **Constitutional Court** which determines whether Serbian laws, regulations and other enactments are in conformity with the Serbian Constitution. Any citizen may begin an initiative in the Court.

3.1.1 Appointment of Judges

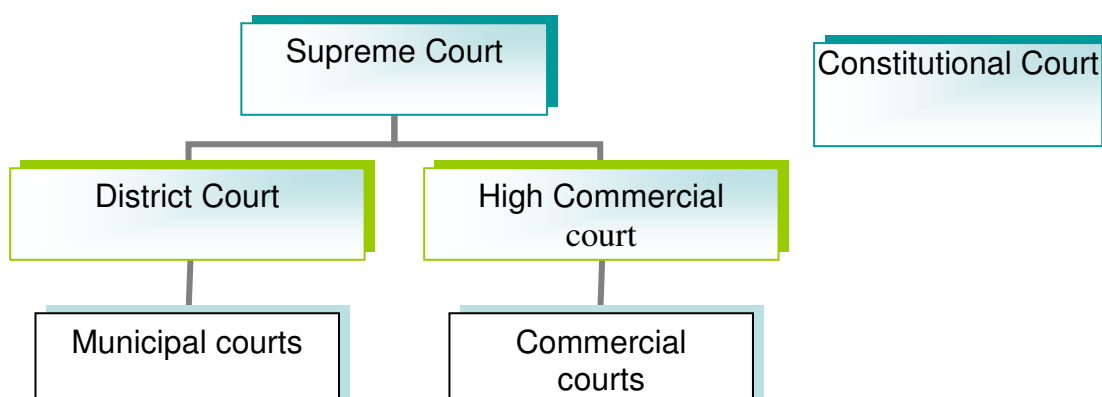
The judges are appointed by the National Assembly on the proposal of the High Judicial Council. The number of judges and jurors for every court is determined by the National Assembly on the recommendation of the High Judicial Council.

The basic requirements for the position of judge are:

- a) Serbian nationality
- b) Law degree
- c) Bar exam
- d) Post bar exam minimum working requirements of at least:
 - Two years for a Municipal Court Judge
 - Four years for a Commercial Court Judge
 - Six years for a District Court Judge
 - Eight years for Judges of Appeal Courts, High Commercial Court
 - Twelve years for a Supreme Court judge

3.1.2 Present Court Structure:

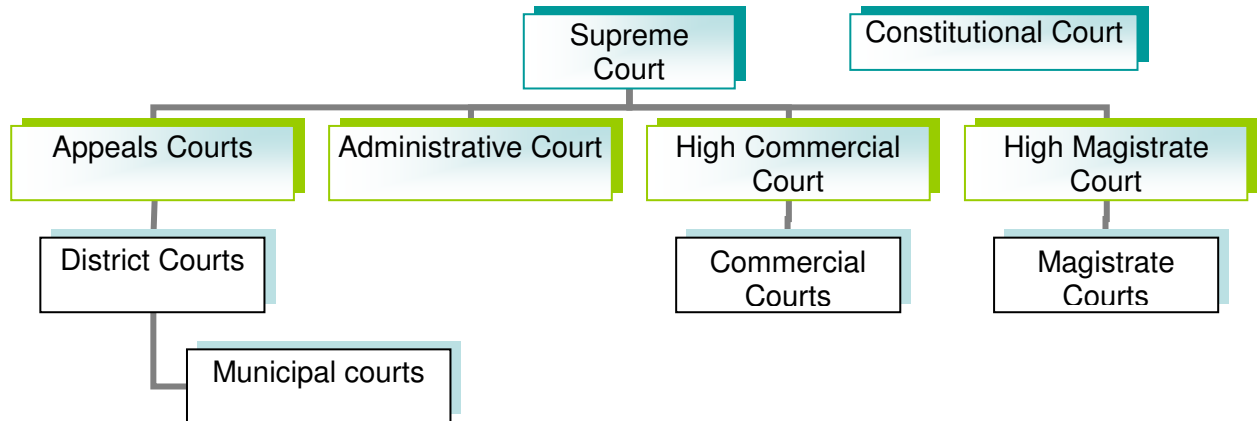
The present Court structure is as follows:



3.1.3 Future Court Structure

The future structure of the judicial system that will come into force on 1st January 2007 will include the **Magistrate courts** and **Administrative court** as specialised courts and the **Appeal courts** for the appeals of general courts adjudications.

The future court structure is proposed as follows:



3.2 THE SERBIAN MAGESTERIAL SYSTEM

The present system of Misdemeanour and Magistrates' Courts consists of two layers:

- Magistrates' Courts: 173 first instance bodies
- Magistrates' Councils: 11 appeal bodies;

In the current system, the 800 Magistrates in the Republic of Serbia who staff Magistrates' Courts deal with important aspects of law and order, but fall outside the mainstream judiciary. Various types of misdemeanours or administrative offences – ranging from traffic offences to offences related to social welfare cases – are brought before the Magistrates' Courts.

Magistrates' Courts can impose the following sanctions:

- Fines;
- Imprisonment up to maximum of 60 days.

3.2.1 Current Model of Appointment of Magistrates

The Magistrate Court Judges are appointed by the Government (not by the Parliament, as all other Judges) on the proposal of The Ministry of Justice for a period of 8 years, with the possibility of renewal. The requirements for the position of Magistrate Court Judge are:

- a) Degree in law
- b) Bar exam
- c) Certain number of years experience.

3.2.2 Current Authority of the Ministry of Justice over the Magistrates' Courts

Currently, Magistrate Courts are performing a judicial function but they are at the same time controlled by the executive branch of Government, the Ministry of Justice.

The Ministry of Justice as an executive branch of government controls:

- The appointment of magistrates;
- Disciplinary proceedings;
- Transfer and dismissal from office;
- Setting of reporting requirements;

3.2.3. Future Model of the Magistrates' System Based on Legislative Changes

The Serbian Government took a decision to reform the Magistrate system. To that end, the Ministry of Justice prepared a set of new Laws and amendments to existing Laws that will ensure the harmonization of Laws and the absorption of the Magistrates in to the mainstream judiciary. The Magistrate Courts will become Courts of Specialized Jurisdiction.

As of 1st January 2007, the Department for Misdemeanours of the Ministry of Justice will cease to exist. The General Assembly will elect the Magistrates based on the proposal of the High Judicial Council, in the same way as Judges are elected. The High Judicial Council has still not determined the final exact number of Magistrates but it is anticipated to be approximately 600, reflecting a reduction of around 25% in the number of Magistrates. The election is not a re-election but will be an open election, so any qualified candidate will be able to apply for the position. Initially the High Magistrates' Council will be elected consisting of around 100 Magistrates. They will then lead the election process for the remaining Magistrates. The election process is due to be completed by 31st December 2006.

4. MAGISTRATES TRAINING IN SERBIA

4.1 Current Training Provision for Magistrates in Serbia

Through the project **Strengthening the System of Misdemeanours and Magistrates Court**, broad ranging and far reaching training provisions have been established. Currently training is provided in the following areas:

- Training at Local Level
- Initial Training
- Continuous Training
- Management Training

The **Training at Local Level** targets those categories of persons who are entitled to initiate proceedings at the Magistrates Court. These include police and traffic police officers, sanitary inspectors, environmental inspectors, labour inspectors, financial inspectors and other staff involved in inspections. The training is undertaken to train the recipients on how to complete a substantiated request for instigation of a misdemeanour procedure, without legal errors. In conjunction with the trainings a manual has been published containing examples of successful requests and requests that have been declared null and void due to incomplete information or legal errors. The training and manual are fundamental in ensuring that proceedings are initiated correctly and that proceedings are not dismissed due to incorrect completion of the request.

The **Initial Training** is organised for those Magistrates with less than three years experience. The training is based upon the initial training conducted for mainstream judges but is tailored to the specific needs of the Magistrates. The training is conducted throughout Serbia and all newly appointed Magistrates have received this training.

Continuous Training is targeted towards Magistrates with three or more years experience and covers various regular and specialized topics. Training has been undertaken on the new criminal code with particular reference to those sections of the code which impact upon the work of the Magistrates. This training is due to continue so that all Magistrates will have received such training prior to the introduction of the new criminal code. Training has also been delivered for Magistrates on Articles 5 and 6 of the European Convention on Human Rights. Finally, training has been provided on new jurisdictional changes and changes in the competencies of the Magistrates, for example in the area of tax law.

The aim of the **Management Training** is to strengthen the capacity of the magistrate court judges in the following areas, team building, communication and correspondence, PR, management, professional relationships and diversity issues. The development and delivery of the training includes a pre-assessment, development of curricula, delivery of training, implementation of an inter-module assessment and evaluation of the training. For further information of the Management Training, please see **Annex V: Terms of Reference for Designing and Delivery of the Management Training**, **Annex VI: Sample Management Training Curricula** and **Annex VII: Standard Terms of Reference for Trainers**.

In addition, a comprehensive **Train the Trainers** session was held for 11 judges from First Instance Magistrates' Bodies and 2 members of the Second Instance Body for Customs Rules Offences. The aims of the training were to discover the values and possibilities of interactive methodology, to develop competencies for the creation, realization and evaluation of trainings and to improve presentation skills. The training was divided into two modules. In the first module, the trainers studied team building, experimental learning, how to structure trainings, group dynamics, the role of the trainer, constructive communication skills, non-verbal communication skills, presentation skills and how to prepare PowerPoint presentations. The second module was practical and was focused on applying the skills learned in the first module. This involved presenting a PowerPoint presentation and

receiving feedback, developing, creating and delivering a workshop in teams and exploring the role of the trainer and the personal competencies of a trainer. For a detailed report on the Train the Trainers session, please see **Annex III**.

Complimentary to the training delivery, various manuals and handbooks have been published. These include drafts of the New Criminal Code and published debates on the most disputed parts of this law.

4.2 Development of Training Provisions

Needs Assessment

At the beginning of the project, a questionnaire was distributed to all Magistrates asking them what their views were on which professional training they required and which other types of training they required. The vast majority of the Magistrates responded to this questionnaire. The questionnaires were then analysed by the Project Implementation Unit and based on the analysis a list of between 20-30 training topics were identified.

Selection of Topics

The initial topics were selected based upon the capacities of the Project Implementation Unit at the time. At the initial stage of the project, only limited contacts had been made with potential trainers so topics were selected on the basis of which trainers were able to provide the training. In addition, the Assistant Minister of Justice had to approve all topics and trainers and there was a period of time in replacing the previous Assistant and the appointment of the new Assistant. Initially, training was delivered on an ad hoc basis until a more standard programme of training could be developed. Please see **Annex II** for a full breakdown of training topics delivered.

Selection of Trainers

Trainers were selected based upon recommendations provided by the Heads of the Magistrates Bodies and the Ministry of Justice. A Working Group for Training was established, which created a concept for selecting trainers based upon an assessment of their written works combined with an oral presentation on a topic selected by the Working Group. All trainers are selected from within the Misdemeanour system and are Magistrate Judges from first or second instance Courts. It was only for training on financial misdemeanours that Ministry of Finance officials were selected as trainers due to the fact that this was a new subject area for the Magistrates. A comprehensive **Train the Trainers** training session was held during the course of the Project and this included topics such as how to create PowerPoint presentations, how to deal with stress and how to deliver training. The majority of the trainings have been delivered according to ex cathedra methods.

Selection of Trainees

The training participants are selected based upon their proximity to the training venue and are recommended by the Heads of the Second Instance Magistrates' Courts. Each specific Magistrate body has had one or more participant in every training. Please see **Annex II** for a breakdown of all trainees who have participated in the training sessions.

Selection of Training Locations

In order to ensure that the entire territory of Serbia was covered in terms of delivery of training four towns/cities were selected. These were selected strategically on the basis that they will become the future venues for the new High Magistrates; Courts. The towns/cities are Belgrade, Kragujevac, Nis and Novi Sad.

Informing Participants

When a training is organized, the Project Implementation Unit informs the Heads of the Second Instance Magistrates' Courts. The participants are informed about the training through the Heads of the Second Instance Magistrates' Court. The Heads then provide the Project Implementation Unit with a list of participants and their professional ranking. Discipline is very high among the Magistrates and

if a Head of a Magistrates' body asks a Magistrate to attend a training then they will do so. Similarly, if the Assistant Minister of the Ministry of Justice asks the Heads to ensure participation, then they will do so. A record is kept of each participant at every training session to ensure that all Magistrates receive and participate in the relevant training.

Partner Organizations

The main organization that has been working in the field of Magistrates in Serbia is The American Bar Association Central European and Eurasian Law Initiative (ABA CEELI). ABA CEELI has been active in strengthening the Magistrates Association of Serbia which has grown from a membership of nine to five hundred and fifty. Although there was some discussion about the merging of the Magistrates Association and the Judges Association, this will not be happening. The Magistrates will have specialised jurisdiction and as such will be entitled to have their own distinct Association. In particular ABA CEELI has assisted in the provision of training through the JTC on domestic violence and human trafficking issues. In terms of cooperation with UNDP, a joint annual conference was held for the Magistrates in Soko Banja in 2005. A similar initiative will be held in 2006. In addition the Belgrade Centre for Human Rights provided training in Valjevo on Articles 5 & 6 of the ECHR and USAID/NCSC made an analysis of the Magistrates court in Kraljevo.

4.3 Absorption of the Magistrates' Training by the Judicial Training Centre

a. Training

One of the fundamental aims of the **Strengthening the System of Misdemeanour and Magistrates' Courts** is to establish the mechanisms for the absorption of the Magistrates training by the Judicial Training Centre. Initially contact was made with the Director of the JTC and the cooperation has been excellent from the beginning. The first training that was delivered through the JTC was on Articles 5 and 6 of the European Convention on Human Rights. The purpose behind all trainings that have been delivered through this project is to design them in such a way so that the JTC can take over full delivery of training once the project closes and the Magistrates become integrated into the mainstream judiciary. The JTC will take over all training for the Magistrates and the responsibility of the database.

In addition to the training on Articles 5 and 6 of the ECHR, the JTC is providing the initial training to Magistrates with less than three years experience. The curricula are the same as that used for mainstream Judges with less than three years experience but are adapted and modified to fulfil the Magistrates' specific needs. The JTC also provides working space for the meetings of the Working Group on Training for the Magistrates and it is envisaged that it will provide working space for Magistrates training.

Furthermore, as of May 2006, five Magistrates have attended a forum for discussion on the new Criminal Law, the purpose of which is to highlight problematic areas of the Law and to propose workable solutions to those problems.

Training on the Law on Juvenile Offenders is also provided through the JTC. The JTC delivers the training for Judges and then modifies it for the Magistrates and it is delivered by a Magistrate trainer. The JTC recently received its first mandate through the Law on Juvenile Offenders to conduct the training for judges, prosecutors and lawyers that will be included in the misdemeanour procedure. All participants who successfully pass the course will receive accreditation, which will be required for anyone working on juvenile justice cases.

It is envisaged that the JTC will establish a permanent training programme for the Magistrates as of January 2007. In order to achieve this, two of the most important elements to establish are that there is a separate budget line for the training of the Magistrate judges and that there are qualified personnel within the JTC who can represent the Magistrates interests and that they are represented within the governing bodies of the JTC.

b. Judicial Training Resource Database

The JTC has developed a unique database, which is the first open source database of its kind. The database has four main components: an online library, the training schedule, a database of trainers and an online registration facility. The Judicial Training Resource Database has been developed to provide the JTC with a unique and well-protected database that serves all twenty-six District Courts, the judiciary and other interested parties. The overall objective of the Judicial Training Resource Database is to produce reports that contain uniform information about every training activity that has been organised by the JTC. The database is able to provide timely and relevant information on demand.

- **Database of Judicial Trainings**

The database of judicial trainings allows registered users to download course materials, register for trainings, offer comments and suggestions and browse the database of trainers. It contains information relating to and all course materials provided for all past, current and future training sessions, as well as information on each individual trainer. This enables participants who were unable to attend a certain training to access the information that was distributed.

- **E-Library**

The e-library documents all relevant legal materials such as statutes, articles and information on court practice. The resources are drawn from a specialised collection of books, journals and the public gazette.

- **Reports**

The reports contain uniform information about every training activity that has been organised by the JTC. The reports are generated on a regular basis to provide current information to executive management and programme personnel. In this way the database acts as a monitoring and evaluation tool.

- **Knowledge management resource**

In addition, the database can be used as a knowledge management resource and can ensure that there is constant improvement of the training provision and that all relevant needs are being met.

- **Users**

The Users of the database range from members of the public, through to members of the judiciary, including trainers and trainees and donors and partners. Each category of user has access to different sections of the database according to their specific needs.

Magistrates Training Resource Database

The process of developing the judicial training resource database has shown that the database can be customized to meet the needs of any kind of judicial training institution and/or effort. In this context, the database has been replicated for the “*Strengthening the System of Misdemeanours and Magistrate’s Courts*” project and this database will ultimately become the responsibility of the JTC. The Database has been replicated and adapted based upon the Judicial Training Resource Database created for the Judicial Training Centre. The Database will also keep track of individual Magistrates career progression.

5. EU REQUIREMENTS

5.1 International Conventions and Agreements

It is widely accepted that judicial and magisterial training is one of the fundamental elements of ensuring the rule of law and the independence and impartiality of judiciaries. It is essential that Judges receive detailed, in-depth, diversified training so that they are able to perform their duties satisfactorily. In this context the EU and other International bodies have established the right to and importance and need of, judicial training.

The EU has even stated that training has a crucial role to play in the forming of a common European judicial culture. Judicial training is currently undergoing important developments at the European level. The European Commission is going to implement The Hague Programme, which makes judicial training one of the priorities of the European Union for the coming years. Judicial training appears as an essential tool in achieving the great ambition of Europe, to build a genuine common area of justice.

Article 6 of the Convention on the Protection of Human Rights and Fundamental Freedoms provides that “everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law”. The **United Nations Basic Principles on the Independence of the Judiciary 1985** recognises that “consideration be first given to the role of judges in relation to the system of justice and to the importance of their selection, training and conduct.

In the **Recommendation of the Committee of Ministers CoE NO R (94) 12** (see **Annex VIII**) reference is made to the independence, efficiency and role of judges.

The European Charter on the Statute of Judges 1998 (see **Annex IX**) makes numerous references to the level and scope of appropriate training that Judges should receive both pre-service and in-service. “The statute ensures by means of appropriate training at the expense of the State, the preparation of the chosen candidates for the effective exercise of judicial duties.....and ensures the appropriateness of training programmes and of the organisation which implements them, in the light of the requirements of open-mindedness, competence and impartiality which are bound up with the exercise of judicial duties” (Article 2.3). Furthermore, “The Statute guarantees to judges the maintenance and broadening of their knowledge, technical as well as social and cultural, needed to perform their duties, through regular access to training which the state pays for” (Article 4.4).

Opinion No 4 of the Consultative Council of European Judges (CCJE) 2003¹ (see **Annex X**) is on the appropriateness of initial and in-service training for Judges at National and European levels. The Opinion sets out recommendations for training and training provision. “Training is essential for the objective, impartial and competent performance of judicial functions”. “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”.

The **Hague Programme for Strengthening Freedom, Security and Justice in the European Union** (see **Annex XI**) adopted on 5th November 2004 stresses the importance of incorporating a European component into national training programmes, in order to achieve widespread familiarity with European Union mechanisms. Furthermore, the **Communication from the Commission to the European Parliament and the Council on Judicial Training in the European Union** dated 29th June 2006, (see **Annex XII**) stresses the importance of judicial training in the establishment of the European judicial area and states that “judicial training should become integrated into a broader

¹ Opinion No 4. of the Consultative Council of European Judges (CCJE) to the attention of the committee of Ministers of the Council of Europe on appropriate initial and in-service training for Judges at national and European levels, Strasbourg, 27 November 2003

international context.....be extended to the Council of Europe and beyond that, to contribute to facilitating judicial cooperation with third countries and to strengthening the rule of law in the world”².

In addition to the above, the Regular Reports of the EC have frequently commented on the importance of judicial training in order to meet the EU Requirements for candidacy status.

5.2. Judicial Education in Serbia as regards EU Requirements

As part of the overall judicial reform process in Serbia, the Ministry of Justice have developed a **National Judicial Reform Strategy**, which was passed by the Parliament of the Republic of Serbia on 25th May 2006. Its basic objective is to restore public trust in the judicial system of the Republic of Serbia by establishing the rule of law and legal certainty. The Strategy relies on four key principles: judicial independence, transparency, accountability and efficiency. The **Strategy Implementation Commission** and **Strategy Implementation Secretariat** are responsible for the realization of the Strategy objectives.

The Strategy positions the JTC as the main institution to provide training for the judiciary, including the Magistrates. This will encompass the administering of standardized multi-level initial and continual education and training programmes. Successfully passed final examination at the JTC will be a pre-requisite for the nominees appointed to the Judiciary.

In addition, the JTC has recently been given its first mandate by the Law on Juvenile Offenders to conduct the training for judges, prosecutors and lawyers that will be included in the misdemeanour procedure. All participants who successfully pass the course will receive accreditation, which will be required for anyone working on juvenile justice cases. The JTC is the only institution to receive such a mandate and this is ground breaking in that it indicates that all training for judges and prosecutors will in the future be validated through the JTC.

Further, under the auspices of the JTC, a Working Group was established tasked with drafting the new Law on Training of Judges, Public Prosecutors, Deputy Public Prosecutors, Judicial and Prosecutorial Assistants. The Working Group has cooperated extensively with the Council of Europe, in order to ensure that the new Law meets the necessary requirements. This Law was also passed by the Serbian Parliament on the 25th May 2006.

The Judicial Reform Strategy and other activities have been developed in close co-operation with the Council of Europe and are fully in line with the EU harmonization process.

² Communication from the Commission to the European Parliament and the Council on judicial training in the European Union, paragraph 36, Brussels 29.06.2006.

6. CURRICULUM

In designing training curricula there are different approaches that can be taken according to the needs of the trainees that need to be met. For example,

Emergency programmes – these are short, mass oriented, and usually emphasize simple messages and information. They are commonly used to increase understanding of and generate enthusiasm about a reform.

Remedial programmes – these are mass focused, but emphasize a broader range of basic skills and knowledge transfer. Their goal is to improve average performance, usually in conjunction with a global reform.

Stable or permanent programmes – these are introduced after a minimum level of average performance has been achieved (or where it already exists, and remedial training is not needed), and are more selective in their focus and clearly separate entry-level, in-service, and specialized courses.

In respect of the training requirements of the Serbian magistracy, these fall somewhere between remedial and stable or permanent programmes. Although certain remedial programmes may still be required for the Magistrates, in general only the issues pertaining to a permanent training programme are considered here.

6.1 Curricula Development

Comprehensive curricula are required for both pre-service and in-service training for the Magistrates. The underpinning philosophy behind this is to ensure the following:

1. That magistrates know what is expected of them and the level of competence they need to achieve
2. That training and development activities should be developed flexibly and designed to enable magistrates to achieve competence
3. That a culture of continuous development should be encouraged and supported through regular, informal self-assessment and post-sitting review, and
4. That both informal and formal appraisal should be robust and used to identify training needs and maintain standards

Developing curricula is more than simply designing a list of topics that can be followed. Comprehensive curricula should reflect the skills and competencies that are required to carry out the function of a magistrate as well as including the substantive and procedural learning areas.

One approach to developing comprehensive curricula for the Magistrates is to develop a **Competency Framework**. A Competency Framework is a straightforward description of the competencies a Magistrate needs to acquire and develop in order to fulfil their duties. Once the Competency Framework has been developed it can then be used as a basis to develop curricula, both pre and in-service, for the Magistrates.

One of the short term goals of the “**Developing results, indicators and benchmarks to strengthen Serbia’s system of misdemeanour courts**” was to enhance and expand Magistrate Court Judges educational training. Complementary to this, the long-term goal was to strategically plan for the continuing education of Judges. In order to achieve these goals it is recommended that the starting point is to design a **Competency Framework** for the Magistrates. A sample **Competency Framework** can be seen below and it is recommended that this be used as a basis for developing a standardized Competency Framework for the Magistrates.

6.2 COMPETENCY FRAMEWORK

Competence 1: Managing Yourself – e.g. self management in relation to preparing for Court, conduct in court and on-going learning

- 1.1. Before the hearing: Preparing yourself
 - a. Obtaining and reading relevant paperwork
 - b. Identifying any possible conflicts of interest
 - c. Analysing any previous case management decision
- 1.2. In the court room: conducting yourself effectively
 - a. Focusing your attention on what is going on in the court room and demonstrating the communication skills required to encourage participation
 - b. Taking accurate, succinct notes of relevant issues to assist in decision-making process
 - c. Asking questions to ensure all relevant information is obtained prior to decision making process
 - d. Acting at all times with authority and in a dignified and impartial manner.
- 1.3. Engaging in ongoing learning and development
 - a. Assessing you own performance against the competence framework. Regularly seeking feedback and identifying your learning and development needs on a continuous basis
 - b. Adapting and developing your own performance in light of changes in law, practice, procedure, research and other developments.

Competence 2: Working as a member of the team

- 2.1. Making an effective contribution to judicial decision making
 - a. Expressing your own views clearly and constructively
 - b. Questioning the views of colleagues to clarify issues, information, facts and evidence and giving equal consideration to your colleagues contributions
 - c. Using appropriate non-discriminatory language. Challenging stereo-typing and discriminatory comments from colleagues
- 2.2. Contributing to the working of the team
 - a. Building supportive, respectful and constructive relationships with others in the team by adapting your communication style to ensure that you are being understood, minimise interpersonal conflict and demonstrate respect and support to others in the team.
 - b. Seeking and being receptive to the advice of others

Competence 3: Making judicial decisions – impartial and structured decision making

- 3.1. Using appropriate processes and structures to facilitate effective decision making
 - a. Identifying and agreeing the most appropriate structure for decision making and applying the correct principles to the decision-making structure
 - b. Sifting all the relevant information and clarifying relevant information where necessary
 - c. Analysing and assessing the information, evidence, facts and submissions within the relevant structure

- d. Identifying and evaluating the outcome(s) that flow(s) from the use of the structure and considering any other relevant factors, including the interests of justice
- e. Assisting in the formulation of reasons and pronouncements

3.2. Making impartial decisions

- a. Identifying, acknowledging and setting aside your own prejudices and bias.
- b. Challenging any bias or prejudice you perceive in the decision making process.
- c. Identifying and taking into account factors that are relevant and should legitimately influence a decision. Ensuring factors that are relevant and that could lead to an unfair decision are not taken into account.

6.3 Development of Core Training for new Magistrates – Pre-service and initial training

Once a **Competency Framework** has been established that reflects the core competencies for the Magistrates, then core training curricula can be developed both for pre-service and in-service training based around the identified competencies.

Core pre-service and initial training for new Magistrates should be based around the following four key areas and should be provided prior to the taking up of a new Magistrate post and also during the initial 3-year period of appointment. A **Standard Training Programme** should be developed to reflect the following areas:

- A. Key Themes
- B. Key Skills
- C. Key Knowledge
- D. Key Legal Knowledge

A. Key Themes

Basic diversity issues e.g.

- (i) case studies using characters from a range of cultures, religions, ethnic groups etc
- (ii) overall make-up of the community served
- (iii) language and cultural differences
- (iv) disadvantaged and vulnerable groups
- (v) discrimination and its impact
- (vi) conditioning and personal prejudices
- (vii) labelling and stereo-typing
- (viii) human rights

B. Key Skills

- (i) attentive listening
- (ii) note taking
- (iii) question styles
- (iv) vocal styles (tone of voice)
- (v) giving and receiving feedback
- (vi) challenging discriminatory or exclusive behaviour and remarks
- (vii) team working
- (viii) assertiveness
- (ix) decision making
- (x) managing disagreement
- (xi) non-verbal communication

C. Key Knowledge

- (i) A magistrates training and development
- (ii) Magistrates in context
- (iii) The jurisdiction of the magistrates
- (iv) Judicial decision making
- (v) Case management and preliminary decisions
- (vi) Sentencing
- (vii) Enforcement of court orders
- (viii) Out of court business
- (ix) Review and planning for ongoing training and development

D. Key Legal Knowledge

All appointees to magisterial posts should have acquired, prior to commencing their duties, extensive knowledge of substantive national and international law and procedure.

6.4. Core Training for In-service Magistrates

In-service training is equally as important as pre and initial service training but requires a different approach. In service Magistrates are required to maintain appropriate standards of competency in the following areas:

- (i) Continuous training
- (ii) Update training

(i) Continuous Training

Continuous training should be provided to all experienced Magistrates in order to enable them to review and maintain their existing knowledge and skills. Once Magistrates have completed the requisite pre-service and initial training during the first three years of appointment, continuous training should be provided on a three yearly basis. The purpose of the continuation training is to reinforce and further develop key skills, knowledge and competencies acquired during the pre and initial service training.

Continuous training should also be available for Magistrates who take up a new post or the assumption of specialist jurisdiction, such as juvenile justice.

(ii) Update Training

Update training is to be provided in response to legislative and procedural changes that occur, which impact upon the carrying out of duties of the Magistrates. It is large-scale training that needs to be delivered in a timely manner in order to support the implementation of the change of law or procedure. Once the update-training has been completed for all Magistrates, the curriculum for the update training can be integrated into the standard training programme for pre and initial service.

6.5 Ensuring Training Participation

Mandatory Attendance

Another issue to be dealt with is how to ensure that the magistrates actually participate in their intended training. The most effective, and essential, method is to make employment conditional on satisfactory completion of the required training, be this through attendance at training sessions or proof of self-training through completion of workbooks or other home exercises. However, this can be a negative incentive and can result in the training becoming bureaucratic and a matter of course.

Pre-service Training

Regarding pre-service training, the Consultative Council of European Judges³ recommends mandatory initial training through programmes appropriate to appointees' professional experience. Similarly, regarding continuous training that is provided when a Magistrate takes up a new post or the assumption of a specialised jurisdiction, such a responsibility can be made conditional upon attendance on a relevant training programme.

In-service and Continuous Training

With regards to a standard in-service training programme, it is generally accepted that to make this mandatory would be a negative approach. Instead, it is necessary to create a culture of training among the Magistrates. "The training should be made attractive enough to induce judges to take part in it, as participation on a voluntary basis is the best guarantee for the effectiveness of the training"⁴. Magistrates should be aware that it is their duty to maintain and update their knowledge and an incentive of doing so could for example be receiving certification upon completion of a course, becoming eligible for promotion or receiving a salary increase.

Certification

For all levels of training certification for participants who successfully complete the course is not only an incentive for participants but is also a convenient way of tracking the career progression of each individual. This is further enhanced if the information is stored in an interactive, open source database.

³ Opinion No. 4 of the Consultative Council of European Judges to the Attention of the Committee of Ministers of the Council of Europe on Appropriate initial and in-service training for judges at national and European levels, 2003

⁴ Ibid

7. PROPOSAL FOR TRAINING METHODOLOGY

7.1 General Training Methodologies

It is widely accepted that the best practice for judicial training methodology is to utilize adult learning methods, which encourage a participatory learning process. Utilizing adult learning principles will help facilitate magistrates to acquire new information and skills and to enable them to implement them into work practices. The emphasis should be on interaction between the trainer and the participants as opposed to the traditional ex-cathedra method of teaching.

There are three commonly accepted methods of learning, the sequential model, the competency-based model and the problem based learning model. The sequential model emphasizes the logical sequence of subject matter. Areas of information are identified and are then taught sequentially from the beginning to the end of the specific area of information. The main problem with this method is that it may not relate to the specific needs or interests of the learners.

The second method is the competency based model, which identifies the key competencies related to each category of user and develops the course around these competencies. This method allows for the identification of knowledge and skills which may be overlooked in other methods. It also encourages learners' motivation because they can see the connection between what they are learning and their professional development.

The problem based learning model uses everyday experiences to stimulate learners to discover and explore key concepts and skills. This model requires the identification of a problem – often in a real-life situation – and then teaching the necessary skills and knowledge to resolve it. Learners are then able to utilize what they have learned in resolving the problem.

The most appropriate approach in view of the Magistrates training methodology is to incorporate aspects from both the competency based model and the problem based learning model. This is because the sequential method is more appropriate for substantive learning undertaking at Law School, whereas combined competency based and problem based learning methods are more suitable for vocational types of training.

7.2 Magistrates Training Methodology

The aim of magisterial training is not simple rote learning, but rather, the ability to apply newly learned information and skills to various contexts. This requires understanding of a subject combined with critical analysis of the context. Thus, the training methodology should ensure that Magistrates are able to demonstrate the following:

1. Recall of knowledge - the ability to recall what has been learned
2. Comprehension – the ability to show basic understanding
3. Application – the ability to apply learning to a new or novel task
4. Analysis – the ability to break information up
5. Evaluation – the ability to evaluate usefulness for a purpose
6. Synthesis – the ability to create something new

Trainers should be able to demonstrate the following qualities:

1. Teaching and assessment methods that foster active and long-term engagement with learning tasks
2. stimulating and considerate teaching, especially teaching which demonstrates the trainer's personal commitment to the subject matter and stresses its meaning and relevance
3. Clearly states expectations

4. opportunities to exercise responsible choice in the method and content of study
5. interest in and background knowledge of the subject matter
6. Previous experiences of educational settings that encourage these approaches

The syllabus should be delivered in such a way that balances the needs of the magistrate with the needs of the magistrates' organisation as a whole. Formal training sessions should be complimented with self-directed learning – reading, visits, observation etc. An appropriate balance should be achieved between traditional ex-cathedra teaching methods and modern, interactive adult-learning teaching methods.

Basic Issues

In order to select the most appropriate structure and methodology the following factors should be considered:

- cultural environment;
- available training resources;
- available timeframes;
- affordability;
- cost-effectiveness.

Training Focus

The training focus is ultimately to maintain an independent and effective magistracy who are fully competent in the execution of their duties.

Specific Issues to Be Considered

In determining training structure and methodology, there are a number of interrelated issues which require resolution:

- What is the best structure for the training programme and when should it be implemented
- What subject matter should training sessions cover and how should these be organised
- What training facilities and aids are required
- How is the success of the training to be measured

7.3 Good Training Practice

- Need to develop mechanisms to identify and collate training needs from a variety of contexts – e.g. new legislation, critical incident in court
- Individual magistrates should be able to access information about learning opportunities available to meet their needs in a timely and relevant way
- Design training and develop programmes to meet the identified needs of the magistrates in their area
- Ensure all training materials are up to date in style, format and content.
- Need to keep up to date with good practice in adult learning
- Training session should provide a range of participative activities such as discussion, role-play and video feedback.

7.4 Monitoring and Evaluation of Training

Monitoring and evaluation strategies should be implemented by the training manager in order to:

- (i) Test the validity of training objectives
- (ii) Evaluate the effectiveness of training and development
- (iii) Identify potential improvements
- (iv) Support the development of improvements
- (v) Evaluate the effectiveness of training and development programmes
- (vi) Support improvement in quality of delivery
- (vii) Support improvement in quality of materials
- (viii) Support improvement in the quality of facilities/suitability of venue
- (ix) Support improvement in achievement of best value
- (x) Provide evidence of participant reaction; and
- (xi) Provide evidence of participant learning

Mechanisms should also be implemented to test if the learning achieved is transferred in practice and where appropriate, test its impact- for example, the effect of case management training on the throughput of cases.

8. CONCLUSIONS AND RECOMMENDATIONS

8.1 Conclusions

Based upon the analysis and assessment undertaken a number of conclusions and recommendations can be made. Through the project **Strengthening the System of Misdemeanour and Magistrates' Courts** comprehensive trainings have been and will be delivered. This is a great achievement considering that prior to the project, the Magistrates were largely neglected in receiving training. Structures have been put in place to enable the Judicial Training Centre to take over the delivery of the training and to maintain and update the database. However, in order for the Magistrates to receive the quality and quantity of training as recommended by the EU and through other international conventions and treaties, further measures should be taken. This will ensure that the quality of the training is strengthened and that all EU requirements are satisfied.

8.2 Recommendations

1. Institutionalization of Magistrates Training

- The Judicial Training Centre should take over full responsibility for the Magistrates' training.
- In order for this to be possible, the JTC must have a separate budget line to finance the Magistrates training.
- There must be qualified personnel among the JTC staff who can meet the Magistrates needs.
- The Magistrates must be represented in the governing bodies of the JTC.
- Individual magistrates should be able to access information about learning opportunities available to meet their needs in a timely and relevant way and in this context the JTC should take over responsibility of the Magistrates Training Resource Database. The Database should also be used as a tool for tracking career progression.

2. Curricula Development

- A competency framework should be designed to reflect the requisite competencies for both pre-service and in-service Magistrates, which can then be used as a basis of developing the training programme.
- A Standard Training Programme should be designed and developed to meet the identified needs of the Magistrates as reflected in the Competency Framework.
- Comprehensive curricula for both pre-service and in-service should be designed that reflect the skills and competencies that are required of the Magistrates as well as including substantive and procedural learning areas.
- In addition, there is a need to develop mechanisms to identify and collate training needs from a variety of contexts – e.g. new legislation, critical incidents in court so that training can be delivered in a responsive manner and can adapt itself to the changing needs and requirements of the Magistrates.

3. Ensuring Training Participation

- Initial training should be mandatory for all Magistrates.
- In-service training should not be mandatory unless it is related to the assumption of a specialized jurisdiction, such as juvenile justice.
- In-service training should be made attractive to the Magistrates to encourage participation through attendance being linked to career progression and through a certification process.
- In general a culture of training should be established through the delivery of quality trainings.

4. Training Methodology

- There is a need to utilize adult learning methods in order to encourage a participatory learning process.
- The competency based model and problem based learning models should be used as a basis for designing the Magistrates training programme.
- Further train-the-trainers sessions should be held to ensure that trainers are fully versed and up-to-date in the methods of adult learning practices.
- There is a need to ensure that all training materials are up-to-date in style, format and content.
- Training sessions should provide a range of participative activities such as discussion, role-play and video feedback

5. Monitoring and Evaluation

- Monitoring and evaluation mechanisms should be introduced that assess whether the training received is transferred in practice and where appropriate to test its impact, for example the impact of case management training on the throughput of cases.
- Mechanisms should be established to ensure the constant improving and upgrading of all aspects of the training in order to ensure that the training is of the best possible quality.

Annex I

List of Resources Reviewed

UNDP Documents

Project Document, Strengthening the System of Misdemeanour and Magistrates' Court, UNDP

Regular Progress Reports, Strengthening the System of Misdemeanour and Magistrates' Court, UNDP

Developing Results, Indicators and Benchmarks to Strengthen Serbia's System of Misdemeanour Courts, October 2005, UNDP

Terms of Reference, Functional Analysis Team, UNDP

Terms of Reference, Development and Delivery of the Management Training Programme for the Magistrates for the project "Strengthening the System of Misdemeanour and Magistrates' Courts"

Laws

Law on Judges

Law on Misdemeanours

Law on Training

International Documents

Convention on the Protection of Human Rights and Fundamental Freedoms

United Nations Basic Principles on the Independence of the Judiciary 1985

European Charter on the Statute of Judges 1998

Recommendation of the Committee of Ministers CoE No R (94) 12

Opinion No 4 of the Consultative Council of European Judges (CCJE) TO THE Attention of the Committee of Ministers of the Council of Europe on Appropriate Initial and In-service Training for Judges at National and European Levels, 2003

The Training of Judges and Public Prosecutors in Europe, Multilateral Meeting organised by the Council of Europe in Conjunction with the Centre for Judicial Studies Lisbon, Conclusions, April 2005

Miscellaneous

Arrangements for the Organization and Management of Magistrates' Training in the Unified Courts Administration, Judicial Studies Board, London, January 2005

Proposals for the Organization and Management of Magistrates' Training in the Unified Courts Administration Publication, Judicial Studies Board, London, June 2004

Magistrates National Training Initiative Handbook, Judicial Studies Board, London, December 2003

Good Practice Guidance for Magistrates' Area Training Committees, London, March 2005,

Websites

European Judicial Training Network www.ejtn.net

Council of Europe www.coe.int

Judicial Studies Board www.jsboard.co.uk

United Nations www.un.org

Netherlands Helsinki Committee, Training of Judges and Public Prosecutors, www.nhc.nl/proj/training.php

National Association of State Judicial Educators, www.nasje.org

Magistrates Association, United Kingdom, www.magistrates-association.co.uk

The Commonwealth Judicial Education Institute, www.cjei.org

Annex II
Breakdown of Training Sessions June 2005 – June 2006

Training	Topics covered	Place of Event	No of Events	No of participants	Participants Distribution
Training for newly appointed Judges	ACTS OF PROBATION IN MISDEMEANOR PROCEDURES 1. Interrogation of the Defendant 2. Questioning of Witnesses 3. Examination of the Scene 4. Expert Evaluation 5. Searching Premises and Persons 6. Temporary confiscation of Items 7. Handling Suspicious Items DETENTION 8. Terms and conditions of Ordering Detention 9. Exigency in Dealing with and Rights of Persons in Detention	Belgrade	1	16	Newly appointed Magistrate judges from the First Instance Magistrate Body in Belgrade
		Novi Sad	2	44	Newly appointed magistrate judges from the First Instance Magistrates' Bodies in: Ada, Backa Palanka, Backa Topola, Becej, Vrbas, Zablje, Zrenjanin, Indjia, Kikinda, Novi Becej, Novi Sad, Kovacica, Kovin, Kula, Pancevo, Senta, Sombor, Subotica, Sid, Vrsac, Velika Plana, Golubac, Zabari, Petrovac on Mlava, Pozarevac, Smederevo
		Kragujevac	3	55	Newly appointed magistrate judges from the First Instance Magistrates' Bodies in: Aleksandrovac, Varvarin, Vrnjacka Banja, Gornji Milanovac, Kraljevo, Krusevac, Novi Pazar, Raska, Tutin, Guca, Lapovo, Cuprija, Paracin, Raca, Valjevo, Loznica, Ljig, Osecina, Pozega, Cajetina, Prijepolje, Nova Varos, Nis, Pirot, Bela Palanka, Prokuplje, Bor, Boljevci, Bujanovac, Vlasotinci, Presevo, Zubin Potok.
Training for Government officials who initiate Magistrate Proceedings Market inspection,	1. Initial Act in the Misdemeanour Procedure - Problems in Praxis 2. Initial Act in the Misdemeanour Procedure - Misdemeanours with Fixed Counts Fines and Proceedings Overview 3. Fact description in the Initial Act of Market inspection	Belgrade	2	292	Belgrade City Area, South Banat District, Macva District, Kolubara District, Round Danube District, Branicevo District
		Novi Sad	2	223	Backa South District, Banat Central District, Backa West District, Srem District
		Kragujevac	1	115	Sumadija District, Round Morava District,

Labour inspection, Budget inspection, Fire-protection inspection, Municipals' inspection, Road Transport Inspection, Traffic Police and Public Order Police from different Districts	4. Fact description in the Initial Act of Labor inspection 5. Fact description in the Initial Act of Budget inspection 5. Fact description in the Initial Act of Fire Protection inspection 6. Fact description in the Initial Act for Public Order Misdemeanours with special Overview of Frequent Traffic Misdemeanours 7. Initial Act of The Municipalities Inspections - Structure Deficiencies Overview 8. Observations on the Law on Road Transport - Connection With Initial Act in Misdemeanour Procedure and Evidence that is to be Supplied	Vrnjacka Banja	2	300	Raska District Bor District, Zajecar District, Zlatibor District, Moravicki District, Rasinski District, Nisava District, Toplica District, Pirot District, Jablanica District, Peinjski District
		Belgrade	3	89	Magistrate judges from the First Instance Magistrates' Bodies in Belgrade, Obrenovac, Sopot, Barajevo, Lazarevac, Mladenovac, Koceljeva, Loznica, Ljig, Osecina, Arilje, Ivanjica, Nova Varos, Prijepolje and Uzice and Second Instance Magistrates Bodies in Belgrade, Valjevo, Novi Sad, Kragujevac, Nis, Kraljevo, Smederevo, Pristina, Zajecar, Leskovac, Uzice
Training on Council of Europe and European Convention on Human Rights	Convention on Human Rights and Fundamental Freedoms 2. European Court for Human Rights - Court Procedure (Application Acceptability) and Standards 3. Article 5 of the European Convention on Human Rights and Fundamental Freedoms (Right to Liberty and Security of Person) 4. Article 6 of European Convention on Human	Novi Sad	2	55	Magistrate judges from the First Instance Magistrates' Bodies in Novi Sad, Backa Palanka, Becej, Zrenjanin, Kikinda, Kovin, Pancevo, Ruma, Sombor, Sremska Mitrovica, Subotica, Sid, Smederevo, Petrovac, Pozarevac, Kucevo, Ada, Alibunar, Backa Palanka, Backa Topola, Backi Petrovac, Vrsac, Zabalj, Zrenjanin, Indjija, Kanjiza, Kikinda, Novi Sad, Odzaci, Pancevo, Ruma, Secanj, Sombor, Stara Pazova, Subotica, Temerin, Titel Sid
		Kragujev	1	30	Magistrate judges from the

	Rights and Fundamental Freedoms (Right to Fear Trial)	ac			First Instance Magistrates' Bodies in: Bor, Zajecar, Negotin, Kladovo, Knjazevac, Sokobanja, Majdanpek, Kragujevac, Knic, Jagodina, Paracin, Lapovo, Despotovac, Varvarin, Cicevac, Trstenik, Kraljevo, Cacak, Krusevac, Gornji Milanovac, Novi Pazar, Sjenica
		Nis	1	31	Magistrate judges from the First Instance Magistrates' Bodies in Nis, Prokuplje, Doljevac, Razanj, Svrljig, Pirot, Leskovac, Vranje, Bujanovac, Vlasotince, Vadin Han, Surdulica, Presevo, Pristina, Kosovska Mitrovica, Zvecan, Gnjilane
Seminar on Introducing the Courts Jurisdiction for Customs and other Financial misdemeanours	1. Jurisdiction For Conducting The Misdemeanours' Procedure For Financial Misdemeanours and New Law Solutions 2. Misdemeanours' Procedure For Customs With Special View on Tariff Law and Following Documents 3. Motor Vehicles As An Object of Forbidden Importation and Disposition in the Country	Belgrade	2	75	Magistrate judges form First instance Magistrates' Bodies in: Belgrade, Pancevo, Kovacica, Kovin, Alibunar, Valjevo, Ljig, Smederevo, Velika Plana, Veliko Gradiste, Kucevo, Petrovac, Pozarevac, Golubac, Smederevska Palanka, Uzice, Bajina Basta, Pozega, Priboj, Prijepolje, Arilje, Ivanjica and Second Instance Magistrates Bodies in: Belgrade, Valjevo, Smederevo and Uzice
		Novi Sad	2	100	Magistrate judges from the First instance Magistrates' Bodies in: Apatin, Kikinda, Loznica, Novi Becej, Backa Palanka, Bac, Krupanj, Backa Topola, Becej, Subotica, Senta, Vladimirci, Bogatic, Odzaci, Ljubovija, Sremska Mitrovica, Kanjiza, Coka, Novi Knezevac, Sabac, Mali Zvornik, Koceljeva, Nova Crnja, Sombor, Sid, Novi Sad, Vrsac, Vrbas, Zabalj, Titel, Stara Pazova, Backi Petrovac, Beocin, Secanj, Srbobran, Bela Crkva, Plandiste, Alibunar,

					Zrenjanin, Irig, Ruma, Ada, Novi Sad, Indjija, Temerin, Kula, Zitiste and Second Instance Magistrate's Body in Novi Sad.
Training on Juveniles in Criminal Proceedings	1. Juveniles in Law on Misdemeanours - Substantive Provisions 2. Juveniles in Law on Misdemeanours - Procedural Provisions 3. Juveniles and European Court for Human Rights 4. Challenges in applying Law provisions on Juveniles 5. Workshop: Case Law - Application -Proposal - Initial Act, Defence, First Instance Court, Defence, Second Instance Court	Belgrade	1	28	Magistrate judges from the First Instance Magistrates' Bodies in Belgrade, Obrenovac, Barajevo, Lazarevac, Mladenovac and Second Instance Magistrate's Body in Belgrade
		Novi Sad	1	26	Magistrate judges from the First Instance Magistrates' Bodies in Novi Sad, Becej, Zrenjanin, Kikinda, Kovin, Pancevo, Ruma, Sombor, Sremska Mitrovica, Subotica, Sid, Smederevo, Petrovac, Pozarevac, Kucevo, Ada, Alibunar, Backa Palanka, Backa Topola, Backi Petrovac, Vrsac, Zabalj, Zrenjanin, Indjija, Kanjiza, Odzaci, Secanj, Stara Pazova, Temerin, Titel
		Vrnjacka Banja	3	120	Magistrate judges form the First Instance and Second Instance magistrates' Bodies in Valjevo, Uzice, Smederevo, Nis, Leskovac, Pristina, Kragujevac, Kraljevo and Zajecar.
		Belgrade	2	23	Magistrate judges from the Second Instance Magistrates' Bodies in Belgrade and Novi Sad and First Instance Magistrates' Bodies in Belgrade, Sabac, Kikinda, Novi Sad, Senta, Vrsac, Valjevo, Smederevo, Zrenjanin
Training in Management Skills	2. Team Building 3. Management and Administration 4. Communication and Professional Relationships 5. Diversities and Equal Opportunities 6. Public Relations	Kragujevac	2	17	Magistrates judges from Second Instance Magistrates Body in Kragujevac and First Instance Magistrates' Bodies in Kragujevac, Ljig, Paracin, Krusevac, Pozarevac, Pozega
		Nis	2	13	Magistrate judges from Second Instance Magistrates' Body in Nis and First Instance Magistrates' Body in Zajecar, Bor, Medvedja,

					Surdulica, Prijepolje, Nis, Uzice, Loznica, Pirot
Training on the New Law on Misdemeanours	1. Ground for Excluding the existence of Misdemeanour 2. Misdemeanour Liability - Guilt and Misapprehension 3. System of Penalties in New Law on Misdemeanours 4. System of Relief Measures in New Law on Misdemeanours 5. Measures for Securing the Presence of the Accused - Bail 6. Judgment in Misdemeanour Proceedings 7. Decision on Abolition of the Misdemeanour Proceedings 8. Regular Legal Remedies (Material Breaches of the Provisions on Misdemeanour Proceedings) and Request for the Renewal of Misdemeanour Proceedings 9. Prurcation of the Misdemeanour Proceedings 10. Enforcement of Decisions - Execution of New Penalties and New Relief Measures in Misdemeanour Proceedings	Vrnjacka Banja	1	100	Magistrate judges from First instance and Second Instance Magistrates' Bodies nationwide
Annual Meeting of Magistrate judges	1. Misdemeanour Liability - Guilt and Misapprehension 2. System of Penalties in New Law on Misdemeanours 3. System of Relief Measures in New Law on Misdemeanours 4. Judgment in Misdemeanour Proceedings 5. Prurcation of the Misdemeanour Proceedings 6. Enforcement of Decisions - Execution of New Penalties and New Relief Measures in Misdemeanour Proceedings 7. Court Role in Decision Enforcement and Supervision on the Execution of the Corrective Measures Issued Against Juveniles 8. Choosing and Ordering Criminal Sanction against Juveniles	Vrnjacka Banja	1	350	Magistrate judges from all First instance and Second Instance Magistrates' Bodies

Workshops on the New Criminal Code (organized by the Judicial Training Centre)	1. Temporal Validity of the Criminal Code Regulations - Applying the Most Favourable Law	Zajecar	1	5	Magistrate judges from the Second Instance Magistrate's Body in Zajecar and First Instance Magistrates Bodies in Bor, Kladovo, Zajecar and Knjazevac
	2. Error of Fact and Error Juris	Leskovac	1	5	Magistrate judges from the First Instance Magistrate's Body and the Second Instance Magistrate's Body in Leskovac
	3. Fines in Criminal Code	Nis	1	5	Magistrate judges from the First Instance Magistrate's Body and the Second Instance Magistrate's Body in Nis
		Subotica	1	5	Magistrate judges from the First Instance Magistrate's Body in Subotica and the Second Instance Magistrate Body in Belgrade
		Novi Sad	1	5	Magistrate judges from the First Instance Magistrate's Body and the Second Instance Magistrate's Body in Novi Sad
		Prokuplje	1	5	Magistrate judges from the Second Instance Magistrate's Body in Pristina
		Jagodina	1	5	Magistrate judges from the First Instance Magistrates' Bodies in Kragujevac, Paracin and Jagodina and the Second Instance Magistrate's Body in Kragujevac
		Sabac	1	5	Magistrate judges from the First Instance Magistrates' Bodies in Lajkovac, Valjevo, Loznica and Osecina and the Second Instance Magistrate's Body in Valjevo
		Pancevo	1	5	Magistrate judges from the First Instance Magistrates' Bodies in Pancevo, Vrsac, Obrenovac, Lazarevac and Mladenovac
		Pozarevac	1	5	Magistrate judges from the First Instance Magistrates' Bodies in Smederevo, Pozarevac and Kucevo and the Second

					Instance Magistrate's Body in Smederevo
		Novi Pazar	1	5	Magistrate judges from the First Instance Magistrates' Bodies in Novi Pazar, Tutin, Raska and Sjenica
		Uzice	1	5	Magistrate judges from the First Instance Magistrates' Bodies in Ivanjica, Novi Pazar, Uzice and Pozega and the Second Instance Magistrate's Body in Uzice
		Cacak	1	5	Magistrate judges from the First Instance Magistrate's Body in Cacak
TOTAL			50	2167	

**ANNEX III
REPORT
TRAIN THE TRAINERS MODULES I AND II
Belgrade, 22nd and 23rd May 2006**

MODULE I

Trainers: Dragana Lalic
Vojislava Tomic
Marija Marjanovic

Venue: Hotel “Moskva”, Belgrade

Participants: There were 13 participants, 11 judges of a First Instance Magistrates’ Bodies and two members of the Second Instance Body for Customs’ rules offences. There were 6 men and 7 women. Participants were from different towns in Serbia and Montenegro. Find enclosed list of participants.

Aims:

- Discovering values and possibilities of interactive methodology
- Developing competencies for creation, realization and evaluation of the training/ workshop
- Improving presentation skills

Topics of the first module:

- Team building
- Experiential learning
- Structure of the training
- Phases of the training
- Group Dynamics
- Role of the trainer
- Constructive communication skills
- Non verbal communication skills
- Presentation
- Power Point Presentation

Outcomes:

- strong cohesion of the group
- knowledge about key values of the training methodology
- basis of constructive communication skills
- better understanding of the role of the trainer
- awareness of the importance of non verbal communication
- better coping with anxiety
- knowledge and skills important for good presentation
- basic knowledge of creating Power Point presentation
-

Evaluation:

Participants were in general very satisfied with the training especially with methodology, atmosphere and trainers work. Some of the comments from oral evaluation are:

- Something completely new

- New, unusual, instructive
- Very interesting and pretty hard, although it looked easy in the beginning
- Significant experience
- Big temptation, new experience, well organized
- Successful and useful
- New knowledge, interesting experience
- This effected as encouragement
- Inspirational, new
- Too many information in a short time

Trainer's impression:

It is very motivated group of participants, active and ready to deal with issues that were raised. It was very fruitful and constructive atmosphere all the time during the training and therefore it was very stimulating for work. Most of the issues were explored in depth and therefore we consider that the outcomes of the learning will be very good.

Plans for the Module II:

In the second module participants will have an opportunity to try and present their presentations (using Power Point) and get a feedback from the group and trainers, learn more about aims and evaluation of the training / workshop, plan and realize short workshops on the themes participants will presents to their colleagues after the training, get a feedback again, and explore a little further the role of the trainer and presenter.

MODULE II

Trainers: Dragana Lalić
Marija Gajić
Marija Marjanović

Venue: Hotel "Moskva", Belgrade

Participants: There were 13 participants. There were 6 men and 7 women. Participants were from different towns in Serbia and Montenegro. Find enclosed list of participants.

Aims:

- Developing presentation skills
- Further developing competencies for creation, realization and evaluation of the training/ workshop
- Exploring and understanding the role of trainer
- Reflection on personal strengths and weaknesses in the role of trainer

Programme elements of Module II:

Second module, as practical one, aimed to provide opportunity for participants to put in practice basic knowledge gained on the first module of the training.

Program has been organized around following main elements:

- Power point presentations of their work and feedback by group and the trainers on presentation skills
- Developing and creating a workshop in teams
- Delivering workshops and having feedback and discussion afterwards

- Exploring the role of trainer and personal competences in the role of trainer

As an additional input participants have been given precise instructions on setting aims and objectives of the workshop, structure and the flow of the workshop/training, evaluation of workshop, different methodology and methods that could be used in the workshop and input on facilitation skills (facilitating exercise and small or large group discussion).

Results and Outcomes:

- Overcoming fear and gaining self-confidence in the role of presenter or trainer
- Practical knowledge about creating workshop
- Possibility to try out working in the team and learning from that
- Trying out personal competences to lead the workshop and learning from feedback
- Deeper understanding of the role of the trainer

Specifically, some elements have been seen as very beneficial.

The **method of work** was highly appreciated in participants' feedback – they describe it:

- to be fun, energetic, interesting
- creates high motivation
- close to real life, offers knowledge that you can implement in real situations
- provokes many thoughts, discussions, insights, emotions
- it creates very valuable group dynamic
- it creates positive energy and respect for oneself and others

Trainers work has been perceived as:

- excellent
- professional
- very sensitive for group process
- participants felt respected, appreciated and equal to the trainers

Comments on **program elements**:

- insights of the very possibilities of approaching or solving problems in a way which by now they have not known
- they've been supported to raise and be gentle to their self-respect
- they've been initiating to perceive weakness and strengths in the role of trainer in themselves and in others
- gained practical skills of facilitating educational workshops which they felt can be applied directly both in their work and everyday life;
- developed communication and facilitation competence;
- got practical guidelines and corrections on workshop creation (structure, aims, evaluation)
- **they got answers how to shape their ideas in more interesting ways**
- participants experienced the benefits and understood much better the dynamics of team and group-work
- discovering team roles / equality of importance of each one

Evaluation (see annex for details):

Participants showed very high satisfaction with training – they found objectives have been achieved in very high level and that methodology, atmosphere and trainers work were great and contributed to large extent to their learning. Results of final evaluation form you'll find in additional document, attached.

Trainers' impression:

High motivation and openness from the first module have been continued. The atmosphere was relaxed and hard working in the same time. They managed to overtake very challenging task of creating workshops for very short time and be willing and free to try out delivering workshops. Self-perception and perception of the group was very sophisticated and feedback was on excellent level, with capability to reflect on mistakes and good things. Capability to reflect on your own practice, as well as on practice of your colleagues, we find one of the most important trainer's competence and the ground for constant self-improvement and further learning of the trainer's practice.

General overview on Module I and Module II and recommendations:

We find that for given time the most benefit was achieved. We also find the task was very challenging and that it's very difficult to grasp methodology and values of the training in 4 days if you haven't participated any training before. What we would recommend is to plan further support for this group – possibility to meet again and exchange experiences after first delivered workshops, as well as additional one day meeting with us for consultations and help. We also find it would be of great benefit to them to pass some more training on different topics, just to have more opportunities to see different methods and to experience in practice little more what interactive methods mean and how you can develop them and lead them.

In general, we would say it is very good selection of high quality people who are motivated to learn and we believe could deliver their tasks on highest possible level in this moment of their development.

Belgrade, 29th May 2006

APPENDIX

Evaluation of the whole training

In the end of the training, participants had a chance to *evaluate accomplishment of aims*. Marks were given on scale from 1 to 5, and they are shown in the following table:

Aim	Average mark
Discovering values and possibilities of interactive methodology	4,8
Developing competencies for creation, realization and evaluation of the training/workshop	4,5
Gaining and improving of presentation skills	4,8
Discovering and understanding role of trainer/facilitator	4,8
Reflection of owns strengths and weaknesses in trainer's/facilitator's role	4,6

As their *biggest gain* from the training, participants emphasized gaining of self confidence and security in the new role (they soon will have on their jobs), discovering values and possibilities of new the ways they can use in presentation, as well as methods and techniques of the education.

Some of participants' statements are:

- Gaining knowledge in the field I new very little until now, as well as self confidence
- Getting familiar with the different methods and techniques of the education, and discovering possibilities of application what I learnt on the job I will do Gaining knowledge of the new methods of work

- Self confidence that I will be a good trainer

As ***the most important for the learning process on training***, participants emphasized following: gaining skills and knowledge, the feedback they received from the colleagues and trainers, as well as the consciousness of possibilities and importance of permanent learning and self improvement.

Some of participants' statements are:

- Feedback on my work from colleagues and trainers
- Development of trainers' skills and creativity
- The mode of keeping attention of the participants, access to the group, the mode of working organization and imagination of space where the training would take place.
- Realizing the importance of improving themselves.
- Practical skill rehearsal and leaders advices.

The participants announced they do not see anything that ***was not useful*** to their learning process, especially after the second module, which helped them to overview the sense of everything we have achieved.

The atmosphere in the group was estimated as excellent and improving as the time was passing by. The surprising fact for the majority was the hard working atmosphere for all the time, but also spontaneous and relaxing. Describing it, the participants used words like: friendly, stimulating, fruitful.

Participants estimated ***the work of the trainers*** as creative, pushing ahead and clear, explaining it as a good example of what they will soon be facing on their jobs.

- Professional, high quality, relaxing, with lots of passion in boosting knowledge, skills and abilities in what they absolutely succeeded.
- Practical, creative, professional, inspiring, educational, simply terrific.

For the ***handouts and working materials*** participants said that they were:

- Useful
- Right on time, clear, educational and full of contents:
- Numerous, but we will learn them
- Illustrational

The participants mark the ***seminar organization*** as good, professional and full point. Most of them complained they endured and exhausted themselves in fulfilling the contents, so they needed some extra time to be more sufficient.

- Excellent
- Very good and got the point
- Outstanding, but thinking we should prolong the event for such a robust schedule.

In the end of evaluation questionnaire, participants had a chance to say something more if they need. So we got a lot of:

- Thank you
- I will remember you through practicing skills I gained here

Participants also emphasized their need to be in the same squad once more so they can get an opportunity to exchange their experiences which they would be earning meanwhile.

Belgrade, 10th May 2006

ANNEX IV
PROJECT DOCUMENT
Strengthening the System of Misdemeanour and Magistrates' Courts

A rule based, predictable and non-discriminatory magistrate system is necessary for an equal access to justice. Such access is considered a basic human right and an important element for legal certainty needed for economic and social developments. At the same time, reforming the magistrate system towards independence and impartiality will contribute to a democratic state, based on separation of powers. The Project aims at strengthening the system of Misdemeanours and Magistrates' Courts by providing training for magistrates and developing a magistrates reform strategy. The project will be focused on professional advancement, defining the legal status of magistrates through legal regulation and developing professional standards and a code of ethics. The project activities will be undertaken by the Project Implementation Unit, in close cooperation with the Ministry of Justice of the Republic of Serbia and the Association of Magistrates.

Date: 15 November 2004

Table of Contents

I. CONTEXT	42
I.A. Situation Analysis	42
I.B. Strategy.....	44
I.C. Ongoing and planned assistance.....	47
II.RESULTS FRAMEWORK.....	48
II.A. Project Results and Resources Framework.....	49
II.B. Outline Timetable	53
III MANAGEMENT ARRANGEMENTS.....	55
III.A.Institutional arrangements	55
III.B.Roles and responsibilities	55
III.C.Inputs.....	56
III.D.Monitoring and Evaluation.....	56
III.E.Advocacy	57
III.F. Legal Context	57
III.G. Risks and Prior Obligations	57

I. CONTEXT

I.A. Situation Analysis

I.A.1 Nature, Mission, Functions and Organisational aspects of the system of Misdemeanours and Magistrates' Courts

The 800 Magistrates in the Republic of Serbia who staff Magistrates' Courts deal with important aspects of law and order, but fall outside the mainstream judiciary. Various types of misdemeanours or administrative offences – ranging from traffic offences to offences related to social welfare cases – are brought before Magistrates' Courts.

The functioning of the Magistrates' Courts is regulated by various laws and secondary regulations:

- 1989 Law on Misdemeanours, which regulates organizational aspects with outside effect and provides for the procedural law;
- Internal Rules (issued by the Serbian Ministry of Justice (which regulate internal procedures));
- Substantive provisions are found in more than 200 separate laws and regulations, which are as yet unconsolidated.

Until approximately 10 years ago, Magistrates had a fairly relaxed and uncomplicated professional existence. However, under the Milosevic regime Magistrates' Courts were misused in applying the notorious Public Information Law and had to deal with those who participated in the 1996/1997 anti-regime rallies. As a result, the reputation of Magistrates' Courts deteriorated considerably.

The present system of Magistrates' Courts consists of two layers:

- Magistrates' Courts: 173 first instance bodies in the Republic of Serbia;
- Magistrates' Councils: 11 appeal bodies.

Magistrates' Courts can impose the following sanctions:

- fines, with apparently inconsiderable limitation and often extensive economical and social consequences;
- terms of imprisonment up to maximum of 60 days.

In addition to their role within the 'law and order' system of the Republic of Serbia, Magistrates' Courts are also important for the state from a financial perspective. According to most sources, the ratio of costs to revenues within the system of Magistrates' Courts is approximately 1 to 4.

Contrary to their social and economic importance, the public appreciation of Magistrates' Courts is not very high. Large parts of society, including lawyers, are more or less unaware of the functions of Magistrates. Furthermore, judges of all levels look down on Magistrates. This is not only the result of their role under the Milosevic regime, but also because of the fact that judges and other legal professionals regard Magistrates as poorly educated and inefficient.

Finally, it needs to be said that Magistrates' Courts exercise both administrative and judicial functions. As far as the latter is concerned, the procedure is to a large extent similar to that exercised by judges in the regular courts. In their adjudicatory functions, Magistrates have broad discretionary powers. From the perspective of the accession of Serbia and Montenegro to the Council of Europe, the magistrates should be addressed with special attention, keeping in mind that, pursuant to the European Convention of Human Rights and Basic Freedoms, the Magistrates' Courts will be clearly regarded as part of the judiciary.

While Magistrates' Courts perform judicial functions, they are at the same time susceptible to the control of the Ministry of Justice. Consequently, one can ask whether there are sufficient guarantees to safeguard the independence of the Magistrates' Court. As the executive branch of government controls the appointment, disciplinary proceedings, transfer and dismissal from office and sets reporting requirements, the traditional separation of powers in a civil constitutional state has been confused and clearly violates the Serbian Constitution, as well as international norms and standards regulating the independence of the judiciary. This is certainly a source of concern and cannot be neglected. However, it is to be expected that the present project will also make a contribution to an improvement of the legal status of Magistrates and the harmonization with international standards and principles.

From the UNDP's assistance point of view, main reasons for interventions are as follows:

- Urgent need for training of magistrates
- Awareness of the gap in professional standardization
- Real concern that the legal uncertainty with regard to the legal status of magistrates should be brought to a conclusion
- Inadequate capacity of the Magistrates' Association to take the appropriate role in the reform of magistrates
- Lack of network of active stakeholders in planning structural changes once the new Law on Magistrates' is adopted
- UNDP's overall support to promote the core UN values as expressed in the Millennium Development Goals (MDGs) related to the eradication of extreme poverty and hunger and promotion of gender equality and empowerment of women. This will be elaborate further in the document.

I.A.2 Present reform efforts

Draft Law on Misdemeanours

The organizational and procedural aspects of the work of Magistrates' Courts are still regulated by the much-amended 1989 Law on Misdemeanours. As the Serbian Government and National Assembly clearly recognized that this Law no longer served the current needs, a process of elaborating a new law commenced after the fall of Milosevic regime, namely with coming to power of the new and democratic Serbian Government.

A Draft Law on Misdemeanours has passed the public debate in the National Assembly. The status of the magistrate court judges and the magistrates' courts, as special courts within the judicial system of the Republic of Serbia will be regulated within the judicial system of the Republic of Serbia pursuant to the Amendments and Addenda to the Law on Organization of Courts and the Law on Judges.

The present Draft Law on Misdemeanours is likely to introduce several innovations, aimed at organizing the Magistrates into a more efficient structure. The most obvious one is the introduction of only one second instance Magistrates' Court – the Republic Magistrates' Court (set in Belgrade), which will have 4 affiliates. Once this system of one second instance Magistrates' Court is introduced, there will also be the possibility of more effective and efficient distribution of appeal cases among the affiliates.

The Draft Law on Misdemeanours also foresees the creation of proper administrative offices at each Magistrate's Court.

For most of the mentioned innovations, the Draft Law on Misdemeanours can certainly be regarded as an improvement of the present system. This Draft Law is in compliance with the international standards and principles.

Establishment of the Association of Magistrates

Another encouraging sign in the area of Magistrates' Courts is the fact that the *Association of Magistrates of the Republic of Serbia* has been established on 29 March 2002. The desire among Magistrates to create their own professional association was based on a variety of reasons. Magistrates were not allowed to become members of the Serbian Judges' Association. More importantly, in order to implement the necessary reforms and speak with one voice in the communication with the Serbian Government, the Judiciary, the donor community and the public at large, the Magistrates felt a pressing need to organize themselves and fight collectively for their interests.

Although only a minority of the Magistrates are the members of the Association (10 June 2002: approximately 150/200 of 800 Magistrates), the membership is growing. More importantly, most of the Magistrates in leading positions appear to be members of the Association.

The Association of Magistrates has the following objectives:

- upgrading the status and material conditions for Magistrates;
- improving and harmonizing the legal framework governing the work of Magistrates with the European standards;

- strengthening the independence of Magistrates;
- improving the implementation of human rights mechanisms; and
- promoting the rule of law.

The leadership of the Association of Magistrates designated following areas as priorities for possible cooperation within the framework of a donor supported project with the Association:

- institutional support to the Association of Magistrates (office supplies, equipment, staff, etc.);
- educational and training activities;
- preparation and printing of brochures: brochures on the Association of Magistrates and on Magistrates' Courts in general.

I.B. Strategy

The magistrate system has several major deficiencies - for example, an inadequate legal framework, inadequate human resources management system, unreliable and inefficient management systems, lack of appropriate facilities. These rule-based deficiencies aside a predictable and non-discriminatory magistrate system is still not in place. On the other hand, due to the magistrates whose competencies (various types of misdemeanours and administrative offences, ranging from traffic offences to offences related to social welfare cases) it is possible that the citizens will be appearing before magistrate courts quite often. This risk requires enhanced efforts for the Ministry of Justice to work on a strategy for magistrates. A sound reform strategy should serve legal certainty and provide adequate access to justice.

The project is designed to carry out a number of different activities such as: expert meetings, workshops, consultation meetings study visits, explanatory notes, publications, substantial reports etc.

The activities aimed to contribute to the diffusion of good practice in the same way as classic multilateral co-operation. In particular, they helped in the practical establishment of national system of quality assessment in a sector of professional advancement for judiciary.

The policy approach of the project is the critical element of the intervention strategy. It covers norms and their sources, magistrate system structure, governance, and learning. Reflecting the unique position of the magistrate system within the judiciary, the project is not carrying with it a ready-made policy model. It addressed the central topics of strategy policy in a dialogue with the project partners, seeking in its advice fairly to reflect international (European) concepts, traditions and standards, as well as evolving ideas of best practice

The project will support the Ministry of Justice in improving: professional standards and reviewing magistrates' legislation. At the same time the project will contribute to the effectiveness of the magistrates' performance.

First project activities will be focused on establishing a Project Implementation Unit within the Ministry of Justice and on sufficiently strengthening its capacity to enable it to develop, manage, monitor and coordinate all project activities. The Unit will consist of two subunits. The first subunit will have the mandate to conduct trainings. The mandate of the second subunit will be development of the reform strategy for the magistrates and assistance in functional review of the Ministry. The Unit's capacity will be to enable the development, management, monitoring and coordination of project activities. After the establishment process is completed, the subunits will start developing training plan and reform strategy for the magistrates.

The training plan for magistrates will be based on two tracks: (1) professional advancement in specific subjects for all magistrates and legal staff, and (2) competency improvement for senior officials. The two tracks training methodology was chosen to address different training needs of magistrates. At the same time, the methodology is flexible enough to allow magistrates to prioritize among training

subjects and to develop a training plan. The first track should contribute to professional improvement of the magistrates through information dissemination on selected substantive subjects. The second track will serve competencies' improvement through training on Project and Result Based Management. Improvement of competencies of senior officials will support the modernization of the magistrates' system.

Developing a magistrates' reform strategy is related to adopting standards required for professional conduct and review of magistrate legislation. The second subunit will play an active role in creation of an operational strategy and plan for effective fulfilment of magistrates' performance. Within this field of activities, the subunit will be assigned to develop and codify professional standards, identifying professional and entry requirements as well as body of knowledge. The same subunit will also have responsibilities in preparing recommendations for legislative changes where necessary and draft publications and information brochures.

The primary aim of the reform strategies component is to provide effective support to the processes of legislative change in the areas of magistrates, as a part of overall consolidations of judiciary reform efforts.

Progress is expected to be made in systematizing concepts of European standards and best practice in these areas during the life of the project, especially legislative review and drafting of magistrate's normative framework. Furthermore, the whole process of (re)drafting of the Law on Magistrates is expected to be conducted under the auspices of the project.

The Unit is expected to prepare and organize the planning workshop and a mid term technical review, focusing on project success criteria including the unit status, training subjects, materials, evaluation and reform strategy results.

The project provides only a framework basis for discussion of long term perspectives of magistrates' policy and in many areas the project has to make informed guesses on international trends in global body of knowledge and to anticipate the future models for the organization and functioning of magistrates. Diverging interests as well as changes in reform concepts and society will continue to create new changes, and solutions sought in a new equilibrium of autonomy and dependence.

In a resolution (reproduced below) drawing on these different perspectives, the planning workshop will need to agree on the three key points:

- Conditions for successful project implantation such as: a timely, cost-effective, principled and practical response by the Ministry of Justice and Magistrates Associations to the challenge of the improving magistrate's system within the judicial reform;
- Integrating the project results within magistrate's system and the Ministry of Justice portfolio;
- Professional standards identified by the project, particularly on magistrates functioning should be consolidated through further governmental action and instruments.

Assistance given to this Ministry, in the context of this proposal, will be based on a functional review or equivalent organizational analysis, carried out by the Ministry itself, with the main objectives to assess current capacity and evaluate the adequacy of the existing disposition and distribution of functions in terms of the legal requirements in force and the government's policy for the sector concerned. In some respects only specific areas or competences of the Ministry will be selected as priorities, in particular financial planning and auditing, direct support services to the Minister and public access to information.

Functional Review. The duties and responsibilities related to the functional review are defined in the framework of the following overall objectives:

- Ensure that the functional review process possesses general and specific expertise and skills in the area of functional review / organizational analysis
- Facilitate the preparation and design of the adequate tailor-made approach to the analysis
- Ensure that the review/analysis is properly planned and that all the preconditions are known and adequately addressed
- Provide training and coaching before and in the course of the review/analysis and develop adequate and appropriate analytical tools (such as questionnaires)
- Provide advisory support and benchmarking for the preliminary / final findings
- Ensure that the functional review has continuous support and backup in terms of troubleshooting and dealing with both methodological and operational challenges while performing the review/analysis
- Ensure that this initiative complements, and does not overlap with, activities sponsored by other public agencies and by donors
- Drafting and finalizing reports and planning the follow-up especially in terms of action plans for re-organization.

The final report should consist of following parts:

- a) The report on the overall project results as seen from the perspective of the experts and in regard to the project document and the work plan
- b) The report on the concrete activities with the emphasis on:
 - Activities carried out (advice provided and trainings delivered)
 - Problems solved and lessons learned

The project structure described above is designed to meet magistrates' training needs and reform challenges. The location of the Unit in the Ministry of Justice will facilitate effective communication in the focus areas. Generally speaking, the Unit is envisioned to be one of the key principal generators of magistrates' professional advancement and reform. The Unit will also provide professional and logistic support in coordinating all activities concerning magistrates' reform strategy.

The Unit is expected to ensure that outputs produced find adequate recognition. In developing and implementing a training plan and reform strategy, the Unit will closely collaborate with the Ministry of Justice of the Republic of Serbia and Association of Magistrates. Furthermore, substantive input should be secured from representative bodies of the Serbian judiciary (as e.g. Judicial Reform Council, the Supreme Court of Serbia and the Serbian Association of Judges) and donors.

Crucial to the judicial reform strategy is the sharing of information and work with partner organizations. Throughout the project, work with partners will include casework, observations, seminars and meetings, publications and public awareness activities. The project will represent a focal point of information about magistrates and related developments in the area of judicial reform. Regular meetings and briefings will help to bring the project new perspectives and to pool together individual strengths in order to maximize overall joint effectiveness.

Sharing information and capacity building project will continue to share information with a number of NGOs and international organizations.

The gender balance participation at all stages of the project and in all project activities is one of essential elements of support. The project implementation unit will be entrusted with the task of stimulating action in that direction to achieve effective equality between primary project beneficiaries. The project is expected to carry out analyses, studies and evaluations, defines strategies and political measures, and, where necessary, frames the appropriate legal instruments. Further more, training subjects will include topics like sex trafficking, domestic violence, prostitution that are in the mandate of magistrates.

I.C. Ongoing and planned assistance

In the last period there were no significant results in this field and furthermore no other assistance or projects are planned to aid this sector.

On the other hand, the judicial system is supported by various donors like OSCE, Council of Europe, World Bank, European Agency for Reconstruction etc.

UNDP has been actively supporting the judicial reform process in Serbia by expert and staff assistance as well as resource mobilization. For example, UNDP played an active role in the coordination of donors' assistance in the process of establishing the Judicial Training Centre. The Centre, supported by the Governments of Netherlands and Sweden, has developed and implemented demand driven curricula for the training of judges and prosecutors.

A priority of the State of Serbia and Montenegro is to proceed in a rapid and efficient manner through the process of accession to European Union. The political criteria of EU accession, as defined at the 1993 European Council meeting in Copenhagen, have particularly emphasized standards of the rule of law, human rights, and protection of minorities. The judiciary itself is identified as a strategically important sector for the EU Stabilization and Association Process. Judicial performance and development will be closely examined, in particular the performance of judicial personnel in maintaining institutional standards and guarantees, as well as their abilities to conduct competent and efficient adjudications. Training of all judicial professions including the magistrates that in a wider sense may be considered a part of judiciary is a vital intervention strategy for achieving social cohesion, empowerment and transition.

Phase-out donor support. The sustainability of the project could be assessed on the basis of sustainability of results and project costs.

The impact changes expected to lead the significant changes in the magistrates profile and gradual shift in the Ministry of Justice focus and therefore automatic priorities, reflecting a general development in the European environment, broadening scope from legislation as such to the policy context surrounding a trend to a fewer but longer term project often involving partners shifts, finally the increasing involvement of experts, however, a more secure and less ad hoc arrangements.

The project costs. The specific content and focus of the phase-out strategy will depend on the individual program or project's scope and objectives. Key generic elements are likely to include:

- *Management roles and responsibilities.* The responsibilities of the counterparts should increase while the expatriates' are phased out over the length of the project. This assumes that the counterparts have ability and are given professional roles in the project in line with their skills.
- *Training.* Training is an important element of phasing out. Training must not only be technical (e.g. maintenance skills), it should include management and planning skills, coordination with other bodies, analysis and problem solving, monitoring, training needs analysis and the training of trainers. Training materials in the local language should be left behind at completion as well as the skills and access to (local) resource needed to up-date them.
- *Finance.* Managerial costs which are met by the donor during implementation, and which must be continued to sustain benefits, should be phased out over time with the stakeholders taking on responsibility for meeting these costs. (for example maintenance costs)
- *Asset maintenance.* Equipment and asset maintenance procedures need to be well in place before project completion, but introducing a culture of operations and management requires time and planning.

II. RESULTS FRAMEWORK

The project will support defining the legal status of the magistrate branch and professional advancement through legal regulations, training and establishment of the code of ethics.

The project activities will cover two main areas:

1. Professional improvement of magistrates' competencies
2. Development of the reform strategy for magistrate branch

It is important that Magistrates, the Serbian legal community and the public at large are kept informed about the project activities. Therefore, the project results should be communicated and explained to them on a regular basis. The Project Implementation Unit will maintain an internet based network, a substantive database which includes statistics, publications and links to the Ministry of Justice and the Judicial Training Centre. In addition, the Unit will support the work of the Ministry of Justice and the Magistrates' Association in raising public awareness and understanding the magistrate reform process.

The outputs to be produced during the project and the key tasks to be performed are summarized below.

II.A. Project Results and Resources Framework

National priority or goal: Increased social cohesion and realization of rights of vulnerable groups

Intended UNDAF outcome: Strengthened rule of law and equal access to justice

Outcome as stated in the Country Programme Document:

Effective and independent judicial systems with increased access to justice for marginalized groups

Output as stated in the Country Programme Document:

Reformed judiciaries and magistratures, exposed to global best practice

Output indicators as stated in the Country Programme Document , including baseline and target:

No. legal profsnls. trained

Baseline Main training beneficiaries are Judges & prosecutors

Target: Training expanded MoJs staff and magistrates

Judicial coop. expanded

Baseline: Lack systematic internat. judicial coop.

Target: Formal channels of judicial cooperation est'd

Programme Component:

Rule of Law and Access to Justice

Role of partners:

Ministry of Justice and court structures in Serbia to provide commitment, and to ensure budgeting incremental government cost-sharing over time; Judicial Training Centers to organize training, professional associations to help identify training needs, NGOs to participate in capacity building training for legal aid provision

International partners: Council of Europe, EAR, OSCE, UN/OHCHR, UNHCR, UNICEF, Sweden/Sida, Netherlands

Project Title and Number:

Strengthening the System of Misdemeanours and Magistrates' Courts

	Intended Outputs	Output Indicator	Indicative Activities	Inputs 2003-2004
1.	<ul style="list-style-type: none"> • Planning workshop conducted • Results Integration Plan developed • Benchmarks and success indicators identified • Work plan developed 	<p>Action plan agreed. Result Integration Plan agreed. Monitoring and evaluation indicators, evaluation plan and system for continuous evaluation agreed and accepted by the Ministry, Magistrates' Association, donors' and UNDP and actively applied. Plan of activities approved by UNDP</p>	<p>Formative evaluation and planning</p> <p>Activities are workshops and scoring exercise</p>	<p>Evaluation International and National consultants - working costs - scoring costs</p>
2.	Establishment of a Project Unit at the Ministry of Justice	<p>Project Unit established and operational</p> <p>Staff trained on project management and project operations</p>	<p>Establish an appropriate organizational structure which aligns the functional responsibilities to the tasks foreseen. Activities entail:</p> <ul style="list-style-type: none"> • assign a head to the unit, recruit an international Senior Adviser, define functions and determine structure; determine further staffing requirements and job descriptions; hold an RBM based project planning workshop to define work plans for both unit and project, training on project operation (UNDP operations in NEX) • define the Unit's internal operating systems and procedures: identify information needs; determine system requirements; develop systems; develop procedures; introduce new systems and procedures; • determine training requirements for unit staff; develop training programme activities; implement on-the-job training 	<p>Non –expendable equipment (See Annex A)</p> <p>The Unit Staff</p> <p>Training for Unit staff IT support Communications</p>

	Intended Outputs	Output Indicator	Indicative Activities	Inputs 2003-2004
			activities; Install Unit's facilities and equipment needed for the systems and procedures in place: determine detailed facility requirements; provide required facilities (move to permanent offices); determine detailed equipment requirements; procure and install equipment; introduce equipment maintenance programme. Activities entail preparing budget estimates; discussions, and approval.	
3.	Determination of target groups of two track training approach Determination of priority subjects and two tracks training methodology Determination of MDGs related training subjects Determination of gender related training subjects (e.g. sex trafficking, domestic violence, prostitution etc.)	Training plan for two tracks developed Training methodology elaborated Training plan on MDGs subjects developed. Training plan on gender developed	Meetings on priority subjects and training methodology Statement of training needs Methodology tools developed Consultation Meetings on harmonization of training agendas for other legal professionals (e.g. the MoJ, Supreme Court, JTC and other providers) Development of course materials	Compilation, printing and binding materials costs National consultants Sundries
4.	Train the trainers for two training tracks	Training for trainers conducted Group of trainers instructed and trained	Organization of trainings for trainers	Training costs
5.	Implementation of the two track Magistrates' training plan Training support	Training and workshops conducted International conferences attended	Organization of Trainings and Workshops Participation at international conferences	National consultants Training and workshops costs (per diem, travel costs, accommodation, hall

	Intended Outputs	Output Indicator	Indicative Activities	Inputs 2003-2004
				rental, etc.) Study tour and International conferences costs (travel and accommodation costs)
6.	Set of standards required for professional conduct completed	Professional standards developed and codified Professional and entry requirements defined Learning resources identified/ body of knowledge	Professional standardization and entry requirements. Database on learning resources set up and running	International Consultant National Consultants Workshops costs Reporting and publications cost Dissemination costs Visibility costs Sundries
7.	Initial review of magistrates' legislation prepared Draft Law on Magistrates prepared Public Awareness strategy developed	Recommendation for legislative changes prepared where necessary Advocacy and Published Strategy developed Publications drafted and published: <ul style="list-style-type: none"> commentary to the law on magistrates information brochures Recommendation for raising public awareness prepared and public awareness action identified	Harmonization of magistrates' legislation will compare existing regulation with EU standards and prepare a report highlighting the areas where changes may be necessary. Findings will be presented to the Ministry and recommendations for legislative changes will be prepared. Meetings of the working groups in charge of drafting. Preparation of the commentary to the new Law and informational brochures (on aspects of the new Law, the Association of Magistrates, newsletter of the Association) Publication Dissemination Newsletters, Website, Articles, Press	International Consultant National Consultants Reporting and publication cost Dissemination costs Visibility costs Sundries

	Intended Outputs	Output Indicator	Indicative Activities	Inputs 2003-2004
			Conferences	
8.	Exit strategy developed	Recommendations for exit strategy prepared	Prepare a set of capacity building measures relating to the systems, procedures, institution and individuals as well as time frame for the transfer of responsibility for providing the services. Training on technical, managerial, planning and coordination skills	International Consultant National Consultant Workshops costs Sundries
9.	The report on functional review produced to the Ministry of Justice	<ul style="list-style-type: none"> current capacity assessed adequacy of the existing disposition and distribution of functions in terms of the legal requirements in force evaluated the Ministry's policy for the sector concerned. 	<u>Functional review conducted:</u> <ul style="list-style-type: none"> <u>comprised team</u> <u>questionnaire developed</u> <u>data collection assembled</u> <u>report presented to the Ministry</u> <u>training conducted, analytical tool identified.</u> 	International Consultant National Consultants Workshop costs
10.	Result Integration plan reviewed Project reviewed	Mid term technical review focusing on criteria including: Unit status Training subjects, evaluation and materials, integrating of project results Reform strategy results	Workshop(s)	International consultant Workshop costs (per diem, travel costs, accommodation, hall rental, etc.) Reporting Sundries
11.	Project Total			

II.B Outline Timetable

Output/month	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24
--------------	---	---	---	---	---	---	---	---	---	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----

PROJECT BENCHMARKING																									
UNIT ESTABLISHMENT																									
FUNCTIONAL REVIEW																									
EXIT STRATEGY																									
TRAINING																									
STRATEGY FOR REFORMMING MAGISTRATE SYSTEM																									

III. MANAGEMENT ARRANGEMENTS

III.A. Institutional arrangements

The project is executed by the Ministry of Justice of the Republic of Serbia (National Execution). However, the MoJ may contract other entities to undertake specific tasks through a process of competitive bidding. The project implementation is subject of the steering mechanism.

The Steering Committee. The overall co-ordination of project activities will be done by a Steering Committee which will be decision making body for project activities. It will be composed of the following officials or their representatives:

- Deputy Minister of Justice
- The President of Judges' Association
- The National Project Director
- The Project Manager
- Donor representatives
- UNDP Resident Representative

The Steering Committee will meet at least once a quarter. It will approve training curricula, review the project's progress, approve financial reports and work plans as well as take decisions related to both substantive and financial aspects of project implementation. Each of the project partners, donor and UNDP could call for the meeting of the Steering Committee. The Project Manager will act as the Secretary of the Steering Committee.

The Steering Committee will ensure appropriate synergy, co-ordination and co-operation with other projects and programmes falling in the same field of intervention as those of the project.

The Project Implementation Unit

Project Manager heads the Unit. Project Implementation Unit is consisting of two subunits. Each subunit is staffed with a Project Coordinator and a Project Assistant. The Programme Associate, hired by UNDP, will support communication between sub units and UNDP. The Project Implementation Unit is located in the Ministry of Justice's Minor Offence Division. UNDP procedures will apply in each case. The Unit staff will be recruited through an open competition in conjunction with the Ministry of Justice and the Magistrates' Association.

The Unit has following functions and responsibilities: a) development of the work plans; b) conducting trainings; c) development of strategy for reforming magistrate system clarifying; (i) appointment of experts; (iii) overseas training or participation at international conferences.

III.B. Roles and responsibilities

For this project, the Ministry of Justice will appoint a National Project Director (*Terms of Reference attached*). The two main partners within the project will be:

The Ministry of Justice. The Ministry of Justice is responsible for human resources development strategy as far as Magistrates are concerned. The Department also has an overall responsibility for the work of magistrates; therefore, the Ministry of Justice will be the central partner for development and implementation of a training plan and reform strategy for Magistrates and legal staff of Magistrates' Courts. The Ministry of Justice will closely collaborate with the Association of Magistrates. Furthermore, substantive input should be secured from representative bodies of the Serbian judiciary (e.g. Judicial Council, the Supreme Court and the Serbian Association of Judges), and the Bar Association of Serbia.

The Association of Magistrates. As the main aim of the newly established Association of Magistrates is to enhance the reform of the system of Magistrates' Courts, improve the status and material conditions for Magistrates and promote the Rule of Law, the Association will be the

second main partner of the project. The project will strengthen the Association in order to enable it to effectively implement activities related to professional advancement and reform strategy.

III.C. Inputs

III.C.1 UNDP inputs

UNDP will provide inputs as follows:

- cover costs for members of the Project Implementation Unit for maximum period of 24 months;
- national and international experts to support the development and implementation of the training and reform strategy and development of the Association of Magistrates;
- trainings, workshops, participation at international conferences ;
- training on RBM and project operations;
- ongoing evaluation;
- equipment needed to carry out the project (See attached Annex).

III.C.2 Government inputs.

The MoJ will appoint a Project Director.

The MoJ will identify and provide the facilities necessary for the Project Implementation Unit and implementation of the training and reform strategy, as well as expendable equipment and operational expenses for the Unit (e.g. electricity, heating, communication).

The MoJ shall retain the right to consider the possibility of extending the funding of the cost associated with the operation of the Unit and the activities after the project is over (the project duration is 24 months, without obligation to integrate the Unit staff into the MoJ resources.

In any case the precedent paragraph may not be interpreted as an obligation assumed by the Government of the Republic of Serbia (MoJ), on the basis of this project.

III.D. Monitoring and Evaluation

III.D.1 Mechanisms used to monitor and evaluate the project

In order to ensure that implementation of the project is on track and on time, UNDP will provide consultants' support in designing project's results, indicators and benchmarks.

The project has to be initialized through planning a workshop in order to identify success criteria and planned activities, involving moderation by an international Monitoring and Evaluation consultant. The outputs will be evaluation plans linked to the Country Office Evaluation Plan and a system for continuous and ex post evaluation.

This will include evaluating to which extent the abovementioned MDGs have been considered.

III.D.2 The deadlines and the responsibilities (e.g. for preparing reports and convening meetings)

Indicators and benchmarks will be developed at the beginning of the project in consultation with the prime stakeholders. Monitoring reports will be prepared by the Project Implementation Unit. A draft evaluation report for comments and approval will be produced for discussion with UNDP; consultants will begin and end reports to the UNDP Resident Representative, whose office will provide all necessary support and contacts for consultant.

III.D.3 Work plan and budget updates

The Management of the project funds must be based on an updated work plan with a corresponding budget. All planned activities must contribute to the project objectives and produce outputs and results defined in the project document. A work plan will be developed through a consultative process, by involving a maximum of stakeholders.

For a budget year, the work plan needs to indicate activities and figures for monthly expenditures, adding up to the budget available for the planning period. For a period of three months, the detailed description of inputs and activities and the accurate figures for the recourses required to allocate the inputs have to be included in the work plan.

Project work plans for a new quarter are discussed with the Team Leader of Democratic Governance Cluster before the beginning of a next quarter. During this period Programme Manager will provide the Team Leader with a feedback of the execution of work plans.

III.E. Advocacy

To keep the general public informed about project's progress and to encourage positive participation in the project, the building and sustaining of political commitment and beneficiaries' demand for the project, the project management will disseminate information through Internet web-sites, newsletters, press releases, videos and other public relations efforts, and carry out feedback surveys, etc.

III.F. Preconditions

The project document shall become valid following its signing.

The MoJ shall upon the signing of the project document appoint the National Project Director.

The immediate implementation of the project shall begin on December 31, 2004, or as soon as the Government of the Republic of Serbia (MoJ) provides the facilities for the Unit's functioning.

III. G. Legal Context

This project document shall be the instrument referred to such as in Article 1 of the Standard Basic Agreement a copy of which is available at RBEC.

The following types of revisions may be made to this project document, provided UNDP is assured that other signatories of the project document have no objections to the proposed changes:

- a) Revisions which do not involve significant changes in the immediate objectives, outputs or activities of a project, but are caused by the rearrangement of inputs already agreed to or by cost increases due to inflation, and
- b) Mandatory annual revisions that rephrase the delivery of agreed project inputs or reflect increased expert or other costs due to inflation, or take into account agency expenditure flexibility.

III.H. Risks and Prior Obligations

There are a number of risks, which can be identified. Their level of criticality is relatively low. Their realization would not diminish the impact of the project, but requires additional inputs and time. Those risks and measures to be taken for their management are set out below:

III.H.1 Beneficiary Expectations

Expectations from the beneficiary institutions, the general public and the donor community from the project may exceed the actual delivery capacity and the quality/quantity of delivery perceived by the beneficiaries. It is, therefore, essential that the Project Implementation Unit in the Ministry run a pro-active *continuous reporting and advocacy strategy* to ensure that those outputs produced find adequate recognition.

III.H.2 Financial Resources

The financial resources provided through this project are sufficient to carry the reform process forward for a limited period. Inadequate financial resources may, in the long run, lead to a standstill of the reforms. It

is, therefore, essential during the first phase of the project that the project management develops *a viable financing plan with a clear identification of future sources of finance and an exit strategy* for donor assistance.

III.H.3 Prior Obligations

The MoJ is obliged to provide the inputs as specified in the section III.C.2. Unless those obligations are met, UNDP reserves the right to terminate the project at any time.

Annex V
Terms of Reference
Management Training Programme

UNITED NATIONS DEVELOPMENT PROGRAMME
SERBIA AND MONTENEGRO

TERMS OF REFERENCE

Title: Development and delivery of the Management Training Programme for Magistrates for the project “Strengthening the System of Misdemeanours and Magistrates’ Courts”

Sector: Judicial Reform/Rule of Law

Duty Station: Belgrade

Duration: April – November 2006

Introduction

The United Nations Development Programme (UNDP) has embarked on assisting Serbia and Montenegro in implementing a comprehensive development framework. The framework focuses on promoting democratic governance, preventing crises and facilitating recovery, and securing the sustainable management of the environment and the sound production and utilization of energy. Cutting across these clusters are four primary themes: (i) human rights and gender equity, (ii) policy reform and consensus building, (iii) constituency empowerment, (iv) e-governance using information technology.

The UN system in Serbia and Montenegro including UNDP, has prioritized the Rule of Law and Access to Justice as one of the three main priority issues for 2005-2009 as reflected in the first United Nations Development Assistance Framework and UNDP’s Country Programme Development document.

In order to assist the UNDP Governance Team in Serbia and Montenegro in advising on the implementation of a technical assistance project aiming at the strengthening the system of misdemeanours and magistrates courts, the UNDP Country Office in Serbia and Montenegro is seeking the support of an institution/organisation-provider of services to develop and deliver a Management Training Programme for Magistrate Court Judges.

II. JUDICIAL REFORM/RULE OF LAW

In December 2001, the Ministry of Justice of the Republic of Serbia and the Serbian Association of Judges established the Judicial Training Centre (JTC) in the Republic of Serbia. The Serbian Government, the Serbian Judiciary and the donors’ community consider the establishment of the JTC as one of the priorities in the present process of legal and judicial reforms in the Federal Republic of Yugoslavia/Republic of Serbia. While the JTC will be supported by various donors and local NGOs, the UNDP has been asked by the Government of Serbia to play a central role in strengthening the JTC’s institutional capacity. The UNDP subsequently formulated a project to assist the Government of Serbia to establish a Judicial Training Centre.

Continuing with the development, the Judicial Reform/Rule of Law Cluster has entered the second phase incorporating new projects such as Strengthening the Judicial Resource and Support Functions in the Judicial Training Centre Strengthening Human Rights Protection Mechanisms and Strengthening the

System of Misdemeanours and Magistrates' Courts, Furthermore, expansion is envisaged in the Transitional Justice Programme.

Project Context

The United Nations Development Programme and the Republic of Serbia is implementing the “Strengthening the System of Misdemeanours and Magistrates’ Courts” project, financed by the Swedish International Development Agency (Sida). In recognizing that a rule based, predictable and non-discriminatory magistrate system is necessary for equal access to justice, the Project aims at strengthening the system of Misdemeanours and Magistrates’ Courts by providing training for magistrates and developing a magistrates reform strategy. The project is focused on professional advancement, defining the legal status of magistrates through legal regulation and developing professional standards and a code of ethics. The project activities are undertaken by the Project Implementation Unit, in close cooperation with the Ministry of Justice of the Republic of Serbia and the Association of Magistrates.

As part of the project implementation an assessment was carried out in October 2005, to develop indicators and benchmarks to measure the project’s progress. The result of this mission was the report, **“Developing results, indicators and benchmarks to strengthen Serbia’s system of misdemeanour courts”**. The findings of this report were formulated into three short term goals and a fourth, long-term goal. They are as follows:

Goal One – Enhance and Expand Misdemeanour Court Judges Educational Training

Goal Two – Enhance the Professional Status and Public Perception of Misdemeanour Court Judges

Goal Three – Streamline and Coordinate Activities among Various Interested Organisations

Goal Four – Strategically plan for the Continuing Education of Judges

1. Overall objective of the engagement

The aim of the Management Training Course is to strengthen the capacity of the magistrate court judges in the following areas, team building, communication and correspondence, PR, management, professional relationships and diversity issues. The institution/organisation – provider of the service will be responsible for undertaking a pre-assessment, developing curricula and delivering the training, undertaking an inter-module assessment, evaluating the training and organising all aspects of the trainings.

1.1 Responsibilities

In accordance with the findings of this report and in line with its recommendations, UNDP is seeking the support of an institution/organisation-provider of services to:

- (i) Propose a comprehensive methodology for undertaking a pre-assessment of the Magistrates training needs
- (ii) Undertake a pre-assessment of the training needs of the Magistrates
- (iii) Design and deliver appropriate training as per the results of the pre assessment but based around the below-mentioned curricula
- (iv) Facilitate an interim-module practical assessment
- (v) Undertake an evaluation to measure the impact of the course and to recommend further training. The results of which, should be presented in a final written report and contain analysis of the evaluation methodology and results.
- (vi) Be responsible for all aspects of the organisation of the training sessions, including logistical and financial burdens.

1.2 Reports

During the course of the engagement, the institution/organisation – provider of the service should also submit the following:

Type of Report	Subject Matter to include as a minimum but not be limited to	Date of submission
Pre-assessment Report	<ul style="list-style-type: none">• Methodology used• Pre-assessment process• Results obtained• Competency framework for each category of trainee• Methodology for curricula development• Final curricula	Two calendar months from the date of signing the contract
Monthly Report	<ul style="list-style-type: none">• Activities undertaken during preceding month• Proposed work-plan for subsequent month• General information relating to progress achieved to date	Every calendar month from the date of signing the contract
Mid-Term Progress Report	<ul style="list-style-type: none">• An elaboration of the monthly report with full details relating to the training process	Three and a half calendar months from the signing of the contract
Final/Evaluation Report	<ul style="list-style-type: none">• Evaluation of the whole training process including the pre-assessment• To include methodology used, data obtained, results concluded• A proposal as to further training needs of the Magistrates• Elaboration of the monthly and mid-term reports	One calendar month after the final training has been completed

Any comments and/or feedback provided to the institution/organisation – provider of the service by UNDP on the basis of the reports must be taken into consideration and if possible facilitated.

2. Specific objectives of the engagement

2.1 Pre-Assessment

The institution/organisation –provider of the service will undertake a thorough pre-assessment, in order to fully ascertain the training needs of the Magistrates. The objective of the pre-assessment is to design a list of competencies and skills that each of the categories of persons being trained requires. These should be presented in the form of a competency framework for each category of trainee. The training will then be specifically tailored within the framework set out below, to meet those requirements. The

institution/organisation –provider is expected to propose a comprehensive methodology for the pre-assessment taking into consideration the specific context and the purpose of the training programme. In the proposal a balance should be ensured between the duration and the depth of the pre-assessment and the need to provide the training. In that sense, the pre-assessment should be seen as a part of finalising the training curricula rather than a system and overarching stand alone exercise. This should be taken into consideration also in the process of budgeting the costs.

Timeframe

The pre-assessment should last no longer than six weeks from the date of signing the contract with UNDP.

2.2 Proposed Provision of Training

The institution/organisation-provider of the service will be required to carry out a training programme consisting of 2 modules, each one lasting for 1.5-2 days. Each group of trainees should go through both modules. However, in between the two modules the trainees will be expected to conduct a practical task to try and apply the skills and knowledge acquired in the first module. In this context, the institution/organisation/provider of the service is expected to design a practical task that could be implemented in between the training modules. In that sense, the overall training programme should be organized as a learning process both at the individual and group level. The training will take place between April and November 2006.

In the proposal the institution/organization – provider is required to propose draft curricula, based around the training topics and issues set out below, which will then be adjusted, polished and finalised after the pre-assessment exercise.

2.3 Potential Target Group

The potential target group of the training is as follows: Presidents (10) and Deputies (10) of the first instance Magistrate Body, and Presidents (16) and Deputies (16) of the Higher Magistrate Court, making a total of fifty-two (52) participants. All candidates will be specifically selected according to whether or not they will remain in their positions as of 2007 onwards.

The trainings will be held in the following 3 cities: Belgrade, Nis and Kragujevac with each location having around 18 participants.

<p>UNDP reserves the right to final approval of the curricula</p>
--

Different segments of the training programme as well as the overall results and the impact should be evaluated thoroughly. For that purpose adequate budget resources as well as evaluation procedures and tools should be proposed by the institution/organization – provider.

2.4 Training Topics

The training topics that need to be included as a minimum are listed below.

Training Topics	Issues to be covered
-----------------	----------------------

Team Building; team work, motivation and team leading	<ul style="list-style-type: none"> - Why is team work important - What sort of team is required - General aspects of team building - How to successfully manage a team - How to motivate employees - Strategic planning of the work of the team
Communication and Professional Relationships	<ul style="list-style-type: none"> - General aspects of communication - Organization and personal communications– methods and techniques - Managing meetings - Ensuring enduring professional relationships with key stakeholders and partners (including prosecution, defence, parties, witnesses and others in a hearing)
Public Relations	<ul style="list-style-type: none"> - Basics of PR – definitions and practical aspects - Relations with media and public speaking - Internal PR - Communication in crises
Management	<ul style="list-style-type: none"> - Time management and setting priorities - Human resources management; what is it, how to conduct job design and assessment and why it is necessary - Managing and leading teams and professionals - Managerial and personal skills
Diversity and equal opportunities	<ul style="list-style-type: none"> - Aspects of living in a multi-cultural society - Awareness raising on discrimination, prejudices, stereotyping etc

2.5 Evaluation

The institution/organisation-provider of the service should survey the group and indicate in a written report the needs for further training of the course participants. This can be achieved through immediate evaluation at the end of the course. In addition, the institution/organization should carry out an evaluation of the process and techniques used during the course and assess the initial response of the participants on the relevance of training in their day-to-day professional capacity. The institution/organisation should provide evaluation of the training event in the form of a report, combined with the evaluation data collected.

2.6 Provision of adequate lecturers for the courses

The institution/organization – provider of the service is required to provide professional trainers and lecturers.

They are required:

- To prepare presentations and related readings on the specific topics
- To submit outlines of the readings and complete power-point presentations if/as necessary

- To deliver presentations on specific topics
- To discuss presentations with course participants
- To illustrate the content of the presentations through case studies
- To disseminate inter-module assessment
- To assess and provide feedback on inter-module assessment both individually to participants and as a group
- To undertake evaluation activities as necessary

2.7 Teaching method and organization of the course

The institution/organization-provider of the service should consider the structure of the target group in setting the teaching method. Therefore, the proper balance between teaching methods should be found in order to ensure full attention and involvement of course participants. The balance should be found between the following teaching methods:

- Lectures
- Presentations and discussions
- Case-studies
- In-class exercises
- Inter-active learning methods

The institution/organisation – provider is also expected to take on the logistical and financial burden for the organisation of all events during the training course. The training will be organised in the place of residence of the trainees, so there should be no cost for travel or accommodation included in the budget. These locations are Belgrade, Nis and Kragujevac. The eligible costs are set out below.

3. Items to Submit with Offer

The institution/organisation – provider of the service is specifically required to submit with their letter of offer a proposal regarding the *entire training process* from pre-assessment to post-evaluation to include but not be limited to the following items:

- (i) A proposal for the methodology of undertaking the pre-assessment
- (ii) A proposal for the methodology of developing curricula to include detailed examples of curricula developed by themselves
- (iii) An outline of their proposed curricula to be based around the above- mentioned training topics but to be finalised subsequent to the results of the pre-assessment
- (iv) The number of trainers proposed and the amount of training materials proposed
- (v) An outline proposal for the inter-module training assessment
- (vi) Evaluation methodology(ies)
- (vii) A detailed budget - Eligible costs

The following costs are eligible and should be included in the proposed budget.

1. Project management team – It is envisaged that the project management team will consist of one project leader and one assistant. The project leader will be responsible for the overall management of the project, the timely submission of reports and ensuring that all requirements are carried out and delivered. The project manager will coordinate all activities and ensure that the project is implemented according to the ToR. The Assistant will assist the project manager in his duties.
2. Trainers – The trainers will be responsible for undertaking the pre-assessment, developing curricula and delivering the training. In addition they will be responsible for contributing to reports, preparing training materials and for facilitating evaluation activities as required.
3. Pre-assessment, curricula development and preparation of training material
4. Organisation of training events (renting the venue and provision of lunch and beverages - excluding travel and accommodation for the trainees)
 - a. This cost should not be more than 20% of the total budget
5. Provision of training equipment and other tools
6. Provision of training materials – in paper and CD format
7. Local travel for the project team and trainers/lecturers
8. Evaluation activities
9. Administrative overhead (maximum 10%)

4. Qualifications and Experience

Institution/organization requirements:

1. Recognised experience in organising methodological courses and trainings for public institutions
2. Expertise in curricula development and modern interactive training techniques
3. Substantive knowledge about the institutional system overall in Serbia - knowledge of judicial system in Serbia would be an asset
4. Experience in consultancy and advisory work in the area of management development and training
5. Ability to clearly link theoretical knowledge with the practical issues facing Magistrate Court Judges on a day-to-day basis
6. Experience and practical knowledge of pre-assessment and evaluation techniques

Trainers/Lecturers Requirements:

1. University degree in the area of the topic he/she delivers a presentation on and/or relevant work experience
2. At least 5 years practical experience in the fields related to the topic of presentation
3. Advanced teaching/training professionals and delivery experience.
4. Proven training and advisory experience.
5. Evaluation skills and techniques
6. Conceptual thinking and analytical skills
7. Good interpersonal skills

ANNEX V1

Management Training Curricula and Inter-Module Assessment

THE CURRICULUM

The trainers' team together with the Centre for Democracy Foundation team produced the curriculum.

The results of the pre-assessment activities have been communicated to the team of trainers engaged by the CDF for the implementation of the training programme. Relevant legal background has been presented to the trainers in order to inform them about the ongoing reform of the misdemeanour system in Serbia.

The curriculum is divided into five sessions which will be conducted along two two-day modules in each of three cities.

Module 1st:

Session 1: Team Building

Session 2: Management and Administration

Module 2nd:

Session 3: Communication and Professional Relations

Session 4: Diversities and Equal Opportunities

Session 5: Public Relations

The curriculum includes objectives of all activities which will be conducted during the sessions and description of all activities.

Session 1: TEAM BUILDING

The training goals for this session are

- To provide the participants with concrete skills and knowledge in the field of team building;
- To develop a sense of common cause and partnership among participants, team work and awareness on magistrate courts reforms in Serbia as team process and joint responsibility of all courts' employees;
- To enable the concrete exchange of experience in misdemeanour courts in Serbia and improve the level of participation and influence of courts' team members at reforms' direction.

The training on Team Building includes 4 workshops, each lasting an hour and a half, such as follows:

1. Building the successful team;
2. Problems in team work;
3. Roles in team;
4. Simulation of team work.

The content of proposed workshops is as follows:

1. Workshop: *Building the successful team*

The workshop starts with theoretical introduction into the topic of team work. First the several working definitions of team work will be presented to participants. After this, the importance of team spirit for the motivation of members and successful performance of set tasks that are in front of team will be elaborated. The participants will also have an opportunity to exercise the team work in practice as they will be divided in several small teams that will be given specific task (e.g. to agree upon characteristics of a successful team within the teams they are divided in, based on their own experience in magistrate courts). By the end of session, the characteristics of teams will be analyzed and distinction between a team and a group made, i.e. the difference between the well structured team and a group of individuals will be stressed.

2. Workshop: *Problems in team work*

This workshop will tackle the concrete problems in team work the participants are facing with in magistrate courts. After that, the solutions to recognized problems are searched for together through individual contribution of each participant and through group interaction. The trainers are in charge of defining the rules, dynamic and way of work with the emphasis on the most important principles and rules of team work.

3. Workshop: *Roles in team*

The third workshop aims at stressing the significance of adequate division of roles for the successful team building. At the beginning, the distinction between two different divisions of roles that exist in every team (functional and team) will be discussed. With their unique experience and examples from magistrate courts, the participants contribute to the discussion on types of roles. The next part of the session is dedicated to the analysis of roles in team based on division made by British psychologists Meredith Belbin. The participants are able, based on their own experience of team work, to analyze the type of team roles they have in their teams. At the end, the emphasis will be put on diversity of team roles in one team, danger of complete unification and the role of leader who coordinates the team activities.

4. Workshop: *Simulation of team work*

The fourth workshop is designed as to be a simulation exercise in which the participants will be given particular roles through which they should, in cooperation with other participants, work on finding solutions to the imposed problems. In this way, they will apply the newly acquired knowledge and skills making thus this simulation as evaluation of activities realized during the day.

The training ends with recapitulation of the discussed topics and conclusion on the whole one-day training.

Session 2: MANAGEMENT AND ADMINISTRATION

The training goals of this session are:

The training aims at informing the representatives of magistrate courts on management techniques through various concepts and skills. The training will help participants to articulate appropriate standards for court work and to link them with respective court activities, to use

information for the purpose of efficient planning and financial management, human and material resources, as well as to monitor the court work and work of individual judges and court staff.

The training on Management and Administration includes 4 half an hour activities and practical exercise such as follows:

1. Time management and setting the priorities;
2. Human resource management;
3. Team management;
4. Managerial and personal skills.

The content of the session is as follows:

1. Activity: *Time management and setting the priorities*

This activity will be dedicated to techniques necessary for identifying the priorities, optimal organization of time and techniques of planning and controlling the time.

2. Activity: *Human resource management*

This activity will show participants how to adopt the concept of planning and development of resources by understanding the practical advantages that this type of management is involves.

3. Activity: *Team management*

During this activity, the participants will through interactive methods be introduced to techniques and skills necessary for team management. The purpose is to teach them some practical skills that could be easily applied in existing working conditions in magistrate courts.

4. Activity: *Managerial and personal skills*

This activity aims at explaining the participants the importance of concept of permanent learning and development of personal and managerial skills.

<p>Session 3: COMMUNICATION AND PROFESSIONAL RELATIONSHIPS IN MAGISTRATE COURTS</p>
--

The training goals of this session are:

This training aims at instructing the participants in easiest and most efficient ways in mutual communication, both within magistrate courts and in communication with parties in the court proceedings and other bodies and organizations.

The training on Communication and Professional Relationships in magistrate courts includes 5 one-hour activities and 2 workshops such as follows:

1. General aspects of communication;
2. Methods and techniques of communication;
3. Organizing and conducting the meeting;
4. Communication with other state bodies, chambers of lawyers and other organizations;
5. Novelties in Internal Magistrate Court Rules draft.

The content of proposed sessions is as follows:

1. Activity: *General aspects of communication*

After theoretical introduction into the notion of communication, the participants will be introduced to the importance of communication for successful performance of tasks of court

administration /court management in magistrate courts. This will be done through interactive exchange of experience.

2. Activity: *Methods and techniques of communication*

On this Activity, the most used methods and techniques in communication will be presented, with special analysis pertaining to different groups of employees such as: court clerks, couriers, judges' assistants /court assistants and others.

3. Activity: *Organizing and conducting the meeting*

This Activity is designed as to enable suggestions and exchange of experience among courts' presidents / heads of misdemeanour bodies who participate in this program in relation to good preparation and organization of meetings.

4. Activity: *Communication with other state bodies, chambers of lawyers and other organizations*

This Activity will present the techniques of communication that will enable effective work of courts and establish communication with other courts, prosecutors' office, state administration, chambers of lawyers and non-governmental organizations.

5. Activity: *Novelties in Internal Magistrate Court Rules draft.*

This Activity will discuss how much is the existing Internal Court Rules, brought 25 years ago, obstacle for more efficient operation and what are the novelties proposed in new Internal Court Rules draft.

Session 4: DIVERSITY AND EQUAL OPPORTUNITIES

The training goals of this session are:

The lecture aims at introducing the participants to the aspects of living in multi-cultural societies. It will explain them the standards in working with vulnerable groups and inform them on Law on Free Access to Information of Public Interest.

The training on Diversity and Equal Opportunities includes 2 one hour sessions such as follows:

Aspects of living in multi-cultural societies and rights of vulnerable groups;
Obligations of courts' presidents according to the Law on Free Access to Information of Public Interest.

The content of proposed sessions is as follows:

1. Activity: *Aspects of living in multi-cultural societies and rights of vulnerable groups*

This Activity will introduce the participants to the aspects of living in multicultural societies, right on use of national minorities' languages in court process, rights of people with disabilities and rights of representatives of vulnerable groups. The lecture will be supplemented by examples of good practices. After theoretical lecture, the case study will be presented.

2. Activity: *Obligations of courts' presidents according to the Law on Free Access to Information of Public Interest*

On this Activity, the Law on Free Access to Information of Public Interest will be discussed. The participants will determine situations and information that could be made public /which may be approached and ways of making them easily accessible to citizens.

This issue is discussed from the perspective of management and not judges decision in single cases.

Session 5: PUBLIC RELATIONS

The training goals of this session are:

- To introduce the participants with definition and practical aspect of public relations;
- To present skills necessary for establishing and maintaining the professional relations with the media, (i.e. general public, citizens); quality public appearance in front of camera which content will be accepted and remembered;
- To improve internal communication.

The training on Public Relations includes 4 activities of half an hour duration and 2 workshops as it follows:

1. The basics of public relations, definition and practical aspect;
2. Relations with the media and public appearance;
3. Internal PR;
4. Communication in crisis.

The content of proposed session is as follows:

1. Activity: *The content of proposed sessions is as follows*

During this Activity, the notion of public relations will be discussed through actual definitions and contemporary theories. The session will be combination of lecturer's presentation and power point presentation.

The goal of this session is to elaborate the notion of "public relations", what is the most important in communication and what are the basic principles in every communication.

2. Activity: *Relations with the media and public appearance*

After this Activity, the participants will become familiar with basic principles of functioning of media and how different messages have been conveyed through the media. They will also learn techniques of giving statements to the media..

The goal of this session is to present skills necessary for establishing and maintaining the professional relations with the media (i.e. general public, citizens); quality public appearance in front of camera which content will be accepted and remembered.

3. Activity: *Internal PR*

This Activity will illustrate the basic principles of internal PR as well as the techniques of overcoming the problems in organization (among other things, through learning about common internal communication channels).

The goal is acceptance of techniques of internal communication improvement as process that needs to be organized and controlled.

4. Activity: *Communication in crisis*

On this Activity, the participants will be introduced to techniques of communication in crisis, how it has to be organized and prepared in advanced, how to behave in particular crisis, etc. In addition, one case study will be presented.

The goal is to enable the participants to behave adequately in crisis.

Workshops: *Public Appearance and PR in Crisis*

On this workshop, the participants will exercise the public appearance that will be recorded on camera and shown and analyzed during workshop.

The goal of this workshop is to instruct participants how to be relaxed and self-confident in front of camera.

INTERMODULAR EXERCISE

As per the UNDP Terms of Reference, the CDF is obliged to facilitate the intermodular assessment of trainees.

The intermodular assessment will be presented to the trainees at the first module. The trainees will have to prepare the presentation for the second module.

The intermodular exercise will include:

- a) The participants will prepare in written a description of one good practice example and one negative example of team work in their misdemeanour body. They will be asked to present freely their opinions and suggestions.
- b) Also the participants will prepare in written a short description of one positive and one negative example of professional relationships with major stakeholders (attorneys, prosecutors, police, citizens, Ministry of Justice, local government units, etc.)
- c) In the next phase they will have to suggest changes in team work and in building professional relationships with stakeholders
- d) The participants will be instructed to contact either CDF staff or trainers in the process of preparing the presentations.
- e) The participants will have to send the prepared presentations by e-mail or by fax to the CDF 1 week before the 2nd module.
- f) The presentations will be presented to other trainees at the second module.

Annex VII

Standard Terms of Reference

Magistrates' Trainers

Functions of the Trainer for Magistrates:

The Trainer for Magistrates is responsible for drafting curriculum in his/her field of expertise, delivering the training session(s) and for submitting a detailed report on all realized training activities.

Responsibilities:

1. **Development of Curricula:** For each training session, the Trainer is expected to develop curriculum for the training, including the identification of the objectives of the training activities in the field of the trainer's expertise, a description of training activities to be undertaken (lectures, workshops and exercises), the duration of each activity, as well as a selection of texts, articles or hand-outs which will be provided at the training. Trainers are expected to use adult-learning techniques and are encouraged to use PowerPoint Presentations.
2. **Delivery of Training:** Training activities should be realized in accordance with the dates of the training modules as per the dates agreed with the trainers, the Project Implementation Unit and UNDP. Trainers should respect the schedule of training activities.
3. **Reporting Obligations:** Trainers are expected to submit a detailed report of the realized training activities, including a description of performed training activities, analyses of the participation of trainees, a description of all materials distributed to trainees, as well as copies of such materials and a copy of their PowerPoint presentation if applicable.

ANNEX VIII

COUNCIL OF EUROPE COMMITTEE OF MINISTERS

RECOMMENDATION No. R (94) 12 OF THE COMMITTEE OF MINISTERS TO MEMBER STATES ON THE INDEPENDENCE, EFFICIENCY AND ROLE OF JUDGES

*(Adopted by the Committee of Ministers on 13 October 1994 at the
518th meeting of the Ministers' Deputies)*

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,

Having regard to Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter referred to as "the Convention") which provides that "everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law";

Having regard to the United Nations Basic Principles on the Independence of the Judiciary, endorsed by the United Nations General Assembly in November 1985;

Noting the essential role of judges and other persons exercising judicial functions in ensuring the protection of human rights and fundamental freedoms;

Desiring to promote the independence of judges in order to strengthen the Rule of Law in democratic states;

Aware of the need to reinforce the position and powers of judges in order to achieve an efficient and fair legal system;

Conscious of the desirability of ensuring the proper exercise of judicial responsibilities which are a collection of judicial duties and powers aimed at protecting the interests of all persons,

Recommends that governments of member states adopt or reinforce all measures necessary to promote the role of individual judges and the judiciary as a whole and strengthen their independence and efficiency, by implementing, in particular, the following principles:

Scope of the recommendation

1. This recommendation is applicable to all persons exercising judicial functions, including those dealing with constitutional, criminal, civil, commercial and administrative law matters.
2. With respect to lay judges and other persons exercising judicial functions, the principles laid down in this recommendation apply except where it is clear from the

context that they only apply to professional judges, such as regarding the principles concerning the remuneration and career of judges.

Principle I - General principles on the independence of judges

1. All necessary measures should be taken to respect, protect and promote the independence of judges.

2. In particular, the following measures should be taken:

a. The independence of judges should be guaranteed pursuant to the provisions of the Convention and constitutional principles, for example by inserting specific provisions in the constitutions or other legislation or incorporating the provisions of this recommendation in internal law. Subject to the legal traditions of each state, such rules may provide, for instance, the following:

i. decisions of judges should not be the subject of any revision outside any appeals procedures as provided for by law;

ii. the terms of office of judges and their remuneration should be guaranteed by law;

iii. no organ other than the courts themselves should decide on its own competence, as defined by law;

iv. with the exception of decisions on amnesty, pardon or similar, the government or the administration should not be able to take any decision which invalidates judicial decisions retroactively.

b. The executive and legislative powers should ensure that judges are independent and that steps are not taken which could endanger the independence of judges.

c. All decisions concerning the professional career of judges should be based on objective criteria, and the selection and career of judges should be based on merit, having regard to qualifications, integrity, ability and efficiency. The authority taking the decision on the selection and career of judges should be independent of the government and the administration. In order to safeguard its independence, rules should ensure that, for instance, its members are selected by the judiciary and that the authority decides itself on its procedural rules.

However, where the constitutional or legal provisions and traditions allow judges to be appointed by the government, there should be guarantees to ensure that the procedures to appoint judges are transparent and independent in practice and that the decisions will not be influenced by any reasons other than those related to the objective criteria mentioned above. These guarantees could be, for example, one or more of the following:

- i. a special independent and competent body to give the government advice which it follows in practice; or
- ii. the right for an individual to appeal against a decision to an independent authority; or
- iii. the authority which makes the decision safeguards against undue or improper influences.

d. In the decision-making process, judges should be independent and be able to act without any restriction, improper influence, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason. The law should provide for sanctions against persons seeking to influence judges in any such manner. Judges should have unfettered freedom to decide cases impartially, in accordance with their conscience and their interpretation of the facts, and in pursuance of the prevailing rules of the law. Judges should not be obliged to report on the merits of their cases to anyone outside the judiciary.

e. The distribution of cases should not be influenced by the wishes of any party to a case or any person concerned with the results of the case. Such distribution may, for instance, be made by drawing of lots or a system for automatic distribution according to alphabetic order or some similar system.

/ A case should not be withdrawn from a particular judge without valid reasons, such as cases of serious illness or conflict of interest. Any such reasons and the procedures for such withdrawal should be provided for by law and may not be influenced by any interest of the government or administration. A decision to withdraw a case from a judge should be taken by an authority which enjoys the same judicial independence as judges.

3. Judges, whether appointed or elected, shall have guaranteed tenure until a mandatory retirement age or the expiry of their term of office, where such exists.

Principle II - The authority of judges

- 1. All persons connected with a case, including state bodies or their representatives, should be subject to the authority of the judge.
- 2. Judges should have sufficient powers and be able to exercise them in order to carry out their duties and maintain their authority and the dignity of the court.

Principle III - Proper working conditions

1. Proper conditions should be provided to enable judges to work efficiently and, in particular, by:

a. recruiting a sufficient number of judges and providing for appropriate training such as practical training in the courts and, where possible, with other authorities and bodies, before appointment and during their career. Such training should be free of

charge to the judge and should in particular concern recent legislation and case-law. Where appropriate, the training should include study visits to European and foreign authorities as well as courts;

b. ensuring that the status and remuneration of judges is commensurate with the dignity of their profession and burden of responsibilities;

c. providing a clear career structure in order to recruit and retain able judges;

d. providing adequate support staff and equipment, in particular office automation and data processing facilities, to ensure that judges can act efficiently and without undue delay;

e. taking appropriate measures to assign non-judicial tasks to other persons, in conformity with Recommendation No. R (86) 12 concerning measures to prevent and reduce the excessive workload in the courts.

2. All necessary measures should be taken to ensure the safety of judges, such as ensuring the presence of security guards on court premises or providing police protection for judges who may become or are victims of serious threats.

Principle IV - Associations

Judges should be free to form associations which, either alone or with another body, have the task of safeguarding their independence and protect their interests.

Principle V - Judicial responsibilities

1. In proceedings, judges have the duty to protect the rights and freedoms of all persons.

2. Judges have the duty and should be given the power to exercise their judicial responsibilities to ensure that the law is properly applied and cases are dealt with fairly, efficiently and speedily.

3. Judges should in particular have the following responsibilities:

a. to act independently in all cases and free from any outside influence;

b. to conduct cases in an impartial manner in accordance with their assessment of the facts and their understanding of the law, to ensure that a fair hearing is given to all parties and that the procedural rights of the parties are respected pursuant to the provisions of the Convention;

c. to withdraw from a case or decline to act where there are valid reasons, and not otherwise. Such reasons should be defined by law and may, for instance, relate to serious health problems, conflicts of interest or the interests of justice;

d. where necessary, to explain in an impartial manner procedural matters to parties;

e. where appropriate, to encourage the parties to reach a friendly settlement;

/ except where the law or established practice otherwise provides, to give clear and complete reasons for their judgments, using language which is readily understandable;

g. to undergo any necessary training in order to carry out their duties in an efficient and proper manner.

Principle VI - Failure to carry out responsibilities and disciplinary offences

1. Where judges fail to carry out their duties in an efficient and proper manner or in the event of disciplinary offences, all necessary measures which do not prejudice judicial independence should be taken. Depending on the constitutional principles and the legal provisions and traditions of each state, such measures may include, for instance:

- a.* withdrawal of cases from the judge;
- b.* moving the judge to other judicial tasks within the court;
- c.* economic sanctions such as a reduction in salary for a temporary period;
- d.* suspension.

2. Appointed judges may not be permanently removed from office without valid reasons until mandatory retirement. Such reasons, which should be defined in precise terms by the law, could apply in countries where the judge is elected for a certain period, or may relate to incapacity to perform judicial functions, commission of criminal offences or serious infringements of disciplinary rules.

3. Where measures under paragraphs 1 and 2 of this article need to be taken, states should consider setting up, by law, a special competent body which has as its task to apply any disciplinary sanctions and measures, where they are not dealt with by a court, and whose decisions shall be controlled by a superior judicial organ, or which is a superior judicial organ itself. The law should provide for appropriate procedures to ensure that judges in question are given at least all the due process requirements of the Convention for instance that the case should be heard within a reasonable time and they should have a right to answer any charges.

COUNCIL OF EUROPE
COMMITTEE OF MINISTERS

EXPLANATORY MEMORANDUM
Recommendation Rec (1994)12
on independence, efficiency and role of judges

*(Adopted by the Committee of Ministers
on 13 October 1994,
at the 518th meeting of the Ministers' Deputies)*

Introduction

1. Within the framework of the activities undertaken to promote and guarantee the efficiency and fairness of civil and criminal justice, it was decided to prepare a recommendation on the independence, efficiency and role of judges.
2. Indeed, the Council of Europe includes among its aims the institution and protection of a democratic and political system characterised by the rule of law and the establishment of a constitutionally governed state, as well as the promotion and protection of human rights and fundamental freedoms.
3. The recommendation on the independence, efficiency and role of judges recognises and emphasises the pre-eminent and significant role played by judges in the implementation of these aims. The independence of judges is one of the central pillars of the rule of law. The need to promote the independence of judges is not confined to individual judges only but may have consequences for the judicial system as a whole. States should therefore bear in mind that, although a specific measure does not concern any individual judge directly, it might have consequences for the independence of judges.
4. The texts of the draft recommendation and its explanatory memorandum were prepared by the Project Group on Efficiency and Fairness of Civil Justice (CJ-JU). After examination by the European Committee on Legal Co-operation (CDCJ), the draft recommendation and its explanatory memorandum were submitted to the Committee of

Ministers of the Council of Europe. The Committee of Ministers adopted the text of the draft recommendation and authorised the publication of the explanatory memorandum to the recommendation.

5. In addition to representatives of the member states of the Council of Europe and the Commission of the European Community, the following observers attended the meetings of the project group which prepared these texts: Albania, Holy See, Latvia, Russia, the European Association of Judges Sitting in Commercial Courts and the International Association of Judges.

6. In order to establish an efficient and fair legal system, it is necessary to strengthen the position and powers of judges and to ensure the proper exercise of judicial responsibilities. When preparing this recommendation, account was taken of the United Nations Basic Principles on the Independence of the Judiciary (1985) and the procedures for the effective implementation of these principles adopted in 1989. The basic principles of the United Nations are, in relation to the draft recommendation, to be seen as a basic text expressing minimum standards which are fully compatible with the recommendation. This implies, on the one hand, that it was not always considered necessary to deal with all subjects covered by the basic principles which would therefore apply. On the other hand, where further protection of the independence of judges within the framework of the like-minded member states of the Council of Europe was considered possible, this has been reflected in the recommendation. Because of its importance, the Committee felt however that it was appropriate to insert the text of Basic Principle No. 12 in the text of the recommendation, without making any amendments to it (see principle I, paragraph 3).

7. The starting-point for the recommendation is the idea that the powers conferred on judges are counterbalanced by their duties. The recommendation fits into the framework of measures to be taken to make the judicial system fairer and more efficient. One of the cornerstones of a fair system of justice is the independence of judges. It is necessary to give judges appropriate powers guaranteeing their independence. However, such powers do not authorise them to act in an arbitrary manner. Judges are also subject to certain duties. Judicial responsibilities are accordingly determined by the relationship between the powers and the duties of judges.

8. Consequently, with the same aim of preserving the independence of judges, it is essential to make judges liable to a system of supervision which makes sure that their rights and duties are respected.

9. The recommendation calls upon the member states to adopt or reinforce, as the case may be, all measures necessary to promote the role of judges and strengthen their efficiency and independence.

10. It contains six principles which should be applied by the governments of member states. These principles relate to the independence of judges, the authority of judges, proper working conditions, the right to form associations, judicial responsibilities and the consequences of failure to carry out responsibilities and disciplinary offences. Although

the recommendation enumerates principles, it was felt necessary to give details concerning these principles, so as to provide guidance to the states implementing the recommendation. In view of the different legal traditions of the member states relating to the protection of judges, the recommendation does not seek a complete harmonisation of the law on this matter but provides examples or general rules which show the direction in which steps need to be taken.

Scope of the recommendation

11. The scope of the recommendation is not confined to specific fields of law and also covers both professional judges and lay judges, except, in the case of lay judges, with regard to the question of remuneration and certain other matters such as the requirement to have proper legal training. It covers the resolution of civil and criminal cases but also administrative law and constitutional law. The recommendation, when defining the scope, refers to persons exercising judicial functions rather than to judges as some persons exercising judicial functions in certain states which do not have the title of judges although they enjoy the same independence as judges in the exercise of their functions. For instance, some countries have a system whereby specialists perform the function of judges in cases which need highly specialised knowledge, such as auditors or experts in land surveying. Such experts exercising judicial functions cannot be compared with "lay judges" since they are often appointed because of their specialist knowledge. A number of these recommendations would also be appropriate for such persons. For reasons of convenience, it was however felt appropriate to use the term "judge" for any person exercising judicial functions. In any case, it is a matter for the internal law, and in particular the constitutions, to decide who are considered judges for the purposes of this recommendation.

The recommendation does not interfere with systems designated to discharge the courts of minor cases in, for instance, criminal or administrative matters (for example the so-called *ordonnance pénale* in France or the *Ordnungswidrigkeiten* in Germany). On the contrary, the Council of Europe has previously encouraged the adoption of such measures.¹

Commentary on the principles

Principle I General principles on the independence of judges

12. Support for the independence of the judges is expressed in the first principle which calls for all necessary measures to be taken to respect, protect and promote the independence of judges. The scope of the concept of "independence of judges" is not confined to judges themselves but covers the judicial system as a whole.

13. The independence of judges should be guaranteed pursuant to the provisions of the Convention and constitutional principles (see paragraph 2. a, of this principle). This requirement implies that the independence of judges must be guaranteed in one way or

¹ See Recommendation No. R (87) 18 on the simplification of criminal justice.

another under domestic law. Depending on the legal system of each country, this guarantee may take the form of a written or unwritten constitution, a treaty or convention incorporated in the national legal system, or even written or unwritten principles of superior status, such as general legal principles.

14. With regard to the measures for implementing this principle, several aspects should be considered, taking into account the legal traditions of each state. The law should lay down rules on how and when appeals may be made against judges' decisions to courts

enjoying judicial independence. A revision of decisions outside that legal framework, by the government or the administration would clearly not be admissible. Similarly, the term of office of judges and their remuneration should be guaranteed by law. As to the term of office, the recommendation provides specific rules on when it would be admissible to suspend judges or permanently remove them (see Principle VI). Moreover, a specific recommendation (see Principle III, paragraph c) is made in respect of the remuneration of judges. Courts should also be able to decide on their own competence, as defined by the law and the administration or government should not be able to take decisions which render the judges' decisions obsolete, with the exception of very special cases of amnesty, pardon, clemency or similar situations. Such exceptions are known in every democracy and find their justification in humanitarian principles of superior value.

15. The independence of judges is first and foremost linked to the maintenance of the separation of powers (see paragraph 2.b of this principle). The organs of the executive and the legislature have a duty to ensure that judges are independent. Some of the measures taken by these organs may directly or indirectly interfere with or modify the exercise of judicial power. Consequently, the organs of the executive and legislative branches must refrain from adopting any measure which could undermine the independence of judges. In addition pressure groups and other interest groups should not be allowed to undermine this independence.

16. It is essential that the independence of judges should be guaranteed when they are selected and throughout their professional career (see paragraph 2.c of this principle) and that there should be no discrimination.² All decisions concerning the professional life of judges should be based on objective criteria and even though each member state has its own method of recruitment, election or appointment, the selection of candidates for the judiciary and the career of judges must be based on merit. In particular where the decision to appoint judges is taken by organs which are not independent of the government or the administration or, for instance, by the parliament or the president of the state, it is important that such decisions are taken only on the basis of objective criteria.

² The United Nations Basic Principles on the Independence of the Judiciary provides in paragraph 10:

"Persons selected for judicial office shall be individuals of integrity and ability with appropriate training or qualifications in law. Any method of judicial selection shall safeguard against judicial appointments for improper motives. In the selection of judges, there shall be no discrimination against a person on the grounds of race, colour, sex, religion, political or other opinion, national or social origin, property, birth or status, except that a requirement that a candidate for judicial office must be a national of the country concerned shall not be considered discriminatory."

All decisions affecting the professional career of judges should be based on objective criteria. It is not only at the time of appointment as judge that judicial independence needs to be preserved but throughout the entire professional career as judge. For instance, a decision to promote a judge to another position could in practice be a disguised sanction for an "inconvenient judge". Such a decision would of course not be compatible with the terms of the recommendation. In order to deal with such situations, some states, such as Italy, have adopted a system of separation of judicial careers and judicial functions.

The recommendation seeks (paragraph 2.c, sub-paragraph 1) to propose standards which should be upheld in all member states, ensuring that decisions are taken without any undue influence from the executive branch or the administration.

Although the recommendation proposes an ideal system for judicial appointments, it was recognised (see sub-paragraph 2) that a number of the member states of the Council of Europe have adopted other systems, often involving the government, parliament or the head of state. The recommendation does not propose to change these systems which have been in operation for decades or centuries and which in practice work well. But also in states where the judges are formally appointed by the government, there should be some kind of system whereby the appointment procedures of judges are transparent and independent in practice. In some states, this is ensured by special independent and competent bodies which give advice to the government, the parliament or the head of state which in practice is followed or by providing a possibility of appeal by the person concerned. Other states have opted for systems involving wide consultations with the judiciary, although the formal decision is taken by a member of government.

It was not felt appropriate to deal explicitly in the text of the recommendation with systems where appointments are made by the president or the parliament, although the Committee was of the opinion that the general principles on appointments would apply also for such systems.

An important aspect of ensuring that the most suitable persons are appointed as judges is the training of lawyers. Professional judges must have proper legal training. In addition, training contributes to judicial independence. If judges have adequate theoretical and practical knowledge as well as skills, it would mean that they could act more independently against the administration and, if they so wish, could change legal profession without necessarily having to continue to be judges.

17. In the decision-making process, judges should be able to act independently (see paragraph 2.d of this principle). The judge should have unfettered freedom to decide a case impartially, in accordance with his conscience and his interpretation of the facts, and in pursuance of the prevailing rules of law. The purpose of this provision is to ensure that no pressure of any kind and from any quarter obliges the judge to deliver judgment along the lines desired by a party, the administration, the government or any other person. Attempts to corrupt judges should be punished under criminal law. In some states, judges are obliged to report, for instance, on backlog of cases to the president of the court or to

official authorities. Such reporting obligations, which are necessary for an efficient management of scarce resources in courts and for planning purposes are of course compatible with the concept of judicial independence. However, as it could be used as a means of exerting influence on judges, they should not be obliged to report on the merits of the cases with a view to justifying their decisions.

18. There are various possible systems for the distribution of cases, such as the drawing of lots, distribution in accordance with the alphabetical order of the names of the judges or by giving cases to the divisions of the court in an order specified beforehand (so-called "automatic distribution") or the sharing out of cases among judges by decision of the president of the court (see paragraph 2.e of this principle). What matters is not so much the system of distribution, but the fact that the actual distribution should not be tainted by outside influence and should not benefit one of the parties. In some states, a decision by the president of the court is considered acceptable. Appropriate rules for substituting judges could be provided for within the framework of the rules governing the distribution of cases. This would ensure that where, as may occur relatively frequently (e.g. illness, vacation), a judge is unable to hear a case it is dealt with properly. In that way extraordinary decisions (see paragraph 2.f of this principle) would be necessary only in a limited number of cases. Rules for the substitution of judges should take account of the period of absence of the judge.

19. Nevertheless, it might on some occasions be necessary to withdraw a particular case from a judge. Therefore, and out of the same concern to preserve the independence of the judicial system, the law should provide that a case should not be withdrawn from a judge by the appropriate body without valid reasons (see paragraph 2.f of this principle). The aim is to prevent a case from being withdrawn from a judge by the executive because the likely decision would not correspond to the expectations of, say, the government or the administration.

20. A case may not be withdrawn from a judge unless there are valid reasons and the decision is taken by the competent body. The concept of "valid reasons" covers all grounds of withdrawal which do not affect the independence of judges. Reasons of efficiency may also constitute valid grounds. For example, when a judge faces a backlog in his caseload due to illness, it is possible for cases to be withdrawn from him and assigned to other judges. Similarly, it may prove necessary to withdraw cases from judges who have been assigned a time-consuming case which may prevent them from dealing with other cases already assigned to them. It may prove necessary for the list of valid reasons to be determined by statute. In no event does this provision affect the right of parties to withdraw a case.

21. With regard to the question of the possibility for a judge to withdraw from a case, see Principle V (paragraph 3.c).

Principle II - The authority of the judges

22. In order to ensure that the judge enjoys the respect due to him as a judge and that the proceedings are conducted efficiently and smoothly, all persons connected with a case (e.g. parties, witnesses, experts) must be subject to the authority of the judge in accordance with domestic law. State bodies or their representatives must also submit to the authority of the judge.

23. Judges should have available to them the necessary practical measures and appropriate powers to maintain order in their courts. Once such powers are allocated to judges, they have a responsibility to prevent the occurrence of situations which call in to question their independence.

24. By way of example, reference may be made to the contempt of court procedures which exist in certain member states. In addition, the presence of security guards at hearings could be useful for the purpose of ejecting persons who disturb public order.

Principle III - Proper working conditions

25. Proper working conditions for judges are a particularly noteworthy aspect of the arrangements for improving the efficiency and fairness of justice. Such working conditions, to which judges are entitled, derive in fact from the powers bestowed on them and the independence they are required to exercise.

26. The following measures will contribute to the provision of proper conditions enabling judges to work efficiently.

27. It is necessary to recruit judges in sufficient numbers to avert an excessive workload and enable the proceedings already started, regardless of their volume, to be finalised within a reasonable time (see paragraph 1.a). States may wish to give consideration to the possibility of allowing single judges to deal with cases of first instance.³

28. With a view to ensuring that the law is properly applied, it is not enough merely to require, at the selection stage, that judges possess suitable qualifications; they must also be given appropriate training before their appointment and during their career. It lies with member states to determine the content of such training although the recommendation proposes some fields where training is of importance. In some cases, training prior to appointment may be very limited, for example when the national system provides for the appointment of former practising lawyers as judges. In the course of their career, judges must receive training which keeps them abreast of important new developments, such as recent trends in legislation and case-law, social trends and relevant studies on topical issues or problems.

29. Status and remuneration are important factors determining appropriate working conditions (see paragraph 1.b). The status accorded to judges should be commensurate

³ Paragraph V of Recommendation No. R (86) 12 concerning measures to prevent and reduce the excessive workload in the courts provides "Generalising, if not yet so, trial by a single judge at first instance in all appropriate matters".

with the dignity of their profession and their remuneration should represent sufficient compensation for their burden of responsibilities. These factors are essential to the independence of judges, especially the recognition of the importance of their role as judges, expressed in terms of due respect and adequate financial remuneration.

30. Paragraph 1 .b is closely bound up with the reference in Principle I to all decisions concerning the professional life of judges, which obviously includes their status and their remuneration.

31. The quality of judicial decisions depends primarily on the quality and competence of judges. Some member states have great difficulty in attracting the best lawyers to the judge's profession and retaining their services. There is intense competition with the private sector because the latter offers more attractive career prospects. Paragraph 1.c is therefore aimed at encouraging member states to make efforts to ensure that such lawyers can expect a successful career as judges. To this end, they must improve career structures, provide for genuine opportunities for promotion and increase remuneration.

32. Judges will also be able to work more efficiently and deliver their judgments promptly if they are assisted by adequate back-up staff and equipment (see paragraph 1.d). In order to ensure improved management of courts and of case files, it is necessary to make all office automation and data processing facilities available to judges.

33. Finally, in order to ease the burden on judges and enable them to concentrate on their work of hearing and determining cases, it is important to relieve them of all non-judicial tasks which can be assigned to other persons (see paragraph 1.f). Judges are not normally themselves empowered to delegate certain tasks to other persons, but it is the law in the broad sense of the term which would authorise the transfer of such non-judicial tasks.⁴

34. However, delegation cannot be done in such a manner that it will endanger the judicial independence of judges. Judicial tasks should, of course, remain within the exclusive purview of the judge.

35. A final aspect in relation to working conditions concerns the safety and physical protection of judges (see paragraph 2). Member states should provide adequate facilities to ensure the protection of judges when this is necessary. While protection is needed more especially for judges dealing with criminal cases, it may also be needed for judges handling civil or commercial cases. The presence of security guards on court premises and police protection for judges who are the victims of serious threats are measures which could be envisaged.

Principle IV - Associations

⁴ See also Recommendation No. R (86) 12 of the Committee of Ministers concerning measures to prevent and reduce the excessive workload in the courts, and in particular the appendix thereto (examples of non-judicial tasks of which judges in some states could be relieved according to the particular circumstances of each country).

36. Under this principle, judges are given the right to take collective action to safeguard their professional independence and protect their interests. To this end, judges are free to form associations whose activities are confined to defending the independence and the interests of the profession. Such associations may, for example, take part in salary negotiations with the Ministry of Justice or contribute to the training of judges. The associations act either alone or with another body.

37. In some member states, judicial bodies or the ministry of justice have a hand in the administration of the courts and tribunals. Once again, such intervention must always be based on respect for the independence of judges.

Principle V - Judicial responsibilities

38. The independent allotted task of judges is that of safeguarding the rights and freedoms of all persons within the scope of their duty to administer justice (see paragraph 1). The judge is responsible for protecting the rights and freedoms granted to individuals. This obligation should not only be seen as a duty to protect the minimum rights as expressed in the European Convention of Human Rights. The obligation goes further but it is difficult to define in precise terms its scope. Ultimately, the obligation has to do with the defence of democracy and the rule of law, safeguarding against oppression and the totalitarian state as expressed in the Statute of the Council of Europe.

39. This principle, which deals with the responsibilities of the judge, covers the relationship between the judge's duties and powers. Judges should be given appropriate powers to assure them of total independence in the fulfilment of their tasks. Judges have a duty to exercise the powers bestowed on them (see paragraph 2).

40. Judges should be given proper working conditions to ensure that they are able to carry out their responsibilities (see Principle III). A balance is struck between the right of judges to adequate working conditions and their responsibility for the use of the resources placed at their disposal, but a lack of adequate working conditions is no excuse for failing to carry out the judicial responsibilities referred to in paragraph 3.

41. Paragraph 3 specifies several responsibilities entrusted to judges.

a. First of all, it is incumbent on judges to act independently in all cases, unaffected by any outside influence. This does not apply to cases where a lower court is bound by a higher court in respect of points of law.

b. Independent judges should give impartial decisions based solely on an assessment of the facts and their understanding of the law. Sub-paragraph 3.b refers expressly to the principle of fairness and the rights of the parties as enshrined in the European Convention on Human Rights, more particularly in Article 6.1 of that Convention, which stipulates that "everyone is entitled to a fair

and public hearing within a reasonable time by an independent and impartial tribunal established by law".

c. Judges have an obligation to give judgment in the cases assigned to them. This responsibility counterbalances Principle I, paragraph 2.f. If a case cannot be withdrawn from a judge by the appropriate body without valid reasons, judges are also not entitled themselves to withdraw from a case without valid reasons. On the other hand, where such reasons exist, judges should have an obligation to withdraw from the case. This twofold requirement contributes to guaranteeing the independence of judges. This responsibility is more particularly applicable to situations where judges withdraw from cases solely because the judgments to be delivered would be unpopular though justified. However, judges can disqualify themselves if there is a conflict of interest or any other valid reason. A "valid reason" can be defined by legislation or case law. Other examples of valid reasons are serious health problems or the interests of justice. This latter concept is difficult to define but relates to some extent to the principle that "justice must not only be done, but must also be seen to be done". For instance, if a case concerns a neighbour of a judge and the judge does not know this neighbour, there is no conflict of interest. However, the judge may consider it necessary to withdraw from the case in the interests of justice so as not to cast any shadow of a doubt over the impartiality of the court.

d. It is also the duty of the judge, in the interests of justice, to give an impartial explanation of certain procedural matters in appropriate cases to the parties. In particular, parties who are not represented by lawyers often need explanations concerning the procedure and judges must ensure that such parties are sufficiently informed to enable them to understand the proceedings.

e. The responsibility of encouraging the parties, where appropriate, to reach a friendly settlement underscores the importance of the conciliatory role played by the judge for the sake of efficiency of justice. In addition, it is the natural function of the judge to secure the reconciliation of the parties: discussion is better than litigation. Judges must however carry out this task with tact and sense and in such a manner that their impartiality cannot be questioned.

f. Again in the interests of guaranteeing the efficiency and fairness of justice, judges must give clear and complete reasons for their judgments, which as far as possible should be comprehensible to the parties. They should try to avoid using complex words when there are more common synonyms, or quotations in a foreign language when an equivalent exists in the language of the country. The obligation to give reasons is, however, not absolute. In some states, it is not necessary to give reasons in specific types of cases, for instance judgments by default or which are based on the defendant's approval (Germany), where a jury has tried the case or in matters concerning provisional measures (Malta) or where a court of appeal does not change the decision of the district court (Sweden).

Usually, such situations dispensing from the main principle are defined by law or, at least, established in long standing practice of the courts.

g. In order to counterbalance the obligation placed on states to provide for appropriate training for judges before their appointment and during their career (Principle III, paragraph 1.a), judges should participate in any training needed for the efficient and proper performance of their duties. Indeed, if member states make training facilities available, judges should use them. This responsibility is more particularly concerned with the obligation to keep abreast of recent changes in legislation or case law.

Principle VI - Failure to carry out responsibilities and disciplinary offences

42. This final principle places an obligation on judges to exercise their powers and assume their responsibilities. Like any other representative of one of the branches of state authority, judges are subject to monitoring of their compliance with this obligation.

43. When judges fail to carry out their duties in an efficient and proper manner, appropriate measures must be taken. Such measures may, for instance, include, depending on the legal traditions of the state, withdrawal of cases from the judge, moving the judge to other judicial tasks within the court, economic sanctions such as a reduction of salary for a temporary period or suspension (see paragraph 1 of this principle). It goes without saying that taking such measures must remain exceptional in order to preserve judicial independence. It lies with the member states to decide which is the appropriate body for monitoring judges' activities, which is why the recommendation in paragraph 3 only requests the member states to "consider" setting up a special competent body. It should be possible to appeal against decisions of this body to a court. It could be a judicial body but other bodies, such as the ministry of justice, fulfil this task in some member states. Any measure taken by the supervisory body must be based on respect for the independence of judges. For example a ministry should not, under the pretext of exercising its supervisory authority, be allowed to withdraw a case from a judge whose decision does not appear likely to be consistent with the wishes of the administration. However, if a judge faces a substantial backlog in his caseload, the president of the court, a higher judicial authority or the ministry of justice may decide to undertake an investigation into the reasons for this state of affairs. In such cases, the requirement of efficiency of justice does not impair the independence of the judge.

44. Where, according to domestic law, judges are alleged to have committed disciplinary offences, it is essential that any proceedings brought against them should safeguard their independence and that any competent tribunal or body should be independent and impartial. In some member states, a judge suspected of having committed a disciplinary offence is brought before a tribunal composed of judges or composed of judges and other persons not belonging to the judiciary. Other member states have no real disciplinary courts or tribunals. The only disciplinary sanction in such countries is dismissal. In certain countries only the national parliament is entitled to dismiss judges of higher courts from their posts. In conclusion: the fact that the tribunal

conducting the disciplinary proceedings does not fall under the jurisdiction of judges or is not subject to a degree of influence by judges is not a source of difficulty provided that the independence of the tribunal or body and the impartiality of the proceedings are respected.

45. Paragraph 2 takes account of the different circumstances in which judges may be removed from office before the age of retirement.

46. The principle of absolute security of tenure for judges given permanent appointments is aimed at guaranteeing their independence and ensures that a permanently appointed judge cannot be removed from office without valid reasons before he reaches the mandatory retirement age. However, some member states do not guarantee security of tenure for judges up to the age for retirement. This applies to cases where either judges have to be re-elected after a certain period or some judges undergo a period of "probation" when they first take up their duties, during which they can be dismissed.

47. The concept of "valid reasons" covers cases involving disciplinary offences or incapacity. It goes without saying that, in dismissal proceedings, judges enjoy the same rights and procedural guarantees as any other party to litigation. Reference should also be made to the United Nations Basic Principles on the Independence of the Judiciary.⁵

⁵ Paragraph 19 of the United Nations Basic Principles provides: "All disciplinary, suspension or removal proceedings shall be determined in accordance with established standards of judicial conduct."

ANNEX IX

EUROPEAN CHARTER ON THE STATUTE FOR JUDGES

The participants at the multilateral meeting on the statute for judges in Europe, organized by the Council of Europe, between 8-10 July 1998,

Having regard to Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms which provides that "everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law" ;

Having regard to the United Nations Basic Principles on the Independence of the Judiciary, endorsed by the United Nations General Assembly in November 1985;

Having referred to Recommendation No R (94) 12 of the Committee of Ministers to member states on the independence, efficiency and role of judges, and having made their own, the objectives which it expresses ;

Being concerned to see the promotion of judicial independence, necessary for the strengthening of the pre-eminence of law and for the protection of individual liberties within democratic states, made more effective ;

Conscious of the necessity that provisions calculated to ensure the best guarantees of the competence, independence and impartiality of judges should be specified in a formal document intended for all European States ;

Desiring to see the judges' statutes of the different European States take into account these provisions in order to ensure in concrete terms the best level of guarantees;

Have adopted the present European Charter on the statute for judges.

1. GENERAL PRINCIPLES

1.1. The statute for judges aims at ensuring the competence, independence and impartiality which every individual legitimately expects from the courts of law and from every judge to whom is entrusted the protection of his or her rights. It excludes every provision and every procedure liable to impair confidence in such competence, such independence and such impartiality. The present Charter is composed hereafter of the provisions which are best able to guarantee the achievement of those objectives. Its provisions aim at raising the level of guarantees in the various European States. They cannot justify modifications in national statutes tending to decrease the level of guarantees already achieved in the countries concerned.

1.2. In each European State, the fundamental principles of the statute for judges

are set out in internal norms at the highest level, and its rules in norms at least at the legislative level.

1.3. In respect of every decision affecting the selection, recruitment, appointment, career progress or termination of office of a judge, the statute envisages 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 following methods guaranteeing the widest representation of the judiciary.

1.4. The statute gives to every judge who considers that his or her rights under the statute, or more generally his or her independence, or that of the legal process, are threatened or ignored in any way whatsoever, the possibility of making a reference to such an independent authority, with effective means available to it of remedying or proposing a remedy.

1.5. Judges must show, in discharging their duties, availability, respect for individuals, and vigilance in maintaining the high level of competence which the decision of cases requires on every occasion - decisions on which depend the guarantee of individual rights and in preserving the secrecy of information which is entrusted to them in the course of proceedings.

1.6. The State has the duty of ensuring that judges have the means necessary to accomplish their tasks properly, and in particular to deal with cases within a reasonable period.

1.7. Professional organizations set up by judges, and to which all judges may freely adhere, contribute notably to the defence of those rights which are conferred on them by their statute, in particular in relation to authorities and bodies which are involved in decisions regarding them.

1.8. Judges are associated through their representatives and their professional organizations in decisions relating to the administration of the courts and as to the determination of their means, and their allocation at a national and local level. They are consulted in the same manner over plans to modify their statute, and over the determination of the terms of their remuneration and of their social welfare.

2. SELECTION, RECRUITMENT, INITIAL TRAINING

2.1. The rules of the statute relating to the selection and recruitment of judges by an independent body or panel, base the choice of candidates on their ability to assess freely and impartially the legal matters which will be referred to them, and to apply the law to them with respect for individual dignity. The statute excludes any candidate being ruled out by reason only of their sex, or ethnic or social origin,

or by reason of their philosophical and political opinions or religious convictions.

2.2. The statute makes provision for the conditions which guarantee, by requirements linked to educational qualifications or previous experience, the ability specifically to discharge judicial duties.

2.3. The statute ensures by means of appropriate training at the expense of the State, the preparation of the chosen candidates for the effective exercise of judicial duties. The authority referred to at paragraph 1.3 hereof, ensures the appropriateness of training programmes and of the organization which implements them, in the light of the requirements of open-mindedness, competence and impartiality which are bound up with the exercise of judicial duties.

3. APPOINTMENT AND IRREMOVABILITY

3.1. The decision to appoint a selected candidate as a judge, and to assign him or her to a tribunal, are taken by the independent authority referred to at paragraph 1.3 hereof or on its proposal, or its recommendation or with its agreement or following its opinion.

3.2. The statute establishes the circumstances in which a candidate's previous activities, or those engaged in by his or her close relations, may, by reason of the legitimate and objective doubts to which they give rise as to the impartiality and independence of the candidate concerned, constitute an impediment to his or her appointment to a court.

3.3. Where the recruitment procedure provides for a trial period, necessarily short, after nomination to the position of judge but before confirmation on a permanent basis, or where recruitment is made for a limited period capable of renewal, the decision not to make a permanent appointment or not to renew, may only be taken by the independent authority referred to at paragraph 1.3 hereof, or on its proposal, or its recommendation or with its agreement or following its opinion. The provisions at point 1.4 hereof are also applicable to an individual subject to a trial period.

3.4. A judge holding office at a court may not in principle be appointed to another judicial office or assigned elsewhere, even by way of promotion, without having freely consented thereto. An exception to this principle is permitted only in the case where transfer is provided for and has been pronounced by way of a disciplinary sanction, in the case of a lawful alteration of the court system, and in the case of a temporary assignment to reinforce a neighbouring court, the maximum duration of such assignment being strictly limited by the statute, without prejudice to the application of the provisions at paragraph 1.4 hereof.

4. CAREER DEVELOPMENT

4.1. When it is not based on seniority, a system of promotion is based exclusively on the qualities and merits observed in the performance of duties entrusted to the judge, by means of objective appraisals performed by one or several judges and discussed with the judge concerned. Decisions as to promotion are then pronounced by the authority referred to at paragraph 1.3 hereof or on its proposal, or with its agreement. Judges who are not proposed with a view to promotion must be entitled to lodge a complaint before this authority.

4.2. Judges freely carry out activities outside their judicial mandate including those which are the embodiment of their rights as citizens. This freedom may not be limited except in so far as such outside activities are incompatible with confidence in, or the impartiality or the independence of a judge, or his or her required availability to deal attentively and within a reasonable period with the matters put before him or her. The exercise of an outside activity, other than literary or artistic, giving rise to remuneration, must be the object of a prior authorization on conditions laid down by the statute.

4.3. Judges must refrain from any behaviour, action or expression of a kind effectively to affect confidence in their impartiality and their independence.

4.4. The statute guarantees to judges the maintenance and broadening of their knowledge, technical as well as social and cultural, needed to perform their duties, through regular access to training which the State pays for, and ensures its organization whilst respecting the conditions set out at paragraph 2.3 hereof.

5. LIABILITY

5.1. The dereliction by a judge of one of the duties expressly defined by the statute, may only give rise to a sanction upon the decision, following the proposal, the recommendation, or with the agreement of a tribunal or authority composed at least as to one half of elected judges, within the framework of proceedings of a character involving the full hearing of the parties, in which the judge proceeded against must be entitled to representation. The scale of sanctions which may be imposed is set out in the statute, and their imposition is subject to the principle of proportionality. The decision of an executive authority, of a tribunal, or of an authority pronouncing a sanction, as envisaged herein, is open to an appeal to a higher judicial authority.

5.2. Compensation for harm wrongfully suffered as a result of the decision or the behaviour of a judge in the exercise of his or her duties is guaranteed by the State. The statute may provide that the State has the possibility of applying, within a fixed limit, for reimbursement from the judge by way of legal proceedings in the

case of a gross and inexcusable breach of the rules governing the performance of judicial duties. The submission of the claim to the competent court must form the subject of prior agreement with the authority referred to at paragraph 1.3 hereof.

5.3. Each individual must have the possibility of submitting without specific formality a complaint relating to the miscarriage of justice in a given case to an independent body. This body has the power, if a careful and close examination makes a dereliction on the part of a judge indisputably appear, such as envisaged at paragraph 5.1 hereof, to refer the matter to the disciplinary authority, or at the very least to recommend such referral to an authority normally competent in accordance with the statute, to make such a reference.

6. REMUNERATION AND SOCIAL WELFARE

6.1. Judges exercising judicial functions in a professional capacity are entitled to remuneration, the level of which is fixed so as to shield them from pressures aimed at influencing their decisions and more generally their behaviour within their jurisdiction, thereby impairing their independence and impartiality.

6.2. Remuneration may vary depending on length of service, the nature of the duties which judges are assigned to discharge in a professional capacity, and the importance of the tasks which are imposed on them, assessed under transparent conditions.

6.3. The statute provides a guarantee for judges acting in a professional capacity against social risks linked with illness, maternity, invalidity, old age and death.

6.4. In particular the statute ensures that judges who have reached the legal age of judicial retirement, having performed their judicial duties for a fixed period, are paid a retirement pension, the level of which must be as close as possible to the level of their final salary as a judge.

7. TERMINATION OF OFFICE

7.1. A judge permanently ceases to exercise office through resignation, medical certification of physical unfitness, reaching the age limit, the expiry of a fixed legal term, or dismissal pronounced within the framework of a procedure such as envisaged at paragraph 5.1 hereof.

7.2. The occurrence of one of the causes envisaged at paragraph 7.1 hereof, other than reaching the age limit or the expiry of a fixed term of office, must be verified by the authority referred to at paragraph 1.3 hereof.

EXPLANATORY MEMORANDUM
TO
THE EUROPEAN CHARTER ON THE
STATUTE FOR JUDGES

1. GENERAL PRINCIPLES

The provisions of the European Charter cover not only professional but also non-professional judges, because it is important that all judges should enjoy certain safeguards relating to their recruitment, incompatibilities, conduct outside, and the termination of their office.

However, the Charter also lays down specific provisions on professional judges, and in fact this specificity is inherent in certain concepts such as careers.

1.1 The Charter endeavours to define the content of the statute for judges on the basis of the objectives to be attained: ensuring the competence, independence and impartiality which all members of the public are entitled to expect of the courts and judges entrusted with protecting their rights. The Charter is therefore not an end in itself but rather a means of guaranteeing that the individuals whose rights are to be protected by the courts and judges have the requisite safeguards on the effectiveness of such protection.

These safeguards on individuals' rights are ensured by judicial competence, in the sense of ability, independence and impartiality. These are positive references because the judge's statute must strive to guarantee them; however, they are also negative because the statute must not include any element which might adversely affect public confidence in such competence, independence and impartiality.

The question arose whether the provisions of the Charter should be mandatory, i.e. whether it should be made compulsory to include them in national statutes regulating the judiciary, or whether they should have the force of recommendations, so that different provisions deemed capable of ensuring equivalent guarantees could be implemented instead.

The latter approach could be justified by a reluctance to criticise national systems in which a long-standing, well-established practice has ensured effective guarantees on statutory protection of the judiciary, even if the system barely mentions such protection.

However, it has also been argued that in a fair number of countries, including new Council of Europe member States, which do not regulate the exercise by political authorities of powers in the area of appointing, assigning, promoting or terminating the office of judges, the safeguards on competence, independence and impartiality are ineffective.

This is why, even though the Charter's provisions are not actually mandatory, they are presented as being the optimum means of ensuring that the aforementioned objectives are attained.

Many of the Charter's provisions are inapplicable in systems where judges are directly elected by the citizens. It would have been impossible to draw up a Charter exclusively comprising provisions compatible with such elective systems, as this would have reduced the text to the lowest common denominator. Nor is the Charter aimed at "invalidating" elective systems, because where they do exist they may be regarded by nationals of the countries concerned as

"quintessentially democratic". We might consider that the provisions apply as far as possible to systems in which the judiciary is elected. For instance, the provisions set out in paragraphs 2.2 and 2.3 (first sentence) are certainly applicable to such systems, for which they provide highly appropriate safeguards.

The provisions of the Charter aim to raise the level of guarantees in the various European States. The importance of such raising will depend on the level already achieved in a country. But the provisions of the Charter must not in any way serve as the basis for modifying national statutes so as on the contrary to decrease the level of guarantees already achieved in any one country.

1.2 The fundamental principles constituting a statute for judges, determining the safeguard on the competence, independence and impartiality of the judges and courts, must be enacted in the normative rules at the highest level, that is to say in the Constitution, in the case of European States which have established such a basic text. The rules included in the statute will normally be enacted at the legislative level, which is also the highest level in States with flexible constitutions.

The requirement to enshrine the fundamental principles and rules in legislation or the Constitution protects the latter from being amended under a cursory procedure unsuited to the issues at stake. In particular, where the fundamental principles are enshrined in the Constitution, it prevents the enactment of legislation aimed at or having the effect of infringing them.

In stipulating that these principles must be included in domestic legal systems, the Charter is not prejudging the respect that is due under such systems for protective provisions set out in international instruments binding upon the European States. This is especially true because the Charter takes the foremost among these provisions as a source of inspiration, as stated in the preamble.

1.3 The Charter provides for the intervention of a body independent from the executive and the legislature where a decision is required on the selection, recruitment or appointment of judges, the development of their careers or the

termination of their office.

The wording of this provision is intended to cover a variety of situations, ranging from the mere provision of advice for an executive or legislative body to actual decisions by the independent body.

Account had to be taken here of certain differences in the national systems. Some countries would find it difficult to accept an independent body replacing the political body responsible for appointments. However, the requirement in such cases to obtain at least the recommendation or the opinion of an independent body is bound to be a great incentive, if not an actual obligation, for the official appointments body. In the spirit of the Charter, recommendations and opinions of the independent body do not constitute guarantees that they will in a general way be followed in practice. The political or administrative authority which does not follow such recommendation or opinion should at the very least be obliged to make known its reasons for its refusal so to do.

The wording of this provision of the Charter also enables the independent body to intervene either with a straightforward opinion, an official opinion, a recommendation, a proposal or an actual decision.

The question arose of the membership of the independent body. The Charter at this point stipulates that at least one half of the body's members should be judges elected by their peers, which means that it wants neither to allow judges to be in a minority in the independent body nor to require them to be in the majority. In view of the variety of philosophical conceptions and debates in European States, a reference to a minimum of 50% judges emerged as capable of ensuring a fairly high level of safeguards while respecting any other considerations of principle prevailing in different national systems.

The Charter states that judges who are members of the independent body should be elected by their peers, on the grounds that the requisite independence of this body precludes the election or appointment of its members by a political authority belonging to the executive or the legislature.

There would be a risk of party-political bias in the appointment and role of judges under such a procedure. Judges sitting on the independent body are expected, precisely, to refrain from seeking the favour of political parties or bodies that are themselves appointed or elected by or through such parties.

Finally, without insisting on any particular voting system, the Charter indicates that the method of electing judges to this body must guarantee the widest representation of judges.

1.4 The Charter enshrines the "right of appeal" of any judge who considers that his or her rights under the statute or more generally independence, or that of the

legal process, is threatened or infringed in any way, so that he or she can refer the matter to an independent body as described above.

This means that judges are not left defenceless against an infringement of their independence. The right of appeal is a necessary safeguard because it is mere wishful thinking to set out principles to protect the judiciary unless they are consistently backed with mechanisms to guarantee their effective implementation. The intervention of the independent body before any decision is taken on the judge's individual status does not necessarily cover all possible situations in which his or her independence is affected, and it is vital to ensure that judges can apply to this body on their own initiative.

The Charter stipulates that the body thus applied to must have the power to remedy the situation affecting the judge's independence of its own accord, or to propose that the competent authority remedy it. This formula takes account of the diversity of national systems, and even a straightforward recommendation from an independent body on a given situation provides a considerable incentive for the authority in question to remedy the situation complained of.

1.5 The Charter sets out the judge's main duties in the exercise of his or her functions. "Availability" refers both to the time required to judge cases properly and to the attention and alertness that are obviously required for such important duties, since it is the judge's decision that safeguards individual rights. Respect for individuals is particularly vital in positions of power such as that occupied by the judge, especially since individuals often feel very vulnerable when confronted with the judicial system. This paragraph also mentions the judge's obligation to respect the confidentiality of information which comes to his or her attention in the course of proceedings. It ends by pointing out that judges must ensure that they maintain the high level of competence that the hearing of cases demands. This means that the high level of competence and of ability is a constant requirement for the judge in examining and adjudicating on cases, and also that he or she must maintain this high level, if necessary through further training. As is pointed out later in the text, judges must be granted access to training facilities.

1.6 The Charter makes it clear that the State has the duty of ensuring that judges have the means necessary to accomplish their tasks properly, and in particular to deal with cases within a reasonable period.

Without explicit indication of this obligation which is the responsibility of the State, the justifications of the propositions related to the responsibility of the judges would be deteriorated.

1.7 The Charter recognises the role of professional associations formed by judges, to which all judges are freely entitled to adhere, which precludes any form of legal discrimination vis-à-vis the right to join them. It also points out that such associations contribute in particular to the defence of judges' statutory rights

before such authorities and bodies as may be involved in decisions affecting them. Judges may therefore not be prohibited from forming or adhering to professional associations.

Although the Charter does not assign these associations exclusive responsibility for defending judges' statutory rights, it does indicate that their contribution to such defence before the authorities and bodies involved in decisions affecting judges must be recognised and respected. This applies, *inter alia*, to the independent authority referred to in paragraph 1.3.

1.8 The Charter provides that judges should be associated through their representatives, particularly those that are members of the authority referred to in paragraph 1.3, and through their professional associations, with any decisions taken on the administration of the courts, the determination of the courts' budgetary resources and the implementation of such decisions at the local and national levels.

Without advocating any specific legal form or degree of constraint, this provision lays down that judges should be associated in the determination of the overall judicial budget and the resources earmarked for individual courts, which implies establishing consultation or representation procedures at the national and local levels. This also applies more broadly to the administration of justice and of the courts. The Charter does not stipulate that judges should be responsible for such administration, but it does require them not to be left out of administrative decisions.

Consultation of judges by their representatives or professional associations on any proposed change in their statute or any change proposed as to the basis on which they are remunerated, or as to their social welfare, including their retirement pension, should ensure that judges are not left out of the decision-making process in these fields. Nevertheless, the Charter does not authorise encroachment on the decision-making powers vested in the national bodies responsible for such matters under the Constitution.

2. SELECTION, RECRUITMENT AND INITIAL TRAINING

2.1 Judicial candidates must be selected and recruited by an independent body or panel. The Charter does not require that the latter be the independent authority referred to in paragraph 1.3, which means, for instance, that examination or selection panels can be used, provided they are independent. In practice, the selection procedure is often separate from the actual appointment procedure. It is important to specify the particular safeguards accompanying the selection

procedure.

The choice made by the selection body must be based on criteria relevant to the nature of the duties to be discharged.

The main aim must be to evaluate the candidate's ability to assess independently cases heard by judges, which implies independent thinking. The ability to show impartiality in the exercise of judicial functions is also an essential element. The ability to apply the law refers both to knowledge of the law and the capacity to put it into practice, which are two different things. The selection body must also ensure that the candidate's conduct as a judge will be based on respect for human dignity, which is vital in encounters between persons in positions of power and the litigants, who are often people in great difficulties.

Lastly, selection must not be based on discriminatory criteria relating to gender, ethnic or social origin, philosophical or political opinions or religious convictions.

2.2 In order to ensure the ability to carry out the duties involved in judicial office, the rules on selection and recruitment must set out requirements as to qualifications and previous experience. This applies, for instance, to systems in which recruitment is conditional upon a set number of years' legal or judicial experience.

2.3 The nature of judicial office, which requires the judge to intervene in complex situations that are often difficult in terms of respect for human dignity, is such that "abstract" verification of aptitude for such office is not enough.

Candidates selected to discharge judicial duties must therefore be prepared for the task by means of appropriate training, which must be financed by the State.

Certain precautions must be taken in preparing judges for the giving of independent and impartial decisions, whereby competence, impartiality and the requisite open-mindedness are guaranteed in both the content of the training programmes and the functioning of the bodies implementing them. This is why the Charter provides that the authority referred to in paragraph 1.3 must ensure the appropriateness of training programmes and of the organization which implements them, in the light of the requirements of open-mindedness, competence and impartiality which are bound up with the exercise of judicial duties. The said authority must have the resources so to ensure. Accordingly, the rules set out in the statute must specify the procedure for supervision by this body in relation to the requirements in question concerning the programmes and their implementation by the training bodies.

3. APPOINTMENT AND IRREMOVABILITY

3.1 National systems may draw a distinction between the actual selection procedure and the procedures of appointing a judge and assigning him or her to a specific court. It should be noted that decisions to appoint or assign judges are taken by the independent authority referred to at paragraph 1.3 hereof or are reached upon its proposal or recommendation or with its agreement or following its opinion.

3.2 The Charter deals with the question of incompatibilities. It discarded the hypothesis of absolute incompatibilities as this would hamper judicial appointments on the grounds of candidates' or their relatives' previous activities. On the other hand, it considers that when a judge is to be assigned to a specific court, regard must be had to the above-mentioned circumstances where they give rise to legitimate and objective doubts as to his or her impartiality and independence.

For example, a lawyer who has previously practised in a given town cannot possibly be immediately assigned as a judge to a court in the same town. It is also difficult to imagine a judge being assigned to a court in a town in which his or her spouse, father or mother, for instance, is mayor or member of parliament. Therefore, where judges are to be assigned to a given court, the relevant statute must take account of situations liable to give rise to legitimate and objective doubts as to their independence and impartiality.

3.3 The recruitment procedure in some national systems provides for a probationary period before a permanent judicial appointment is made, and others recruit judges on fixed-term renewable contracts.

In such cases the decision not to make a permanent appointment or not to renew an appointment can only be taken by the independent authority referred to at paragraph 1.3 hereof or upon its proposal, recommendation or following its opinion. Clearly, the existence of probationary periods or renewal requirements presents difficulties if not dangers from the angle of the independence and impartiality of the judge in question, who is hoping to be established in post or to have his or her contract renewed. Safeguards must therefore be provided through the intervention of the independent authority. In so far as the quality as a judge of an individual who is the subject of a trial period may be under discussion, the Charter lays down that the right to make a reference to an independent authority, as referred to in paragraph 1.4, is applicable to such an individual.

3.4 The Charter enshrines the irremovability of judges, which means that a judge cannot be assigned to another court or have his or her duties changed without his or her free consent. However, exceptions must be allowed where transfer is provided for within a disciplinary framework, when a lawful reorganization of the court system takes place involving for example the closing

down of a court or a temporary transfer is required to assist a neighbouring court. In the latter case, the duration of the temporary transfer must be limited by the relevant statute. Nevertheless, since the problem of transferring a judge without his or her consent is highly sensitive, it is recalled that under the terms of paragraph 1.4 he or she has a general right of appeal before an independent authority, which can investigate the legitimacy of the transfer. In fact, this right of appeal can also remedy situations which have not been specifically catered for in the provisions of the Charter where a judge has such an excessive workload as to be unable in practice to carry out his or her responsibilities normally.

4. CAREER DEVELOPMENT

4.1 Apart from cases where judges are promoted strictly on the basis of length of service, a system which the Charter did not in any way exclude because it is deemed to provide very effective protection for independence, but which presupposes high-quality recruitment in the countries concerned, it is important to ensure that the judge's independence and impartiality are not infringed in the area of promotion. It must be specified that there are two potential issues here: judges illegitimately barred from promotion, and judges unduly promoted.

This is why the Charter defines the criteria for promotion exclusively as the qualities and merits observed in the performance of judicial duties by means of objective assessments carried out by one or more judges and discussed with the judge assessed.

Decisions concerning promotion are then taken on the basis of these assessments in the light of the proposal by the independent authority referred to in paragraph 1.3 or upon its recommendation or with its agreement or following its opinion. It is expressly stipulated that the judge who is not proposed for promotion on completion of the procedure must be entitled to present his or her case before the said authority.

The provisions of paragraph 4.1 are obviously not intended to apply to systems in which judges are not promoted, and there is no judicial hierarchy, systems which are also in this regard highly protective of judicial independence.

4.2 The Charter deals here with activities conducted alongside judicial functions. It provides that judges may freely exercise activities outside their judicial mandate, including those which are the embodiment of their rights as citizens. This freedom, which constitutes the principle, may not know of limitation except only in so far as judges engage in outside activities incompatible either with public confidence in their impartiality and independence or with the availability required to consider the cases submitted to them with due care and within a reasonable time. The Charter does not specify any particular type of activity. The negative effects of outside activities on the conditions under which

judicial duties are discharged must be pragmatically assessed. The Charter stipulates that judges require authorisation to engage in activities other than literary or artistic when they are remunerated.

4.3 The Charter addresses the question of what is sometimes called "judicial discretion". It adopts a position which derives from Article 6 of the European Convention on Human Rights and the case-law of the European Court of Human Rights thereupon, laying down that judges must refrain from any behaviour, action or expression likely to affect public confidence in their impartiality and independence. The reference to the risk of such confidence being undermined obviates any excessive rigidity which would result in the judge becoming a social and civic outcast.

4.4 The Charter lays down "the judge's right to in-house training": he or she must have regular access to training courses organized at public expense, aimed at ensuring that judges can maintain and improve their technical, social and cultural skills. The State must ensure that such training programmes are so organised as to respect the conditions set out in paragraph 2.3, which relate to the role of the independent authority referred to in paragraph 1.3, in order to guarantee appropriateness in the content of training courses and in the functioning of the bodies implementing such courses, to the requirements of open-mindedness, competence and impartiality.

The definition of these guarantees set out in paragraphs 2.3 and 4.4 on training is very flexible, enabling them to be tailored to the various national training systems: training colleges administered by the Ministry of Justice, institutes operating under the higher council of judges, private law foundations, etc.

5. LIABILITY

5.1 The Charter deals here with the judge's disciplinary liability. It begins with a reference to the principle of the legality of disciplinary sanctions, stipulating that the only valid reason for imposing sanctions is the failure to perform one of the duties explicitly defined in the Judges' Statute and that the scale of applicable sanctions must be set out in the judges' statute. Moreover, the Charter lays down guarantees on disciplinary hearings: disciplinary sanctions can only be imposed on the basis of a decision taken following a proposal or recommendation or with the agreement of a tribunal or authority, at least one half of whose members must be elected judges. The judge must be given a full hearing and be entitled to representation. If the sanction is actually imposed, it must be chosen from the scale of sanctions, having due regard to the principle of proportionality. Lastly, the Charter provides for a right of appeal to a higher judicial authority against any

decision to impose a sanction taken by an executive authority, tribunal or body, at least half of whose membership are elected judges.

The current wording of this provision does not require the availability of such a right of appeal against a sanction imposed by Parliament.

5.2 Here the Charter relates to judges' civil and pecuniary liability. It posits the principle that State compensation shall be paid for damage sustained as a result of a judge's wrongful conduct or unlawful exercise of his or her functions whilst acting as a judge. This means that it is the State which is in every case the guarantor of compensation to the victim for such damage.

In specifying that such a State guarantee applies to damage sustained as a result of a judge's wrongful conduct or unlawful exercise of his or her functions, the Charter does not necessarily refer to the wrongful or unlawful nature of the conduct or of the exercise of functions, but rather emphasises the damage sustained as a result of that "wrongful" or "unlawful" nature. This is fully compatible with liability based not upon misconduct by the judge, but upon the abnormal, special and serious nature of the damage resulting from his or her wrongful conduct or unlawful exercise of functions. This is important in the light of concerns that judges' judicial independence should not be affected through a civil liability system.

The Charter also provides that, when the damage which the State had to guarantee is the result of a gross and inexcusable breach of the rules governing the performance of judicial duties, the statute may confer on the State the possibility of bringing legal proceedings with a view to requiring the judge to reimburse it for the compensation paid within a limit fixed by the statute. The requirement for gross and inexcusable negligence and the legal nature of the proceedings to obtain reimbursement must constitute significant guarantees that the procedure is not abused. An additional guarantee is provided by way of the prior agreement which the authority referred to at paragraph 1.3 must give before a claim may be submitted to the competent court.

5.3 Here the Charter looks at the issue of complaints by members of the public about miscarriages of justice.

States have organised their complaints procedures to varying degrees, and it is not always very well organised.

This is why the Charter provides for the possibility to be open to an individual to make a complaint of miscarriage of justice in a given case to an independent body, without having to observe specific formalities. Were full and careful consideration by such a body to reveal a clear prima facie disciplinary breach by a judge, the body concerned would have the power to refer the matter to the disciplinary authority having jurisdiction over judges, or at least to a body

competent, under the rules of the national statute, to make such referral. Neither this body nor this authority will be constrained to adopt the same opinion as the body to which the complaint was made. In the outcome there are genuine guarantees against the risks of the complaints procedure being led astray by those to be tried, desiring in reality to bring pressure to bear on the justice system.

The independent body concerned would not necessarily be designed specifically to verify whether judges have committed breaches. Judges have no monopoly on miscarriages of justice. It would therefore be conceivable for this same independent body similarly to refer matters, when it considers such referral justified, to the disciplinary authority having jurisdiction over, or to the body responsible for taking proceedings against lawyers, court officials, bailiffs, etc.

The Charter, however, relating to the judges' statute, has to cover in greater detail only the matter of referral relating to judges.

6. REMUNERATION AND SOCIAL WELFARE

The provisions under this heading relate only to professional judges.

6.1 The Charter provides that the level of the remuneration to which judges are entitled for performing their professional judicial duties must be set so as to shield them from pressures intended to influence their decisions or judicial conduct in general, impairing their independence and impartiality.

It seemed preferable to state that the level of the remuneration paid had to be such as to shield judges from pressures, rather than to provide for this level to be set by reference to the remuneration paid to holders of senior posts in the legislature or the executive, as the holders of such posts are far from being treated on a comparable basis in the different national systems.

6.2 The level of remuneration of one judge as compared to another may be subject to variations depending on length of service, the nature of the duties which they are assigned to discharge and the importance of the tasks which are imposed on them, such as weekend duties. However, such tasks justifying higher remuneration must be assessed on the basis of transparent criteria, so as to avoid differences in treatment unconnected with considerations relating to the work done or the availability required.

6.3 The Charter provides for judges to benefit from social security, i.e. protection against the usual social risks, namely illness, maternity, invalidity, old age and death.

6.4 It specifies in this context that judges who have reached the age of judicial retirement after the requisite time spent as judges must benefit from payment of a

retirement pension, the level of which must be as close as possible to the level of their final salary as a judge.

7. TERMINATION OF OFFICE

7.1 Vigilance is necessary about the conditions in which judges' employment comes to be terminated. It is important to lay down an exhaustive list of the reasons for termination of employment. These are when a judge resigns, is medically certified as physically unfit for further judicial office, reaches the age limit, comes to the end of a fixed term of office or is dismissed in the context of disciplinary liability.

7.2 On occurrence of the events which are grounds for termination of employment other than the ones - i.e. the reaching of the age limit or the coming to an end of a fixed term of office - which may be ascertained without difficulty, they must be verified by the authority referred to in paragraph 1.3. This condition is easily realised when the termination of office results from a dismissal decided precisely by this authority, or on its proposal or recommendation, or with its agreement.



Strasbourg, 27 November 2003
[ccje/docs2003/ccje(2003) op n° 4e]

CCJE (2003) Op. N° 4

ANNEX X

OPINION No. 4 OF THE CONSULTATIVE COUNCIL OF EUROPEAN JUDGES (CCJE)

TO THE ATTENTION OF THE COMMITTEE OF MINISTERS OF THE COUNCIL OF EUROPE

ON APPROPRIATE INITIAL AND IN-SERVICE TRAINING FOR JUDGES AT NATIONAL AND EUROPEAN LEVELS

Introduction

1. At a time when we are witnessing an increasing attention being paid to the role and significance of the judiciary, which is seen as the ultimate guarantor of the democratic functioning of institutions at national, European and international levels, the question of the training of prospective judges before they take up their posts and of in-service training is of particular importance (see Opinion of the CCJE N° 1 (2001), paragraphs 10-13 and Opinion N° 3 (2002), paragraphs 25 and 50.ix).
2. The independence of the judiciary confers rights on judges of all levels and jurisdictions, but also imposes ethical duties. The latter include the duty to perform judicial work professionally and diligently, which implies that they should have great professional ability, acquired, maintained and enhanced by the training which they have a duty, as well as a right, to undergo.
3. 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.

4. 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.

5. Lastly, training is a prerequisite if the judiciary is to be respected and worthy of respect. The trust citizens place in the judicial system will be strengthened if judges have a depth and diversity of knowledge which extend beyond the technical field of law to areas of important social concern, as well as courtroom and personal skills and understanding enabling them to manage cases and deal with all persons involved appropriately and sensitively. Training is in short essential for the objective, impartial and competent performance of judicial functions, and to protect judges from inappropriate influences.

6. There are great differences among European countries with respect to the initial and in-service training of judges. These differences can in part be related to particular features of the different judicial systems, but in some respects do not seem to be inevitable or necessary. Some countries offer lengthy formal training in specialised establishments, followed by intensive further training. Others provide a sort of apprenticeship under the supervision of an experienced judge, who imparts knowledge and professional advice on the basis of concrete examples, showing what approach to take and avoiding any kind of didacticism. Common law countries rely heavily on a lengthy professional experience, commonly as advocates. Between these possibilities, there is a whole range of countries where training is to varying degrees organised and compulsory.

7. 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.

8. 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) and was referred to in paragraph 11 of the CCJE's Opinion N° 1.

I. The right to training and the legal level at which this right should be guaranteed

9. Constitutional principles should guarantee the independence and impartiality on which the legitimacy of judges depends, and judges for their part should ensure that they maintain a high degree of professional competence (see paragraph 50 (ix) of the CCJE Opinion N° 3).

10. In many countries the training of judges is governed by special regulations. The essential point is to include the need for training in the rules governing the status of judges; legal regulations should not detail the precise content of training, but entrust this task to a special body responsible for drawing up the curriculum, providing the training and supervising its provision.

11. The State has a duty to provide the judiciary or other independent body responsible for organising and supervising training with the necessary means, and to meet the costs incurred by judges and others involved.

12. The CCJE therefore recommends that, in each country, the legislation on the status of judges should provide for the training of judges.

II. The authority responsible for training

13. The European Charter on the Statute for Judges (paragraph 2.3) states that any authority responsible for supervising the quality of the training programme should be independent of the Executive and the Legislature and that at least half its members should be judges. The Explanatory Memorandum also indicates that the training of judges should not be limited to technical legal training, but should also take into account that the nature of the judicial office often requires the judge to intervene in complex and difficult situations.

14. This highlights the key importance attaching to the independence and composition of the authority responsible for training and its content. This is a corollary of the general principle of judicial independence.

15. Training is a matter of public interest, and the independence of the authority responsible for drawing up syllabuses and deciding what training should be provided must be preserved.

16. The judiciary should play a major role in or itself be responsible for organising and supervising training. Accordingly, and in keeping with the recommendations of the European Charter on the Statute for Judges, the CCJE advocates that these responsibilities should, in each country, be entrusted, not to the Ministry of Justice or any other authority answerable to the Legislature or the Executive, but to the judiciary itself or another independent body (including a Judicial Service Commission). Judges' associations can also play a valuable role in encouraging and facilitating training, working in conjunction with the judicial or other body which has direct responsibility.

17. In order to ensure a proper separation of roles, the same authority should not be directly responsible for both training and disciplining judges. The CCJE therefore recommends that, under the authority of the judiciary or other independent body, training should be entrusted to a special autonomous establishment with its own budget, which is thus able, in consultation with judges, to devise training programmes and ensure their implementation.

18. Those responsible for training should not also be directly responsible for appointing or promoting judges. If the body (i.e. a judicial service commission) referred to in the CCJE's Opinion N° 1, paragraphs 73 (3), 37, and 45, is competent for training and appointment or promotion, a clear separation should be provided between its branches responsible for these tasks.

19. In order to shield the establishment from inappropriate outside influence, the CCJE recommends that the managerial staff and trainers of the establishment should

be appointed by the judiciary or other independent body responsible for organising and supervising training.

20. It is important that the training is carried out by judges and by experts in each discipline. Trainers should be chosen from among the best in their profession and carefully selected by the body responsible for training, taking into account their knowledge of the subjects being taught and their teaching skills.

21. When judges are in charge of training activities, it is important that these judges preserve contact with court practice.

22. Training methods should be determined and reviewed by the training authority, and there should be regular meetings for trainers to enable them to share their experiences and enhance their approach.

III. Initial training

a. Should training be mandatory?

23. While it is obvious that judges who are recruited at the start of their professional career need to be trained, the question arises whether this is necessary where judges are selected from among the best lawyers, who are experienced, as (for instance) in Common Law countries.

24. In the CCJE's opinion, both groups should receive initial training: the performance of judicial duties is a new profession for both, and involves a particular approach in many areas, notably with respect to the professional ethics of judges, procedure, and relations with all persons involved in court proceedings.

25. On the other hand, it is important to take the specific features of recruitment methods into account so as to target and adapt the training programmes appropriately: experienced lawyers need to be trained only in what is required for their new profession. In some small countries with a very small judiciary, local training opportunities may be more limited and informal, but such countries in particular may benefit from shared training opportunities with other countries.

26. The CCJE therefore recommends mandatory initial training by programmes appropriate to appointees' professional experience.

b. The initial training programme

27. The initial training syllabus and the intensiveness of the training will differ greatly according to the chosen method of recruiting judges. Training should not consist only of instruction in the techniques involved in the handling 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. In addition, the opening up of borders means that future judges need to be aware that they are European judges and be more aware of European issues.

28. In view of the diversity of the systems for training judges in Europe, the CCJE recommends:

- i. that all appointees to judicial posts should have or acquire, before they take up their duties, extensive knowledge of substantive national and international law and procedure;
- ii. that training programmes more specific to the exercise of the profession of judge should be decided on by the establishment responsible for training, and by the trainers and judges themselves;
- iii. that these theoretical and practical programmes should not be limited to techniques in the purely legal fields but should also include training in ethics and an introduction to other fields relevant to judicial activity, such as management of cases and administration of courts, information technology, foreign languages, social sciences and alternative dispute resolution (ADR);
- iv. that the training should be pluralist in order to guarantee and strengthen the open-mindedness of the judge;
- v. that, depending upon the existence and length of previous professional experience, training should be of significant length in order to avoid its being purely a matter of form.

29. The CCJE recommends the practice of providing for a period of training common to the various legal and judicial professions (for instance, lawyers and prosecutors in countries where they perform duties separate from those of judges). This practice is likely to foster better knowledge and reciprocal understanding between judges and other professions.

30. The CCJE has also noted that many countries make access to judicial posts conditional upon prior professional experience. While it does not seem possible to impose such a model everywhere, and while the adoption of a system combining various types of recruitment may also have the advantage of diversifying judges' backgrounds, it is important that the period of initial training should include, in the case of candidates who have come straight from university, substantial training periods in a professional environment (lawyers' practices, companies, etc).

IV. In-service training

31. Quite apart from the basic knowledge they need to acquire before they take up their posts, judges are "condemned to perpetual study and learning" (see report of R. Jansen "How to prepare judges to become well-qualified judges in 2003", doc. CCJE-GT (2003) 3).

32. Such training is made indispensable not only by changes in the law, technology and the knowledge required to perform judicial duties but also by the possibility in many countries that judges will acquire new responsibilities when they take up new posts. In-service programmes should therefore offer the possibility of training in the event of career changes, such as a move between criminal and civil courts; the assumption of specialist jurisdiction (e.g. in a family, juvenile or social court) and the assumption of a post such as the presidency of a chamber or court. Such

a move or the assumption of such a responsibility may be made conditional upon attendance on a relevant training programme.

33. While it is essential to organise in-service training, since society has the right to benefit from a well trained judge, it is also necessary to disseminate a culture of training in the judiciary.

34. It is unrealistic to make in-service training mandatory in every case. The fear is that it would then become bureaucratic and simply a matter of form. The suggested training must be attractive enough to induce judges to take part in it, as participation on a voluntary basis is the best guarantee for the effectiveness of the training. This should also be facilitated by ensuring that every judge is conscious that there is an ethical duty to maintain and update his or her knowledge.

35. The CCJE also encourages in the context of continuous training collaboration with other legal professional bodies responsible for continuous training in relation to matters of common interest (e.g. new legislation).

36. It further stresses the desirability of arranging continuous judicial training in a way which embraces all levels of the judiciary. Whenever feasible, the different levels should all be represented at the same sessions, giving the opportunity for exchange of views between them. This assists to break-down hierarchical tendencies, keeps all levels of the judiciary informed of each other's problems and concerns, and promotes a more cohesive and consistent approach throughout the judiciary.

37. The CCJE therefore recommends:

- i. that the in-service training should normally be based on the voluntary participation of judges;
- ii. that there may be mandatory in-service training only in exceptional cases; examples might (if the judicial or other body responsible so decided) include when a judge takes up a new post or a different type of work or functions or in the event of fundamental changes in legislation;
- iii. that training programmes should be drawn up under the authority of the judicial or other body responsible for initial and in-service training and by trainers and judges themselves;
- iv. that those programmes, implemented under the same authority, should focus on legal and other issues relating to the functions performed by judges and correspond to their needs (see paragraph 27 above);
- v. that the courts themselves should encourage their members to attend in-service training courses;
- vi. that the programmes should take place in and encourage an environment, in which members of different branches and levels of the judiciary may meet and exchange their experiences and achieve common insights;
- vii. that, while training is an ethical duty for judges, member states also have a duty to make available to judges the financial resources, time and other means necessary for in-service training.

V. Assessment of training

38. In order continuously to improve the quality of judicial training, the organs responsible for training should conduct frequent assessments of programmes and methods. An important role in this process should be played by opinions expressed by all participants to training initiatives, which may be encouraged through appropriate means (answers to questionnaires, interviews).

39. While there is no doubt that performance of trainers should be monitored, the evaluation of the performance of participants in judicial training initiatives is more questionable. The in-service training of judges may be truly fruitful if their free interaction is not influenced by career considerations.

40. In countries that train judges at the start of their professional career, the CCJE considers evaluation of the results of initial training to be necessary in order to ensure the best appointments to the judiciary. In contrast, in countries that choose judges from the ranks of experienced lawyers, objective evaluation methods are applied before appointment, with training occurring only after candidates have been selected, so that in those countries evaluation during initial training is not appropriate.

41. It is nevertheless important, in the case of candidates subject to an appraisal, that they should enjoy legal safeguards that protect them against arbitrariness in the appraisal of their work. In addition, in the case of States arranging for the provisional appointment of judges, the removal of these from office at the end of the training period should take place with due regard for the safeguards applicable to judges when their removal from office is envisaged.

42. In view of the above, the CCJE recommends:

- i. that training programmes and methods should be subject to frequent assessments by the organs responsible for judicial training;
- ii. that, in principle, participation in judges' training initiatives should not be subject to qualitative assessment; their participation in itself, objectively considered, may however be taken into account for professional evaluation of judges;
- iii. that quality of performance of trainees should nonetheless be evaluated, if such evaluation is made necessary by the fact that, in some systems, initial training is a phase of the recruitment process.

VI. The European training of judges

43. Whatever the nature of their duties, no judge can ignore European law, be it the European Convention on Human Rights or other Council of Europe Conventions, or if appropriate, the Treaty of the European Union and the legislation deriving from it, because they are required to apply it directly to the cases that come before them.

44. In order to promote this essential facet of judges' duties, the CCJE considers that member states, after strengthening the study of European law in universities, should also promote its inclusion in the initial and in-service training programmes

proposed for judges, with particular reference to its practical applications in day-to-day work.

45. It also recommends reinforcing the European network for the exchange of information between persons and entities in charge of the training of judges (Lisbon Network), which promotes training on matters of common interest and comparative law, and that this training should cater for trainers as well as the judges themselves. The functioning of this Network can be effective only if every member state supports it, notably by establishing a body responsible for the training of judges, as set out in section II above, and by pan-European co-operation in this field.

46. Furthermore, the CCJE considers that the co-operation within other initiatives aiming at bringing together the judicial training institutions in Europe, in particular within the European Judicial Training Network, can effectively contribute to the greater coordination and harmonisation of the programmes and the methods of training of judges on the whole continent.

ANNEX XI

**Council of the European Union
Brussels, 13 December 2004**

NOTE

from : General Secretariat
to : Delegations
Subject: The Hague Programme : strengthening freedom, security and justice in the
European Union

Delegations will find enclosed the Hague Programme for strengthening freedom, security and justice in the European Union as approved by the European Council at its meeting on 5 November 2004.

I. INTRODUCTION

The European Council reaffirms the priority it attaches to the development of an area of freedom, security and justice, responding to a central concern of the peoples of the States brought together in the Union.

Over the past years the European Union has increased its role in securing police, customs and judicial cooperation and in developing a coordinated policy with regard to asylum, immigration and external border controls. This development will continue with the firmer establishment of a common area of freedom, security and justice by the Treaty establishing a Constitution for Europe, signed in Rome on 29 October 2004. This Treaty and the preceding Treaties of Maastricht, Amsterdam and Nice have progressively brought about a common legal framework in the field of justice and home affairs, and the integration of this policy area with other policy areas of the Union.

Since the Tampere European Council in 1999, the Union's policy in the area of justice and home affairs has been developed in the framework of a general programme. Even if not all the original aims were achieved, comprehensive and coordinated progress has been made. The European Council welcomes the results that have been achieved in the first five-year period: the foundations for a common asylum and immigration policy have been laid, the harmonisation of border controls has been prepared, police cooperation has been improved, and the groundwork for judicial cooperation on the basis of the principle of mutual recognition of judicial decisions and judgments has been well advanced.

The security of the European Union and its Member States has acquired a new urgency, especially in the light of the terrorist attacks in the United States on 11 September 2001 and in Madrid on 11 March 2004. The citizens of Europe rightly expect the European Union, while guaranteeing respect for fundamental freedoms and rights, to take a more effective, joint approach to cross-border problems such as illegal migration, trafficking in and smuggling of human beings, terrorism and organised crime, as well as the prevention thereof. Notably in the field of security, the coordination and coherence between the internal and the external dimension has been growing in importance and needs to continue to be vigorously pursued.

Five years after the European Council's meeting in Tampere, it is time for a new agenda to enable the Union to build on the achievements and to meet effectively the new challenges it will face. To this end, the European Council has adopted this new multi-annual programme to be known as the Hague Programme. It reflects the ambitions as expressed in the Treaty establishing a Constitution for Europe and contributes to preparing the Union for its entry into force. It takes account of the evaluation by the Commission¹ as welcomed by the European Council in June 2004 as well as the Recommendation adopted by the European Parliament on 14 October 2004², in particular in respect of the passage to qualified majority voting and co-decision as foreseen by Article 67(2) TEC.

The objective of the Hague programme is to improve the common capability of the Union and its Member States to guarantee fundamental rights, minimum procedural safeguards and access to justice, to provide protection in accordance with the Geneva Convention on Refugees and other international treaties to persons in need, to regulate migration flows and to control the external borders of the Union, to fight organised cross-border crime and repress the threat of terrorism, to realise the potential of Europol and Eurojust, to carry further the mutual recognition of judicial decisions and certificates both in civil and in criminal matters, and to eliminate legal and judicial obstacles in litigation in civil and family matters with cross-border implications. This is an objective that has to be achieved in the interests of our citizens by the development of a Common Asylum System and by improving access to the courts, practical police and judicial cooperation, the approximation of laws and the development of common policies.

¹ COM (2004) 401 final

² P 6 T A-PRO V (2004) 0022 A6-0010/2004

A key element in the near future will be the prevention and suppression of terrorism. A common approach in this area should be based on the principle that when preserving national security, the Member States should take full account of the security of the Union as a whole. In addition, the European Council will be asked to endorse in December 2004 the new European Strategy on Drugs 2005-2012 that will be added to this programme.

The European Council considers that the common project of strengthening the area of freedom, security and justice is vital to securing safe communities, mutual trust and the rule of law throughout the Union. Freedom, justice, control at the external borders, internal security and the prevention of terrorism should henceforth be considered indivisible within the Union as a whole. An optimal level of protection of the area of freedom, security and justice requires multi-disciplinary and concerted action both at EU level and at national level between the competent law enforcement authorities, especially police, customs and border guards.

In the light of this Programme, the European Council invites the Commission to present to the Council an Action Plan in 2005 in which the aims and priorities of this programme will be translated into concrete actions. The plan shall contain a timetable for the adoption and implementation of all the actions. The European Council calls on the Council to ensure that the timetable for each of the various measures is observed. The Commission is invited to present to the Council a yearly report on the implementation of the Hague programme ("Scoreboard").

II. GENERAL ORIENTATIONS

1. General principles

The programme set out below seeks to respond to the challenge and the expectations of our citizens. It is based on a pragmatic approach and builds on ongoing work arising from the Tampere programme, current action plans and an evaluation of first generation measures. It is also grounded in the general principles of subsidiarity, proportionality, solidarity and respect for the different legal systems and traditions of the Member States.

The Treaty establishing a Constitution of Europe (hereinafter "the Constitutional Treaty") served as a guideline for the level of ambition, but the existing Treaties provide the legal basis for Council action until such time as the Constitutional Treaty takes effect. Accordingly, the various policy areas have been examined to determine whether preparatory work or studies could already commence, so that measures provided for in the Constitutional Treaty can be taken as soon as it enters into force.

Fundamental rights, as guaranteed by the European Convention on Human Rights and the Charter of Fundamental Rights in Part II of the Constitutional Treaty, including the explanatory notes, as well as the Geneva Convention on Refugees, must be fully respected. At the same time, the programme aims at real and substantial progress towards enhancing mutual confidence and promoting common policies to the benefit of all our citizens.

2. Protection of fundamental rights

Incorporating the Charter into the Constitutional Treaty and accession to the European Convention for the protection of human rights and fundamental freedoms will place the Union, including its institutions, under a legal obligation to ensure that in all its areas of activity, fundamental rights are not only respected but also actively promoted.

In this context, the European Council, recalling its firm commitment to oppose any form of racism, anti-Semitism and xenophobia as expressed in December 2003, welcomes the Commission's communication on the extension of the mandate of the European Monitoring Centre on Racism and Xenophobia towards a Human Rights Agency.

3. Implementation and evaluation

The evaluation by the Commission of the Tampere programme¹ showed a clear need for adequate and timely implementation and evaluation of all types of measures in the area of freedom, security and justice.

It is vital for the Council to develop in 2005 practical methods to facilitate timely implementation in all policy areas: measures requiring national authorities' resources should be accompanied by proper plans to ensure more effective implementation, and the length of the implementation period should be more closely related to the complexity of the measure concerned. Regular progress reports by the Commission to the Council during the implementation period should provide an incentive for action in Member States.

Evaluation of the implementation as well as of the effects of all measures is, in the European Council's opinion, essential to the effectiveness of Union action. The evaluations undertaken as from 1 July 2005 must be systematic, objective, impartial and efficient, while avoiding too heavy an administrative burden on national authorities and the Commission. Their goal should be to address the functioning of the measure and to suggest solutions for problems encountered in its implementation and/or application. The Commission should prepare a yearly evaluation report of measures to be submitted to the Council and to inform the European Parliament and the national parliaments.

The European Commission is invited to prepare proposals, to be tabled as soon as the Constitutional Treaty has entered into force, relating to the role of the European Parliament and national parliaments in the evaluation of Eurojust's activities and the scrutiny of Europol's activities.

4. Review

Since the programme will run for a period during which the Constitutional Treaty will enter into force, a review of its implementation is considered to be useful. To that end, the Commission is invited to report by the entry into force of the Constitutional Treaty (1 November 2006) to the European Council on the progress made and to propose the necessary additions to the programme, taking into account the changing legal basis as a consequence of its entry into force.

III. SPECIFIC ORIENTATIONS 1.

STRENGTHENING FREEDOM

1.1 Citizenship of the Union

The right of all EU citizens to move and reside freely in the territory of the Member States is the central right of citizenship of the Union. Practical significance of citizenship of the Union will be enhanced by full implementation of Directive 2004/38¹, which codifies Community law in this field and brings clarity and simplicity. The Commission is asked to submit in 2008 a report to the Council and the European Parliament, accompanied by proposals, if appropriate, for allowing EU citizens to move within the European Union on similar terms to nationals of a Member State moving around or changing their place of residence in their own country, in conformity with established principles of Community law.

The European Council encourages the Union's institutions, within the framework of their competences, to maintain an open, transparent and regular dialogue with representative associations and civil society and to promote and facilitate citizens' participation in public life. In particular, the European Council invites the Council and the Commission to give special attention to the fight against anti-Semitism, racism and xenophobia.

1.2 Asylum, migration and border policy

International migration will continue. A comprehensive approach, involving all stages of migration, with respect to the root causes of migration, entry and admission policies and integration and return policies is needed.

¹ Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC OJL 158 of 30.04.2004, p. 77

To ensure such an approach, the European Council urges the Council, the Member States and the Commission to pursue coordinated, strong and effective working relations between those responsible for migration and asylum policies and those responsible for other policy fields relevant to these areas.

The ongoing development of European asylum and migration policy should be based on a common analysis of migratory phenomena in all their aspects. Reinforcing the collection, provision, exchange and efficient use of up-to-date information and data on all relevant migratory developments is of key importance.

The second phase of development of a common policy in the field of asylum, migration and borders started on 1 May 2004. It should be based on solidarity and fair sharing of responsibility including its financial implications and closer practical cooperation between Member States: technical assistance, training, and exchange of information, monitoring of the adequate and timely implementation and application of instruments as well as further harmonisation of legislation.

The European Council, taking into account the assessment by the Commission and the strong views expressed by the European Parliament in its Recommendation¹, asks the Council to adopt a decision based on Article 67(2) TEC immediately after formal consultation of the European Parliament and no later than 1 April 2005 to apply the procedure provided for in Article 251 TEC to all Title IV measures to strengthen freedom, subject to the Nice Treaty, except for legal migration.

1.3 A Common European Asylum System

The aims of the Common European Asylum System in its second phase will be the establishment of a common asylum procedure and a uniform status for those who are granted asylum or subsidiary protection. It will be based on the full and inclusive application of the Geneva Convention on Refugees and other relevant Treaties, and be built on a thorough and complete evaluation of the legal instruments that have been adopted in the first phase.

¹ P 6 T A-PRO V (2004) 0022 A6-0010/2004

The European Council urges the Member States to implement fully the first phase without delay. In this regard the Council should adopt unanimously, in conformity with article 67(5) TEC, the Asylum Procedures Directive as soon as possible. The Commission is invited to conclude the evaluation of first-phase legal instruments in 2007 and to submit the second-phase instruments and measures to the Council and the European Parliament with a view to their adoption before the end of 2010. In this framework, the European Council invites the Commission to present a study on the appropriateness, the possibilities and the difficulties, as well as the legal and practical implications of joint processing of asylum applications within the Union. Furthermore a separate study, to be conducted in close consultation with the UNHCR, should look into the merits, appropriateness and feasibility of joint processing of asylum applications outside EU territory, in complementarity with the Common European Asylum System and in compliance with the relevant international standards.

The European Council invites the Council and the Commission to establish in 2005 appropriate structures involving the national asylum services of the Member States with a view to facilitating practical and collaborative cooperation. Thus Member States will be assisted, inter alia, in achieving a single procedure for the assessment of applications for international protection, and in jointly compiling, assessing and applying information on countries of origin, as well as in addressing particular pressures on the asylum systems and reception capacities resulting, inter alia, from their geographical location. After a common asylum procedure has been established, these structures should be transformed, on the basis of an evaluation, into a European support office for all forms of cooperation between Member States relating to the Common European Asylum System.

The European Council welcomes the establishment of the new European Refugee Fund for the period 2005-2010 and stresses the urgent need for Member States to maintain adequate asylum systems and reception facilities in the run-up to the establishment of a common asylum procedure. It invites the Commission to earmark existing Community funds to assist Member States in the processing of asylum applications and in the reception of categories of third-country nationals. It invites the Council to designate these categories on the basis of a proposal to be submitted by the Commission in 2005.

1.4 Legal migration and the fight against illegal employment

Legal migration will play an important role in enhancing the knowledge-based economy in Europe, in advancing economic development, and thus contributing to the implementation of the Lisbon strategy. It could also play a role in partnerships with third countries.

The European Council emphasizes that the determination of volumes of admission of labour migrants is a competence of the Member States. The European Council, taking into account the outcome of discussions on the Green Paper on labour migration, best practices in Member States and its relevance for implementation of the Lisbon strategy, invites the Commission to present a policy plan on legal migration including admission procedures capable of responding promptly to fluctuating demands for migrant labour in the labour market before the end of 2005.

As the informal economy and illegal employment can act as a pull factor for illegal immigration and can lead to exploitation, the European Council calls on Member States to reach the targets for reducing the informal economy set out in the European employment strategy.

1.5 Integration of third-country nationals

Stability and cohesion within our societies benefit from the successful integration of legally resident third-country nationals and their descendants. To achieve this objective, it is essential to develop effective policies, and to prevent the isolation of certain groups. A comprehensive approach involving stakeholders at the local, regional, national, and EU level is therefore essential.

While recognising the progress that has already been made in respect of the fair treatment of legally resident third-country nationals in the EU, the European Council calls for the creation of equal opportunities to participate fully in society. Obstacles to integration need to be actively eliminated.

The European Council underlines the need for greater coordination of national integration policies and EU initiatives in this field. In this respect, the common basic principles underlying a coherent European framework on integration should be established.

These principles, connecting all policy areas related to integration, should include at least the following aspects. Integration:

- is a continuous, two-way process involving both legally resident third-country nationals and the host society;
- includes, but goes beyond, anti-discrimination policy;
- implies respect for the basic values of the European Union and fundamental human rights;
- requires basic skills for participation in society;
- relies on frequent interaction and intercultural dialogue between all members of society within common forums and activities in order to improve mutual understanding;
- extends to a variety of policy areas, including employment and education.

A framework, based on these common basic principles, will form the foundation for future initiatives in the EU, relying on clear goals and means of evaluation. The European Council invites Member States, the Council and the Commission to promote the structural exchange of experience and information on integration, supported by the development of a widely accessible website on the Internet.

1.6 The external dimension of asylum and migration

1.6.1 Partnership with third countries

Asylum and migration are by their very nature international issues. EU policy should aim at assisting third countries, in full partnership, using existing Community funds where appropriate, in their efforts to improve their capacity for migration management and refugee protection, prevent and combat illegal immigration, inform on legal channels for migration, resolve refugee situations by providing better access to durable solutions, build border-control capacity, enhance document security and tackle the problem of return.

The European Council recognises that insufficiently managed migration flows can result in humanitarian disasters. It wishes to express its utmost concern about the human tragedies that take place in the Mediterranean as a result of attempts to enter the EU illegally. It calls upon all States to intensify their cooperation in preventing further loss of life.

The European Council calls upon the Council and the Commission to continue the process of fully integrating migration into the EU's existing and future relations with third countries. It invites the Commission to complete the integration of migration into the Country and Regional Strategy Papers for all relevant third countries by the spring of 2005.

The European Council acknowledges the need for the EU to contribute in a spirit of shared responsibility to a more accessible, equitable and effective international protection system in partnership with third countries, and to provide access to protection and durable solutions at the earliest possible stage. Countries in regions of origin and transit will be encouraged in their efforts to strengthen the capacity for the protection of refugees. In this regard the European Council calls upon all third countries to accede and adhere to the Geneva Convention on Refugees.

1.6.2 Partnership with countries and regions of origin

The European Council welcomes the Commission Communication on improving access to durable solutions * and invites the Commission to develop EU-Regional Protection Programmes in partnership with the third countries concerned and in close consultation and cooperation with UNHCR. These programmes will build on experience gained in pilot protection programmes to be launched before the end of 2005. These programmes will incorporate a variety of relevant instruments, primarily focused on capacity building, and include a joint resettlement programme for Member States willing to participate in such a programme.

Policies which link migration, development cooperation and humanitarian assistance should be coherent and be developed in partnership and dialogue with countries and regions of origin. The European Council welcomes the progress already made, invites the Council to develop these policies, with particular emphasis on root causes, push factors and poverty alleviation, and urges the Commission to present concrete and carefully worked out proposals by the spring of 2005.

1.6.3. Partnership with countries and regions of transit

As regards countries of transit, the European Council emphasises the need for intensified cooperation and capacity building, both on the southern and the eastern borders of the EU, to enable these countries better to manage migration and to provide adequate protection for refugees. Support for capacity-building in national asylum systems, border control and wider cooperation on migration issues will be provided to those countries that demonstrate a genuine commitment to fulfil their obligations under the Geneva Convention on Refugees.

The proposal for a Regulation establishing a European Neighbourhood and Partnership Instrument⁷ provides the strategic framework for intensifying cooperation and dialogue on asylum and migration with neighbouring countries amongst others around the Mediterranean basin, and for initiating new measures. In this connection, the European Council requests a report on progress and achievements before the end of 2005.

1.6.4 Return and re-admission policy

Migrants who do not or no longer have the right to stay legally in the EU must return on a voluntary or, if necessary, compulsory basis. The European Council calls for the establishment of an effective removal and repatriation policy based on common standards for persons to be returned in a humane manner and with full respect for their human rights and dignity.

The European Council considers it essential that the Council begins discussions in early 2005 on minimum standards for return procedures including minimum standards to support effective national removal efforts. The proposal should also take into account special concerns with regard to safeguarding public order and security. A coherent approach between return policy and all other aspects of the external relations of the Community with third countries is necessary as is special emphasis on the problem of nationals of such third countries who are not in the possession of passports or other identity documents.

The European Council calls for:

- closer cooperation and mutual technical assistance;
- launching of the preparatory phase of a European return fund;
- common integrated country and region specific return programmes;
- the establishment of a European Return Fund by 2007 taking into account the evaluation of the preparatory phase;
- the timely conclusion of Community readmission agreements;
- the prompt appointment by the Commission of a Special Representative for a common readmission policy.

1.7 Management of migration flows

1.7.1 Border checks and the fight against illegal immigration

The European Council stresses the importance of swift abolition of internal border controls, the further gradual establishment of the integrated management system for external borders and the strengthening of controls at and surveillance of the external borders of the Union. In this respect the need for solidarity and fair sharing of responsibility including its financial implications between the Member States is underlined.

The European Council urges the Council, the Commission and Member States to take all necessary measures to allow the abolition of controls at internal borders as soon as possible, provided all requirements to apply the Schengen acquis have been fulfilled and after the Schengen Information System (SIS II) has become operational in 2007. In order to reach this goal, the evaluation of the implementation of the non SIS II related acquis should start in the first half of 2006.

The European Council welcomes the establishment of the European Agency for the Management of Operational Cooperation at the External Borders, on 1 May 2005. It requests the Commission to submit an evaluation of the Agency to the Council before the end of 2007. The evaluation should contain a review of the tasks of the Agency and an assessment of whether the Agency should concern itself with other aspects of border management, including enhanced cooperation with customs services and other competent authorities for goods-related security matters.

The control and surveillance of external borders fall within the sphere of national border authorities. However, in order to support Member States with specific requirements for control and surveillance of long or difficult stretches of external borders, and where Member States are confronted with special and unforeseen circumstances due to exceptional migratory pressures on these borders, the European Council:

- invites the Council to establish teams of national experts that can provide rapid technical and operational assistance to Member States requesting it, following proper risk analysis by the Border Management Agency and acting within its framework, on the basis of a proposal by the Commission on the appropriate powers and funding for such teams, to be submitted in 2005;
- invites the Council and the Commission to establish a Community border management fund by the end of 2006 at the latest;
- invites the Commission to submit, as soon as the abolition of controls at internal borders has been completed, a proposal to supplement the existing Schengen evaluation mechanism with a supervisory mechanism, ensuring full involvement of Member States experts, and including unannounced inspections.

The review of the tasks of the Agency envisaged above and in particular the evaluation of the functioning of the teams of national experts should include the feasibility of the creation of a European system of border guards.

The European Council invites Member States to improve their joint analyses of migratory routes and smuggling and trafficking practices and of criminal networks active in this area, inter alia within the framework of the Border Management Agency and in close cooperation with Europol and Eurojust. It also calls on the Council and the Commission to ensure the firm establishment of immigration liaison networks in relevant third countries. In this connection, the European Council welcomes initiatives by Member States for cooperation at sea, on a voluntary basis, notably for rescue operations, in accordance with national and international law, possibly including future cooperation with third countries.

With a view to the development of common standards, best practices and mechanisms to prevent and combat trafficking in human beings, the European Council invites the Council and the Commission to develop a plan in 2005.

1.7.2 Biometrics and information systems

The management of migration flows, including the fight against illegal immigration should be strengthened by establishing a continuum of security measures that effectively links visa application procedures and entry and exit procedures at external border crossings. Such measures are also of importance for the prevention and control of crime, in particular terrorism. In order to achieve this, a coherent approach and harmonised solutions in the EU on biometric identifiers and data are necessary.

The European Council requests the Council to examine how to maximise the effectiveness and

The European Council invites the Council, the Commission and Member States to continue their efforts to integrate biometric identifiers in travel documents, visa, residence permits, EU citizens' passports and information systems without delay and to prepare for the development of minimum standards for national identity cards, taking into account ICAO standards.

1.7.3 Visa policy

The European Council underlines the need for further development of the common visa policy as part of a multi-layered system aimed at facilitating legitimate travel and tackling illegal immigration through further harmonisation of national legislation and handling practices at local consular missions. Common visa offices should be established in the long term, taking into account discussions on the establishment of an European External Action Service. The European Council welcomes initiatives by individual Member States which, on a voluntary basis, cooperate at pooling of staff and means for visa issuance.

The European Council:

- invites the Commission, as a first step, to propose the necessary amendments to further enhance visa policies and to submit in 2005 a proposal on the establishment of common application centres focusing inter alia on possible synergies linked with the development of the VIS, to review the Common Consular Instructions and table the appropriate proposal by early 2006 at the latest;
- stresses the importance of swift implementation of the VIS starting with the incorporation of among others alphanumeric data and photographs by the end of 2006 and biometrics by the end of 2007 at the latest;
- invites the Commission to submit without delay the necessary proposal in order to comply with the agreed time frame for implementation of the VIS;
- calls on the Commission to continue its efforts to ensure that the citizens of all Member States can travel without a short-stay visa to all third countries whose nationals can travel to the EU without a visa as soon as possible;
- invites the Council and the Commission to examine, with a view to developing a common approach, whether in the context of the EC readmission policy it would be opportune to facilitate, on a case by case basis, the issuance of short-stay visas to third-country nationals, where possible and on a basis of reciprocity, as part of a real partnership in external relations, including migration-related issues.

2. STRENGTHENING SECURITY

2.1 Improving the exchange of information

The European Council is convinced that strengthening freedom, security and justice requires an innovative approach to the cross-border exchange of law-enforcement information. The mere fact that information crosses borders should no longer be relevant.

With effect from 1 January 2008 the exchange of such information should be governed by conditions set out below with regard to the principle of availability, which means that, throughout the Union, a law enforcement officer in one Member State who needs information in order to perform his duties can obtain this from another Member State and that the law enforcement agency in the other Member State which holds this information will make it available for the stated purpose, taking into account the requirement of ongoing investigations in that State.

Without prejudice to work in progress¹ the Commission is invited to submit proposals by the end of 2005 at the latest for implementation of the principle of availability, in which the following key conditions should be strictly observed:

- the exchange may only take place in order that legal tasks may be performed;

- ¹ The Draft framework decision on simplifying the exchange of information and intelligence between law enforcement authorities of the Member States of the European Union, in particular as regards serious offences including terrorist acts, doc. COM(2004) 221 final.
- common standards for access to the data and common technical standards must be applied;
 - supervision of respect for data protection, and appropriate control prior to and after the exchange must be ensured;
 - individuals must be protected from abuse of data and have the right to seek correction of incorrect data.
-

The methods of exchange of information should make full use of new technology and must be adapted to each type of information, where appropriate, through reciprocal access to or interoperability of national databases, or direct (on-line) access, including for Europol, to existing central EU databases such as the SIS. New centralised European databases should only be created on the basis of studies that have shown their added value.

2.2 Terrorism

The European Council underlines that effective prevention and combating of terrorism in full compliance with fundamental rights requires Member States not to confine their activities to maintaining their own security, but to focus also on the security of the Union as a whole.

As a goal this means that Member States:

- use the powers of their intelligence and security services not only to counter threats to their own security, but also, as the case may be, to protect the internal security of the other Member States;
- bring immediately to the attention of the competent authorities of other Member States any information available to their services which concerns threats to the internal security of these other Member States;
- in cases where persons or goods are under surveillance by security services in connection with terrorist threats, ensure that no gaps occur in their surveillance as a result of their crossing a border.

In the short term all the elements of the European Council's declaration of 25 March 2004 and the EU action plan on combating terrorism must continue to be implemented in full, notably that enhanced use of Europol and Eurojust should be made and the EU Counter Terrorism Coordinator is encouraged to promote progress.

In this context the European Council recalls its invitation to the Commission to bring forward a proposal for a common EU approach to the use of passengers data for border and aviation security and other law enforcement purposes¹.

The high level of exchange of information between security services shall be maintained. Nevertheless it should be improved, taking into account the overall principle of availability as described above in paragraph 2.1 and giving particular consideration to the special circumstances that apply to the working methods of security services, e.g. the need to secure the methods of collecting information, the sources of information and the continued confidentiality of the data after the exchange.

With effect from 1 January 2005, SitCen will provide the Council with strategic analysis of the terrorist threat based on intelligence from Member States' intelligence and security services and, where appropriate, on information provided by Europol.

The European Council stresses the importance of measures to combat financing of terrorism. It looks forward to examining the coherent overall approach that will be submitted to it by the Secretary General/High Representative and the Commission at its meeting in December 2004. This strategy should suggest ways to improve the efficiency of existing instruments such as the monitoring of suspicious financial

¹ Declaration on Combating terrorism adopted on 25 March 2004, doc. 7906/04, point 6.

The European Council also stresses the need to ensure adequate protection and assistance to victims of terrorism.

The Council should, by the end of 2005, develop a long-term strategy to address the factors which contribute to radicalisation and recruitment for terrorist activities.

All the instruments available to the European Union should be used in a consistent manner so that the key concern - the fight against terrorism - is fully addressed. To that end the JHA Ministers within the Council should have the leading role, taking into account the task of the General Affairs and External Relations Council. The Commission should review Community legislation in sufficient time to be able to adapt it in parallel with measures to be adopted in order to combat terrorism.

The European Union will further strengthen its efforts being directed, in the external dimension of the area of freedom, security and justice, towards the fight against terrorism. In this context, the Council is invited to set up in conjunction with Europol and the European Border Agency a network of national experts on preventing and combating terrorism and on border control, who will be available to respond to requests from third countries for technical assistance in the training and instruction of their authorities.

The European Council urges the Commission to increase the funding for counter-terrorism related capacity-building projects in third countries and to ensure it has the necessary expertise to implement such projects effectively. The Council also calls on the Commission to ensure that, in the proposed revision of the existing instruments governing external assistance, appropriate provisions are made to enable rapid, flexible and targeted counter-terrorist assistance.

2.3 Police cooperation

The effective combating of cross-border organised and other serious crime and terrorism requires intensified practical cooperation between police and customs authorities of Member States and with Europol and better use of existing instruments in this field.

The European Council urges the Member States to enable Europol in cooperation with Eurojust to play a key role in the fight against serious cross-border (organised) crime and terrorism by:

- ratifying and effectively implementing the necessary legal instruments by the end of 2004 ¹;
- providing all necessary high quality information to Europol in good time;
- encouraging good cooperation between their competent national authorities and Europol.

With effect from 1 January 2006, Europol must have replaced its "crime situation reports" by yearly "threat assessments" on serious forms of organised crime, based on information provided by the Member States and input from Eurojust and the Police Chiefs Task Force. The Council should use these analyses to establish yearly strategic priorities, which will serve as guidelines for further action. This should be the next step towards the goal of setting up and implementing a methodology for intelligence-led law enforcement at EU level.

Europol should be designated by Member States as central office of the Union for euro counterfeits within the meaning of the Geneva Convention of 1929.

The Council should adopt the European law on Europol, provided for in Article III-276 of the Constitutional Treaty, as soon as possible after the entry into force of the Constitutional Treaty and no later than 1 January 2008, taking account of all tasks conferred upon to Europol.

Until that time, Europol must improve its functioning by making full use of the cooperation agreement with Eurojust. Europol and Eurojust should report annually to the Council on their common experiences

Europol Protocols: the Protocol amending Article 2 and the Annex to the Europol Convention of 30 November 2000, OJ C 358 13.12.2000, p. 1, the Protocol on the privileges and immunities of Europol, the members of its organs, its Deputy Directors and its members of 28 November 2002 OJ C 312 16.12.2002, p.1 and the Protocol amending the Europol Convention of 27 November 2003, OJ C 2 6.1.2004, p. 3. The Convention of 29 May 2000 on mutual assistance in criminal matters between the Member States, OJ C 197, 12.7.2000, p. 1 and its accompanying Protocol of 16 October 2001 OJ C 326, 21.11.2001, p. 2 and Framework Decision 2002/465/JHA of 13 June 2002 on Joint Investigation Teams, OJ L 162, 20.6.2002, p. 1.

Experience in the Member States with the use of joint investigation teams is limited. With a view to encouraging the use of such teams and exchanging experiences on best practice, each Member State should designate a national expert.

The Council should develop cross-border police and customs cooperation on the basis of common principles. It invites the Commission to bring forward proposals to further develop the Schengen-acquis in respect of cross border operational police cooperation.

Member States should engage in improving the quality of their law enforcement data with the assistance of Europol. Furthermore, Europol should advise the Council on ways to improve the data. The Europol information system should be up and running without delay.

The Council is invited to encourage the exchange of best practice on investigative techniques as a first step to the development of common investigative techniques, envisaged in Article III-257 of the Constitutional Treaty, in particular in the areas of forensic investigations and information technology security.

Police cooperation between Member States is made more efficient and effective in a number of cases by facilitating cooperation on specified themes between the Member States concerned, where appropriate by establishing joint investigation teams and, where necessary, supported by Europol and Eurojust. In specific border areas, closer cooperation and better coordination is the only way to deal with crime and threats to public security and national safety.

Strengthening police cooperation requires focused attention on mutual trust and confidence-building. In an enlarged European Union, an explicit effort should be made to improve the understanding of the working of Member States' legal systems and organisations. The Council and the Member States should develop by the end of 2005 in cooperation with CEPOL standards and modules for training courses for national police officers with regard to practical aspects of EU law enforcement cooperation.

The Commission is invited to develop, in close cooperation with CEPOL and by the end of 2005, systematic exchange programmes for police authorities aimed at achieving better understanding of the working of Member States' legal systems and organisations.

Finally experience with external police operations should also be taken into account with a view to improving internal security of the European Union.

2.4 Management of crises within the European Union with cross-border effects On 12 December 2003 the European Council adopted the European security strategy, which outlines global challenges, key threats, strategic objectives and policy implications for a secure Europe in a better world. An essential complement thereof is providing internal security within the European Union, with particular reference to possible major internal crises with cross-border effects affecting our citizens, vital infrastructure and public order and security. Only then can optimum protection be provided to European citizens and vital infrastructure for instance in the event of a CBRN accident.

Effective management of cross-border crises within the EU requires not only strengthening of current actions on civil protection and vital infrastructure but also addressing effectively the public order and security aspects of such crises and coordination between these areas.

Therefore the European Council calls for the Council and the Commission to set up within their existing structures, while fully respecting national competences, integrated and coordinated EU crisis-management arrangements for crises with cross-border effects within the EU, to be implemented at the latest by 1 July 2006. These arrangements should at least address the following issues: further assessment of Member States' capabilities, stockpiling, training, joint exercises and operational plans for civilian crisis management

2.5 Operational cooperation

Coordination of operational activities by law enforcement agencies and other agencies in all parts of the area of freedom, security and justice, and monitoring of the strategic priorities set by the Council, must be ensured.

To that end, the Council is invited to prepare for the setting up of the Committee on Internal Security, envisaged in Article III-261 of the Constitutional Treaty, in particular by determining its field of activity, tasks, competences and composition, with a view to its establishment as soon as possible after the Constitutional Treaty has entered into force.

To gain practical experience with coordination in the meantime, the Council is invited to organise a joint meeting every six months between the chairpersons of the Strategic Committee on Immigration, Frontiers and Asylum (SCIFA) and the Article 36 Committee (CATS) and representatives of the Commission, Europol, Eurojust, the EBA, the Police Chiefs' Task Force, and the SitCEN.

2.6 Crime Prevention

Crime prevention is an indispensable part of the work to create an area of freedom, security and justice. The Union therefore needs an effective tool to support the efforts of Member States in preventing crime. To that end, the European Crime Prevention Network should be professionalized and strengthened. Since the scope of prevention is very wide, it is essential to focus on measures and priorities that are most beneficial to Member States. The European Crime Prevention Network should provide expertise and knowledge to the Council and the Commission in developing effective crime prevention policies.

In this respect the European Council welcomes the initiative of the Commission to establish European instruments for collecting, analysing and comparing information on crime and victimisation and their respective trends in Member States, using national statistics and other sources of information as agreed indicators. Eurostat should be tasked with the definition of such data and its collection from the Member States.

It is important to protect public organisations and private companies from organised crime through administrative and other measures. Particular attention should be given to systematic investigations of property holdings as a tool in the fight against organised crime. Private/public partnership is an essential tool. The Commission is invited to present proposals to this effect in 2006.

2.7. Organised crime and corruption

The European Council welcomes the development of a strategic concept with regard to tackling cross-border organised crime at EU-level and asks the Council and the Commission to develop this concept further and make it operational, in conjunction with other partners such as Europol, Eurojust, the Police Chiefs Task Force, EUCPN and CEPOL. In this connection, issues relating to corruption and its links with organised crime should be examined.

2.8 European strategy on drugs

The European Council underlines the importance of addressing the drugs problem in a comprehensive, balanced and multidisciplinary approach between the policy of prevention, assistance and rehabilitation of drug dependence, the policy of combating illegal drug trafficking and precursors and money laundering, and the strengthening of international cooperation.

The European Strategy on Drugs 2005-2012 will be added to the programme after its adoption by the European Council in December 2004.

3. **STRENGTHENING JUSTICE**

borders between countries in Europe no longer constitute an obstacle to the settlement of civil law matters or to the bringing of court proceedings and the enforcement of decisions in civil matters.

3.1 European Court of Justice

The European Council underlines the importance of the European Court of Justice in the relatively new area of freedom, security and justice and is satisfied that the Constitutional Treaty greatly increases the powers of the European Court of Justice in that area.

To ensure, both for European citizens and for the functioning of the area of freedom, security and justice, that questions on points of law brought before the Court are answered quickly, it is necessary to enable the Court to respond quickly as required by Article III-369 of the Constitutional Treaty.

In this context and with the Constitutional Treaty in prospect, thought should be given to creating a solution for the speedy and appropriate handling of requests for preliminary rulings concerning the area of freedom, security and justice, where appropriate, by amending the Statutes of the Court. The Commission is invited to bring forward - after consultation of the Court of Justice - a proposal to that effect.

3.2 Confidence-building and mutual trust

Judicial cooperation both in criminal and civil matters could be further enhanced by strengthening mutual trust and by progressive development of a European judicial culture based on diversity of the legal systems of the Member States and unity through European law. In an enlarged European Union, mutual confidence shall be based on the certainty that all European citizens have access to a judicial system meeting high standards of quality. In order to facilitate full implementation of the principle of mutual recognition, a system providing for objective and impartial evaluation of the implementation of EU policies in the field of justice, while fully respecting the independence of the judiciary and consistent with all the existing European mechanisms, must be established.

Strengthening mutual confidence requires an explicit effort to improve mutual understanding among judicial authorities and different legal systems. In this regard, networks of judicial organisations and institutions, such as the network of the Councils for the Judiciary, the European Network of Supreme Courts and the European Judicial Training Network, should be supported by the Union.

Exchange programmes for judicial authorities will facilitate cooperation and help develop mutual trust. An EU component should be systematically included in the training of judicial authorities. The Commission is invited to prepare as soon as possible a proposal aimed at creating, from the existing structures, an effective European training network for judicial authorities for both civil and criminal matters, as envisaged by Articles III-269 and III-270 of the Constitutional Treaty.

3.3 Judicial cooperation in criminal matters

Improvement should be sought through reducing existing legal obstacles and strengthening the coordination of investigations. With a view to increasing the efficiency of prosecutions, while guaranteeing the proper administration of justice, particular attention should be given to possibilities of concentrating the prosecution in cross-border multilateral cases in one Member State. Further development of judicial cooperation in criminal matters is essential to provide for an adequate follow up to investigations of law enforcement authorities of the Member States and Europol.

The European Council recalls in this context the need to ratify and implement effectively - without delay - the legal instruments to improve judicial cooperation in criminal matters, as referred to already in the paragraph on police cooperation.

3.3.1 Mutual recognition

The comprehensive programme of measures to implement the principle of mutual recognition of judicial decisions in criminal matters, which encompasses judicial decisions in all phases of criminal procedures or

OJ C 12, 15.1.2001, pages 10-22.

The further realisation of mutual recognition as the cornerstone of judicial cooperation implies the development of equivalent standards for procedural rights in criminal proceedings, based on studies of the existing level of safeguards in Member States and with due respect for their legal traditions. In this context, the draft Framework Decision on certain procedural rights in criminal proceedings throughout the European Union should be adopted by the end of 2005.

The Council should adopt by the end of 2005 the Framework Decision on the European Evidence Warrant \ The Commission is invited to present its proposals on enhancing the exchange of information from national records of convictions and disqualifications, in particular of sex offenders, by December 2004 with a view to their adoption by the Council by the end of 2005. This should be followed in March 2005 by a further proposal on a computerised system of exchange of information.

3.3.2 Approximation of law

The European Council recalls that the establishment of minimum rules concerning aspects of procedural law is envisaged by the treaties in order to facilitate mutual recognition of judgments and judicial decisions and police and judicial cooperation in criminal matters having a cross-border dimension. The approximation of substantive criminal law serves the same purposes and concerns areas of particular serious crime with cross border dimensions. Priority should be given to areas of crime that are specifically mentioned in the treaties.

To ensure more effective implementation within national systems, JHA Ministers should be responsible within the Council for defining criminal offences and determining penalties in general.

3.3.3 Eurojust

Effective combating of cross-border organised and other serious crime and terrorism requires the cooperation and coordination of investigations and, where possible, concentrated prosecutions by Eurojust, in cooperation with Europol.

COM(2003) 688.

The European Council urges the Member States to enable Eurojust to perform its tasks by:

- effectively implementing the Council Decision on Eurojust by the end of 2004¹ with special attention to the judicial powers to be conferred upon their national members; and
- ensuring full cooperation between their competent national authorities and Eurojust.

The Council should adopt on the basis of a proposal of the Commission the European law on Eurojust, provided for in Article III-273 of the Constitutional Treaty, after the entry into force of the Constitutional Treaty but no later than 1 January 2008, taking account of all tasks referred to Eurojust.

Until that time, Eurojust will improve its functioning by focusing on coordination of multilateral, serious and complex cases. Eurojust should include in its annual report to the Council the results and the quality of its cooperation with the Member States. Eurojust should make maximum use of the cooperation agreement with Europol and should continue cooperation with the European Judicial Network and other relevant partners.

The European Council invites the Council to consider the further development of Eurojust, on the basis of a

3.4.1 Facilitating civil law procedure across borders

Civil law, including family law, concerns citizens in their everyday lives. The European Council therefore attaches great importance to the continued development of judicial cooperation in civil matters and full completion of the programme of mutual recognition adopted in 2000. The main policy objective in this area is that borders between countries in Europe should no longer constitute an obstacle to the settlement of civil law matters or to the bringing of court proceedings and the enforcement of decisions in civil matters.

OJL63, 6.3.2002, pages 1-3.

3.4.2 Mutual recognition of decisions

Mutual recognition of decisions is an effective means of protecting citizens' rights and securing the enforcement of such rights across European borders.

Continued implementation of the programme of measures on mutual recognition * must therefore be a main priority in the coming years to ensure its completion by 2011. Work concerning the following projects should be actively pursued: the conflict of laws regarding non-contractual obligations ("Rome II") and contractual obligations ("Rome I"), a European Payment Order and instruments concerning alternative dispute resolution and concerning small claims. In timing the completion of these projects, due regard should be given to current work in related areas.

The effectiveness of existing instruments on mutual recognition should be increased by standardising procedures and documents and developing minimum standards for aspects of procedural law, such as the service of judicial and extra-judicial documents, the commencement of proceedings, enforcement of judgments and transparency of costs.

Regarding family and succession law, the Commission is invited to submit the following proposals:

- a draft instrument on the recognition and enforcement of decisions on maintenance, including precautionary measures and provisional enforcement in 2005;
- a green paper on the conflict of laws in matters of succession, including the question of jurisdiction, mutual recognition and enforcement of decisions in this area, a European certificate of inheritance and a mechanism allowing precise knowledge of the existence of last wills and testaments of residents of European Union in 2005; and
- a green paper on the conflict of laws in matters concerning matrimonial property regimes, including the question of jurisdiction and mutual recognition in 2006;
- a green paper on the conflict of laws in matters relating to divorce (Rome III) in 2005.

Instruments in these areas should be completed by 2011. Such instruments should cover matters of private international law and should not be based on harmonised concepts of "family", "marriage", or other. Rules of uniform substantive law should only be introduced as an accompanying measure, whenever necessary to effect mutual recognition of decisions or to improve judicial cooperation in civil matters.

OJC12, 15.1.2001, page 1-9.

Implementation of the programme of mutual recognition should be accompanied by a careful review of the operation of instruments that have recently been adopted. The outcome of such reviews should provide the necessary input for the preparation of new measures.

3.4.3 Enhancing cooperation

With a view to achieving smooth operation of instruments involving cooperation of judicial or other bodies, Member States should be required to designate liaison judges or other competent authorities based in their own country. Where appropriate they could use their national contact point within the European Judicial Network in civil matters. The Commission is invited to organise EU workshops on the application of EU law and promote cooperation between members of the legal professions (such as bailiffs and notaries public) with a view to establishing best practice.

3.4.4 Ensuring coherence and upgrading the quality of EU legislation

In matters of contract law, the quality of existing and future Community law should be improved by measures of consolidation, codification and rationalisation of legal instruments in force and by developing a common frame of reference. A framework should be set up to explore the possibilities to develop EU-wide standard terms and conditions of contract law which could be used by companies and trade associations in the Union.

Measures should be taken to enable the Council to effect a more systematic scrutiny of the quality and coherence of all Community law instruments relating to cooperation on civil law matters.

3.4.5 International legal order

The Commission and the Council are urged to ensure coherence between the EU and the international legal order and continue to engage in closer relations and cooperation with international organisations such as The Hague Conference on Private International Law and the Council of Europe, particularly in order to coordinate initiatives and to maximise synergies between these organisations' activities and instruments and the EU instruments. Accession of the Community to the Hague Conference should be concluded as soon as possible.

4. EXTERNAL RELATIONS

The European Council considers the development of a coherent external dimension of the Union policy of freedom, security and justice as a growing priority.

In addition to the aspects already addressed in the previous chapters, the European Council calls on the Commission and the Secretary-General / High Representative to present, by the end of 2005, a strategy covering all external aspects of the Union policy on freedom, security and justice, based on the measures developed in this programme to the Council. The strategy should reflect the Union's special relations with third countries, groups of countries and regions, and focus on the specific needs for JHA cooperation with them.

All powers available to the Union, including external relations, should be used in an integrated and consistent way to establish the area of freedom, security and justice. The following guidelines¹ should be taken into account: the existence of internal policies as the major parameter justifying external action; need for value added in relation to projects carried out by the Member States;

contribution to the general political objectives of the foreign policies of the Union; possibility of achieving the goals during a period of reasonable time; the possibility of long-term action.

established at the European Council meeting in Feira in 2000.

ANNEX XII
COMMISSION OF THE EUROPEAN COMMUNITIES



COMMUNICATION
FROM THE COMMISSION TO THE
EUROPEAN PARLIAMENT AND THE
COUNCIL

on judicial training in the European Union

COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL

on judicial training in the European Union

1. INTRODUCTION:

1. The adoption of the Amsterdam Treaty with its reference to the new objective of creating an "area of freedom, security and justice" means that judicial training is a new task for the Union. Admittedly, there has always been a great need for high-level training for the practitioners of justice in the EU because the proper application of Community law depends heavily on the national judicial systems. The familiarity of judges, prosecutors and lawyers with this subject has, from the outset, been essential for the sound application of the Community legislation and full respect for the fundamental freedoms recognised by the Treaty¹. But justice, which was hitherto only a means of enforcing Community law in the Community, became an objective in its own right under the Amsterdam Treaty. Improvement of judicial cooperation is now an objective to be met. Judicial training is an essential instrument to this end.
2. After several years of development of the area of freedom, security and justice, this question has taken on particular significance. The adoption of a corpus of legislation that has become substantial and must now be implemented by the practitioners of justice, coupled with the development of the mutual recognition principle, which rests primarily on a high degree of mutual confidence between the Member States' judicial systems, means that judicial training is now a major issue.
3. The Hague programme adopted by the European Council in November 2004² stresses the need to strengthen mutual confidence, which requires "an explicit effort to improve mutual understanding among judicial authorities and different legal systems". As in December 2001, when the Laeken European Council called for "a European network to encourage the training of magistrates to be set up swiftly; this will help develop trust between those involved in judicial cooperation"³, the Hague programme considers that the Union must in particular seek support in the European Judicial Training Network. This communication is in response to the request that the Commission "prepare as soon as possible a proposal aimed at creating, from the existing structures, an effective European training network for judicial authorities for both civil and criminal matters, as envisaged by Articles III-269 and III-270 of the Constitutional Treaty", included in the Action Plan to implement the Hague programme⁴.

¹ See COM(1993) 632 final.

² OJ C 53, 3.3.2005, p. 1.

³ SN (2001) 1200.

⁴ OJ C 198, 12.8.2005, p. 1.

4. It also underlines the close link between mutual confidence and the constitution of a "European legal culture", which training can help to strengthen. This European legal culture rests on a sense of belonging to a single area shared by practitioners of justice in the Member States. Apart from the wealth and diversity of the national judicial systems, a significant factor in this area is the presence of common fundamental values embodied in instruments such as the Convention for the Protection of Human Rights and Fundamental Freedoms and the Charter of Fundamental Rights of the European Union, and of a shared legal corpus including both Community law and Union law. The development of the mutual recognition principle, which means that judgments given in one Member State can be enforced quickly and simply in any of the other Member States, requires that this common sense of belonging be strengthened and consolidated. The principle of direct contact between judicial authorities, which is asserted in most of the instruments of judicial cooperation, is another of its components.
5. There is a wide range of judicial professions. This communication primarily addresses issues related to the training of judges and prosecutors who come under the direct authority of the Member States and also, although this is a responsibility for the professions, the training of lawyers. It analyses the operation of legal training in the Member States and the way in which the European Union, particularly through financing programmes, has helped to develop it, before considering the components of a future European strategy on judicial training.

2. JUDICIAL TRAINING IN THE EUROPEAN UNION

2.1. A situation that varies very widely between Member States

6. Judicial training systems are closely linked to judicial organisation in the Member States and vary very widely. The decisive factor is the machinery through which judges, prosecutors and lawyers are recruited.
7. The initial training of the judges, and sometimes the prosecutors, varies in its level of detail according to whether they are recruited straight from university or after several years' professional experience. Continuing training exists in virtually all the Member States, but is not equally highly developed.
8. National training structures reflect differences between judicial systems. Depending on the systems, judges, lawyers and prosecutors follow either the same basic curriculum or separate curricula. As regards judges and prosecutors, depending on the Member State, judicial training comes under the Ministry of Justice, the Higher Council of the Judiciary or Justice, or, as appropriate, under the Prosecutor-General, where there is strict separation between judges and prosecutors, or under specialised establishments. In several Member States⁵, a single institution is responsible for training judges and prosecutors, though they may belong to separate professional categories. Lawyers' training is often organised direct by the bar, in many cases in conjunction with the universities.

Austria, Belgium, the Czech Republic, France, Germany, Greece, Italy, Portugal, the Netherlands, Poland, Slovakia and Slovenia.

9. Likewise, the judges in the administrative courts, whether or not they belong to the same professional category as the judges in the ordinary courts, must be brought within European debate on training, especially in view of their essential role in matters such as asylum and immigration. Generally, all the judges, including the specialised courts (military judges, neighbourhood judges, justices of the peace, judges in commercial courts, etc.), who may have to apply European law are involved.
10. Although the Commission does not have exhaustive information on this point, major differences seem to exist between the Member States in the duration of training. Only continuing training is in this respect a comparable parameter, given the differences in recruitment systems. There are sometimes major inequalities in access to training as between judges, prosecutors and lawyers. In budgetary terms, the training of judges and prosecutors is almost always financed from public funds, whereas training for lawyers is financed by professional organisations.
11. The European Union has no grounds for interfering in the organisation of national training systems, which reflect the Member States' legal and judicial traditions. But strengthening mutual confidence entails developing training sufficiently and devoting sufficient resources to it. Judges, lawyers and prosecutors must be able to receive training of an equivalent level and quality. The time devoted to training must be sufficient both to ensure high quality standards in the judicial system and to allow a significant European component to be developed in the programmes. European financing can be used only by way of addition to national financing and cannot be used to release the Member States from their responsibility for ensuring an appropriate level of training of the judicial professions.

2.2. The European aspects of judicial training

12. The wish to strengthen judicial training has been clearly affirmed politically on several occasions, and financial support has been forthcoming. In addition to European organisations involved in judicial training, national training structures have set up a network to meet the challenges involved in strengthening mutual confidence.

2.2.1. European support for judicial training

13. After a first debate in the Council prompted by Italy in 1991⁶, France presented a legislative initiative in November 2000⁷. This proposal was not adopted, but it enabled the Commission to take stock of the possible mechanisms for structuring the European Judicial Training Network⁸. It was also the source of Council conclusions in June 2003 stressing the essential character of training for the success of the adoption of the area of freedom, security and justice and asking the Member States and the Commission to support the European Judicial Training Network.
14. The European Parliament, when considering the French initiative, stressed the importance of the training of judicial professionals in Community and Union law⁹.

~~Doc. 9090/91, 31.10.1991, JUR. 107, COURT~~
13. OJ C 18, 19.1.2001 p. 9.

⁶ SEC(2002) 635.

⁹ Report by Ms Evelyn Gebhardt, A5- 0276/2002 (OJ C 273 E, 14.11.2003, p. 999).

More recently, in its recommendation on the quality of criminal justice and the harmonisation of criminal law in the Member States¹⁰, Parliament stressed "the key role played by training in developing a common legal culture and a culture of fundamental rights within the Union, in particular via the actions of the European judicial training network".

15. In addition to political impetus, the development of training has been stimulated by financial support. Since 1996, when the first Grotius programme was set up "to foster mutual knowledge of legal and judicial systems and to facilitate judicial cooperation between Member States"¹¹, the European Union has contributed to strengthening the training of legal practitioners through a series of general or sectoral programmes¹².
16. The European Parliament's wish to support training took practical form in the establishment of a pilot project to boost exchanges between judicial authorities. This programme continues in 2006 and was incorporated into the legislative proposals for the framework programme on fundamental rights and justice for 2007-2013¹³ (see below). The civil justice and criminal justice aspects of this programme will further boost the resources devoted to judicial training.
17. In 2005 Union financial support for judicial training enabled professionals to meet on numerous occasions.¹⁴ Nevertheless, the mechanism of the annual calls for proposals can have the effect that priority is given to financing specific projects that do not fall within a generally consistent pattern and can make it difficult to situate training in a long-term perspective.
18. The framework programme on fundamental rights and justice must therefore facilitate an increase in European financing devoted to judicial training and encourage closer correlation between the Union's priorities and the training schemes organised, thus encouraging projects that are more ambitious and coordinated and that yield genuine European value added.
19. In addition to financial tools, the mechanisms set up by the Union to help cooperation, such as the Judicial Network in Civil Matters, on the one hand, and Eurojust and the Judicial Network in Criminal Matters, on the other, can play an important role in training by disseminating information on the Union's legal instruments or by organising local training activities. This role could be strengthened in the future.

¹⁰ P6-TA(2005)0030 (OJ C 304E, 1.12.2005, p. 109).

¹¹ Joint action 96/636/JHA of 28 October 1996 (OJ L 287, 8.11.1996).

¹² See STOP programme (OJ L 322, 12.12.1996) and Falcone programme (OJ L 99, 31.03.1998) which were merged in the AGIS programme in 2002 (OJ L 203, 1.8.2002); in civil matters (OJ L 115, 1.5.2001); in competition law (Decision No 792/2004/EC of 21 April 2004) and, since 2004, the Hercules programme for the protection of the financial interests of the Communities (OJ L 143, 3.4.2004). For the record, Action Robert Schuman (OJ L 196, 14.7.1998).

¹³ Commission Communication to the Council and the European Parliament establishing for the period

2007-2013 a framework programme on fundamental rights and justice (OJ C 211, 30.8.2005, p. 6).

¹⁴ In 2005, 1000 judges or prosecutors took part in training activities in another Member State under the EJTN.

2.2.2. *Organisations with a European dimension involved in judicial training*

20. There are many institutions regularly organising training for practitioners of justice. Apart from the universities, there is the European Institute of Public Administration (EIPA) in Maastricht, which opened the European Centre for Judges and Lawyers in Luxembourg in 1992. And the European Law Academy (ERA), founded in Trier in 1992, seeks to disseminate better familiarity with European law among lawyers and the legal professions. The EIPA and the ERA are supported by the European Union.
21. In 2000 the national institutions responsible for judicial training in the Member States set up the European Judicial Training Network (EJTN) to develop their relations and coordinate their activities. The EJTN brings the national education institutions together within an association.¹⁵ Its aim is twofold: to promote a training programme with a genuinely European dimension and to develop cooperation as regards analysis of training needs and exchanges of experience and in devising common programmes and tool, all for the benefit of members of European judicial bodies.
22. The EJTN is a valuable tool for developing judicial training and coordinating the activities of the various national structures in the field of Union law. It received operating grants from the Union budget in 2003 and 2005. It also coordinates an important part of the judges exchange programme for 2005. As from 2007, the Commission proposes that it be allocated an annual operating grant under the framework programme on fundamental rights and justice (specific programme on criminal justice).

3. WHAT ACTION SHOULD EUROPE TAKE ON JUDICIAL TRAINING? 3.1. Objectives and needs

23. The organisation of judicial training is primarily the responsibility of the Member States, and it is up to them to incorporate the European dimension fully into their national activities. The needs are great. In criminal matters, special attention was drawn to them in the first evaluation exercise devoted to mutual judicial assistance in criminal matters.¹⁶ Eurojust and the Judicial Network in Civil Matters regularly came to the same conclusion.
24. Priority should be given to three types of action:
 - improving familiarity with Union and Community legal instruments, in particular in areas where specific powers are entrusted to the national judges;

17

The ERA also takes part and the Lisbon Network, set up by the Council of Europe, is involved.

¹ OJ C 216, 1.8.2001, p. 14.

² That applies in specific areas such as competition (see in particular Regulation (EC) No 1/2003 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty, which

⁵ 23 Member States plus Bulgaria and Romania are represented. Contacts are ongoing with EE and CY. confers power on the national courts to apply these articles) but also, more generally, as regards civil and criminal justice and especially for the implementation of mutual recognition.

- improving language skills so that judicial authorities can communicate with each other direct, as provided for in most instruments;

developing familiarity with the legal and judicial systems of the Member States so that their respective needs can be assessed in the judicial cooperation context.

25. In terms of method, training must stress the practical aspects which enable the instruments that are adopted to be applied correctly. Apart from lectures and seminars, methods allowing broader dissemination of the results of training must be developed. More training courses for trainers should be offered, in particular to encourage them to be more keenly aware of the European dimension of judicial action and to disseminate such awareness. The use of easily accessible, reusable training tools, in particular on-line, must be sought, particularly regarding Union instruments and information on the national legal systems to which practitioners need to have access. In this connection, close cooperation is desirable between national training bodies, European training bodies and the EJTN, on the one hand, and Eurojust and the Judicial Networks in Civil and Criminal Matters, on the other. Moreover, the introduction of a multidisciplinary element in compliance with national traditions should facilitate exchanges of views and experience between, for example, judges, prosecutors, lawyers and police officers.
26. The principle of direct communication between judicial authorities is regularly hampered by practitioners' inadequate language skills. Resolute action is needed here, targeting in particular those professionals who are directly involved in judicial cooperation.
27. Exchanges are an excellent method of developing common benchmarks while respecting national identities. They could be supplemented by periods of training of an appropriate duration at the Court of Justice and at Eurojust, with the details to be worked out with each of these institutions.
28. The Hague programme stresses the importance of incorporating a European component in national training programmes. Distinctions need to be made according to the level of development of initial training in each Member State. Generally, the purpose of initial training can be seen in particular as one of giving future professionals a sense of belonging to the same area of law and values. Continuing training, on the other hand, must enable already experienced professionals to feel at home with the legal instruments adopted in the European Union. It must first target professionals involved in judicial cooperation, without of course ruling out a broader knowledge-sharing objective.
29. The point of strengthening the European component of national training is to achieve more widespread familiarity with Union mechanisms. There is also a need to develop a more fully integrated type of training, conceived and implemented at European level. The Judicial Network in Civil Matters, Eurojust, the Judicial Network in Criminal Matters, and, if it wishes, the Court of Justice should be associated with designing training of this type, in conjunction with the EJTN, with institutions such as the ERA or the EIPA and with academic networks.

3.2. Towards a European strategy of judicial training

30. Strengthening legal training involves developing closer relations between national institutions, organisations operating at European level and the Union institutions, particularly the Commission.
31. At this stage, without ruling out the possibility of a specific legislative instrument, the Commission first wishes to give financial support to the training of legal professions in Union and Community law under the 2007-2013 framework programme on fundamental rights and justice.
32. In its implementation, difficulties identified in previous programmes must be remedied. To ensure that financing for training is actually targeted on essential needs and to facilitate medium- and long-term activity programming, the main actors in judicial training in the Member States and at European level will be consulted regularly in order to devise a European strategy of multi-annual training that will subsequently be reflected in the annual programmes.
33. Parallel to continuous support for European organisations such as the EIPA and the ERA, the EJTN must be strengthened to improve coordination between national entities and to develop strong and stable relations between them. Establishing an annual operating grant for it is a major element, though actual payment, of course, will be subject to the conditions laid down in the Financial Regulation. The EJTN should also be able to become involved in devising fully European training schemes in conjunction with the other relevant bodies. It comprises the institutions competent for training judges, prosecutors being included only where they are classed as judicial officers. Prosecutors must be allowed to take part in all the activities developed at European level and managed by the Network, subject to full respect for national traditions concerning the separation between judges and prosecutors. Many cooperation mechanisms, particularly in criminal matters, are based on sound cooperation between the Member States' prosecutors and between them and Eurojust. The question of the participation of the judges from administrative courts and specialised judges more generally (for example, in commercial courts, employment courts and so on) must also be considered.
34. Training for the other legal professions, and particularly lawyers, whose role is decisive, must also be strengthened. Existing programmes already make it possible to finance actions of interest to them. The future framework programme on fundamental rights and justice must provide the means of strengthening them in order to preserve a balance between judicial authorities and the other legal professions.
35. Financially speaking, there will have to be a degree of simplification to target European financing more clearly on projects that make it possible to reach out to audiences of particular importance (judges, prosecutors and lawyers). Account will be taken in particular of the pre-eminent role of national institutions whose direct involvement should make it possible to strengthen the European components in the national programmes. In addition, in order to facilitate the medium-term planning of activities, general partnership agreements could be put in place to stabilise relations with qualified institutions; calls for tender could also be issued on a one-off basis for certain larger-scale projects.

36. Lastly, judicial training should become integrated into a broader international context and should be an area for cooperation beyond the borders of the Union. It should be able to be extended to the Council of Europe (under the Lisbon Network) and, beyond that, to contribute to facilitating judicial cooperation with third countries and to strengthening the rule of law in the world.

4. CONCLUSION:

37. Judicial training is a vital issue for the establishment of the European judicial area in the years to come, as the Hague programme stated. Numerous actors will have to be mobilised to play a role here, with a star role for the framework programme on fundamental rights and justice. Concerning the strengthening of the European Judicial Training Network referred to expressly in the Hague programme, financial support appears the most appropriate solution in the current situation. A different option was taken in police matters, where the Union chose a European agency structure when setting up CEPOL¹⁸. Although a similar solution does not currently seem necessary in judicial matters. The question of developing European judicial training structures towards other forms could be raised again when the framework programme on fundamental rights and justice comes to an end.

38. The adoption of that programme will be an opportunity to highlight the importance attached by the Union to training for the judicial professions by assuring it of increased financial support. The development of a European strategy for legal training involving national and European players should enable optimum use to be made of the new resources. At the present stage of evolution of the European judicial area, training for practitioners is a crucial factor in making effective and visible to the people of Europe the progress achieved in establishing the area of freedom, security and justice.

⁸ Council Decision 2005/681/JHA of 20 September 2005 establishing the European Police College (CEPOL) and repealing Decision 2000/820/JHA (OJ L 256, 1.10.2005, p. 63).
