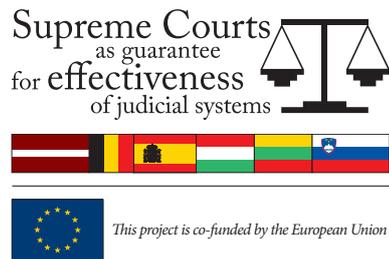


# Best practice guide for managing Supreme Courts

Supreme Courts  
as guarantee  
for effectiveness  
of judicial systems



*This project is co-funded by the European Union*



This Best practice guide is issued as a result of the project *Supreme Courts as guarantee for effectiveness of judicial systems in the European Union*, co-funded by the European Commission. The project is elaborated in collaboration among the Supreme Court of Latvia, Curia of Hungary, Supreme Court of Lithuania, Supreme Court of Spain, University of Antwerp and University of Ljubljana.

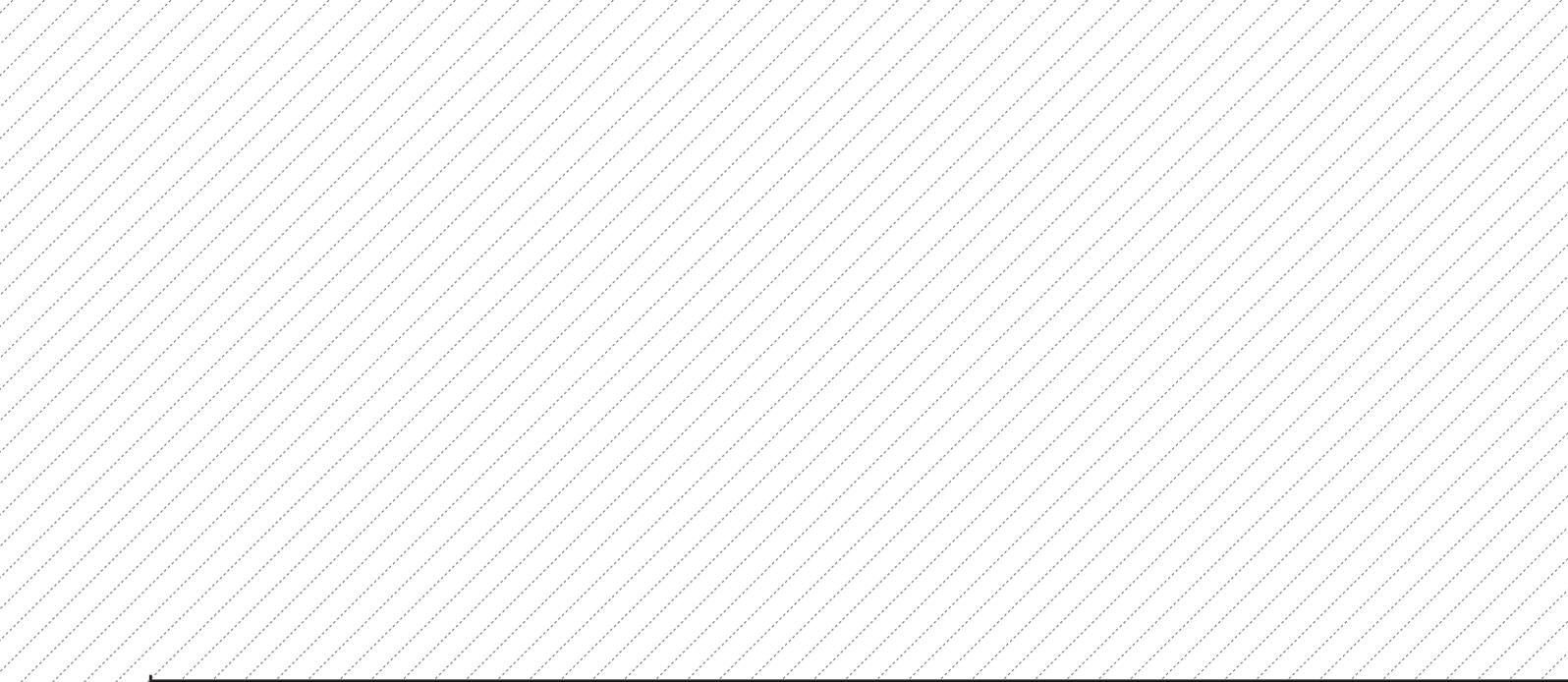
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Best practice guide  
for managing  
Supreme Courts

Dear colleagues across the Europe,

it is an honour for the Project team to open a new page in mutual dialogue among the Supreme Courts of the European Union. Although there exists a common understanding about the special role of the Supreme Courts both in judiciary and in the society, the Project has proved that we still have many things to learn from each other. This concerns not only classical questions on the procedure and criteria for filtering of appeals or reasoning of judicial decisions, but also more pragmatic practical issues, related to the streamlining of the work of Courts: how is the judicial work organized in terms of personnel, infrastructure and financial aspects.

It is also important to note that various platforms (Network of the Presidents of the Supreme Judicial Courts of the European Union, Association of Councils of State and Supreme Administrative Jurisdictions (ACA-Europe), International Association of Judges (IAJ), European Network of Councils for the Judiciary (ENCJ) and many others) focus their efforts on strengthening the independence of judiciary, including implementing valuable indepth researches on different topics. It has become evident that comparative studies have numerous advantages, including exchange of experience and knowledge on what practice should be followed and what should be avoided.

The Supreme courts across Europe fulfil a crucial role both in development of legal systems in general, and, more specifically, in development of judicial systems that are both effective and efficient and based on principles of meaningful and accountable independence of judiciary. I hope that this handbook will be a new encouragement for an in-depth dialogue about past lessons, present challenges and future objectives for judiciaries in the EU.

The handbook contains a special chapter devoted to Councils for the Judiciary. It has also been a self-set task for the Project team to reveal the important connection and correlation between Supreme Courts of EU member states and their Councils for the Judiciary. During the last two decades numerous research activities have been held in order to strengthen and implement the ideal of independent judiciary, which ever more often has been embodied in separate institutions, where judges form a substantial majority and have a platform for a dialogue with the executive and legislative powers of the state.

Nevertheless, establishment of a Council for the Judiciary *per se* does not guarantee that judiciary is granted a meaningful voice in setting clear standards and putting into practice the principles of independent, accountable and efficient judiciary in the service of society. In this sense, the Project team found it necessary to research, how strong and vital is the link between the Supreme Courts, which play a unique role in saying the final word regarding the Justice and the overall mission of Councils for the Judiciary as watchdogs of judicial independence.

The Report is primarily based on a questionnaire filled by the Supreme Courts (20 countries have filled the questionnaire), supplemented by a multitude of other sources. I would like to extend my thanks to our project partners – Universities of Antwerp and Ljubljana – who took upon themselves the task of analysing and summarizing this information, as well as lending their informed observers' perspective in formulating the recommendations this volume contains.



Ivars Bičkovičs  
Chief Justice of the Supreme Court of Latvia  
and Chair of the Council for the Judiciary

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# Introduction

## 1. PURPOSE

Effective justice systems play a crucial role in upholding the rule of law and the European Union's fundamental values. **Quality, independence and efficiency** are some of the **essential parameters** of an **'effective justice system'** and are used in the EU Justice Scoreboard to analyse the functioning of the judicial systems of all EU Member States. As the highest instance court, the essential task of the Supreme Courts is to safeguard legal certainty and legal uniformity and to contribute to the development of law. Supreme Courts are thus a key factor in an effective justice system. Since the Supreme Courts act as EU courts when applying EU law, they also play an important role in the coherent application of EU law.

The Supreme Courts of Latvia, Hungary, Lithuania and Spain, as well as the University of Ljubljana and the University of Antwerp analysed the performance of the Supreme Courts in the European Union. The research findings are presented in this report.

The research project focused on the following questions, all related to the management of the Supreme Courts:

- 1. How can Supreme Courts contribute to legal certainty, consistency and the transparency of the law?** Embedded within this first research question is the sub-question of how to enhance the institutional capacity of Supreme Court research and documentation units, which are generally charged with the twofold task of analytical overview of the Supreme Court's case law, as well as in assisting the judges with research. Particular attention will be paid to the contribution of research and documentation units to the correct implementation of EU law.
- 2. How can Supreme Court management be improved and backlogs be reduced in order to guarantee an effective and timely protection of rights?** The research concentrates on best practices in EU Member States to improve the functioning of the management systems of Supreme Courts, with particular attention being paid to streamlined case handling and in-house coordination.
- 3. How can Supreme Court communication with the public be improved?** This priority is aimed at communication with the parties (access of the parties to the case file) and with the general public (information and education of the public).
- 4. What is the role of the Supreme Courts in the work of the national Councils of Judiciary?** More broadly, the research project will make a SWOT analysis of the Councils for the Judiciary as a crucial actor in relation to enhancing and sustaining the quality of the judicial system. A SWOT analysis concerns the Strengths, Weaknesses, Opportunities and Threats of a certain practice, institution, decision, etc.

I To answer these questions, we analysed the literature and existing studies regarding these topics as well as surveys that were sent out to all the Supreme Courts of the European Union. Furthermore, the project partners also engaged in four study visits.

The goal of collecting all this information was to come up with best practices for managing Supreme Courts. The aim was to increase the administrative and judicial capacity of Supreme Courts and thus to increase the effectiveness of judicial systems. Better court management and improved transparency in the work of the Supreme Courts will not only lead to more efficient case handling, but will also raise the trust of civil society and improve the image of Supreme Courts as reliable and user-friendly institutions. The smooth assignment and quicker examination of cases will also lead to better implementation of EU law.

This best-practice guide will be presented and distributed to all Supreme Courts of the European Union during an international conference on 21 April 2017 in Riga. It can be used as an inspirational tool for Supreme Courts to improve their management.

The guide presents various examples of practices adopted by other Supreme Courts and gives an overview of the most important literature and studies as a background to the proposed best practices. In this way, it serves as a tool to exchange ideas, rather than as a strict book of rules that have to be applied in order to qualify as a competent and effective Supreme Court.

## 2. METHODOLOGY

As previously stated, this report looks at the practices adopted by Supreme Courts in **four focus areas**: research and documentation units, communication strategies, administration of Supreme Courts (especially allocation of cases and length of proceedings) and the role of the Supreme Court in the work of the national Councils of Judiciary.

The report uses various sources of information to study the above-mentioned topics. We begin each chapter with some **general observations**, in which the most important studies and literature regarding the topic in question is summarised. Much attention is paid to the opinions of the Consultative Council of European Judges (CCJE), previous studies and tools adopted by the European Commission for the Efficiency of Justice (CEPEJ), the European Network of Councils for the Judiciary (ENCJ) and the European Commission.

Subsequently, we discuss the **survey results**. As stated in the European Judicial Systems, Edition 2016, the quality of the data also depends here *'on the type of questions asked in the data collection instrument, the definitions used by the states, the system of registration, the efforts made by national correspondents, the national data available and the way the figures were processed and analysed. (...) one can assume that some variations occurred when the national correspondents interpreted the questions regarding their country and attempted to match the questions with the information available. The reader should bear this point in mind and always interpret the statistics by the light of the comments and the detailed explanations given individually by the states'*.<sup>1</sup>

It is also important to note that the information on the countries in this report is based on the answers given by the respondents in the survey. Furthermore, we remind the reader that the survey was drafted at an early stage, following a bottom-up approach by the project partners. The University of Ljubljana and the University of Antwerp were subsequently asked to analyse the survey results. As it was impossible to foresee all aspects of certain topics at this early stage, some aspects will require further research.

We addressed our survey to 39 Supreme Courts and received answers from the following 26: the Supreme Court of Austria, the Supreme Administrative Court of Austria, the Supreme Court of Belgium, the Supreme Court of Cyprus, the Supreme Court of the Czech Republic, the Supreme Court of Estonia, the Supreme Administrative Court of Finland, the Federal Administrative Court

<sup>1</sup> European Commission for the Efficiency of Justice (CEPEJ), 'European Judicial Systems. Efficiency and Quality of Justice. Edition 2016 (2014 data)' (CEPEJ Studies no 23, 2016 CEPEJ) 8 <[www.coe.int/t/dghl/cooperation/cepej/evaluation/2016/publication/CEPEJ%20Study%202023%20report%20EN%20web.pdf](http://www.coe.int/t/dghl/cooperation/cepej/evaluation/2016/publication/CEPEJ%20Study%202023%20report%20EN%20web.pdf)> accessed 12 January 2017

of Germany, the Curia of Hungary,<sup>2</sup> the Supreme Court of Ireland, the Supreme Court of Italy, the Supreme Court of Latvia, the Supreme Court of Lithuania, the Supreme Administrative Court of Lithuania, the Supreme Court of Luxembourg, the Supreme Court of the Netherlands, the Supreme Court of Poland, the Supreme Administrative Court of Poland, the Supreme Court of Portugal, the Supreme Administrative Court of Portugal, the Supreme Court of Romania, the Supreme Court of Slovakia, the Supreme Court of Slovenia, the Supreme Court of Spain, the Supreme Court of Sweden and the Supreme Administrative Court of Sweden. The response rate to this survey was therefore 67%. We selected these courts through two organisations: the Network of the Presidents of Supreme Judicial Courts of the European Union and the Association of the Councils of State and Supreme Administrative Jurisdictions of the European Union. All the courts were asked two or three times to complete the surveys. In addition, we sent a letter to both of the above-mentioned associations and asked them to help us disseminate information about the surveys.

We use the following country codes throughout this report to refer to the Supreme Courts that participated in the survey:

Supreme Court of Austria	AT	Supreme Court of Luxembourg	LU
Supreme Administrative Court of Austria	AT(A)	Supreme Court of the Netherlands	NL
Supreme Court of Belgium	BE	Supreme Court of Poland	PL
Supreme Court of Cyprus	CY	Supreme Administrative Court of Poland	PL(A)
Supreme Court of the Czech Republic	CZ	Supreme Court of Portugal	PT
Supreme Court of Estonia	EE	Supreme Administrative Court of Portugal	PT(A)
Supreme Administrative Court of Finland	FI	Supreme Court of Romania	RO
Federal Administrative Court of Germany	DE	Supreme Court of Slovakia	SK
Curia of Hungary	HU	Supreme Court of Slovenia	SL
Supreme Court of Ireland	IE	Supreme Court of Spain	ES
Supreme Court of Italy	IT	Supreme Court of Sweden	SE
Supreme Court of Latvia	LV	Supreme Administrative Court of Sweden	SE(A)
Supreme Court of Lithuania	LT		
Supreme Administrative Court of Lithuania	LT(A)		

After we have made some general remarks about the survey results, we formulate some **recommendations**, which are **illustrated with best practices** found at the Supreme Courts that participated in the survey.

### 3. VALUE OF EFFECTIVE JUSTICE SYSTEMS

Without doubt, the justice system forms an important element of society and the State, since it provides an essential public service.<sup>3</sup> It allows individuals to enforce their rights and to obtain redress.<sup>4</sup> Access to an effective justice system is a **fundamental right** enshrined in Articles 6 and 13 of the European Convention on Human Rights and Article 47 of the Charter of Fundamental Rights of the European Union.

The European Union phrases the importance of improving access to justice as follows: *‘This accessibility is put at risk when court proceedings are too intimidating, too hard to understand, too expensive, or too time-consuming. It is undermined when the legal representatives of citizens and businesses are not able to get full and easy access to the case law that allows them to perform as advocates. Good practice dictates that judiciaries search for ways to explain court processes and judgments in plain language, to inform lawyers on legal precedents, and to promote alternatives to court which are potentially faster, cheaper and more conciliatory in the service of justice.’*<sup>5</sup>

<sup>2</sup> The Curia of Hungary is the country’s supreme judicial forum.

<sup>3</sup> European Commission, *Quality of Public Administration. A Toolbox for Practitioners* (abridged version, Publications Office of the European Union 2015) 102

<sup>4</sup> European Commission, *Communication from the Commission to the European Parliament, the Council, the European Central Bank, the European Economic and Social Committee and the Committee of the Regions – The 2016 EU Justice Scoreboard* (Publications Office of the European Union 2016) 1-4 <[http://ec.europa.eu/justice/effective-justice/files/justice\\_scoreboard\\_2016\\_en.pdf](http://ec.europa.eu/justice/effective-justice/files/justice_scoreboard_2016_en.pdf)> accessed 17 November 2016

<sup>5</sup> European Commission, *Quality of Public Administration. A Toolbox for Practitioners* (abridged version, Publications Office of the European Union 2015) 106

In addition to the fact that access to an effective justice system is a fundamental right, effective justice systems also raise society's trust. This trust in the justice system is a key element for business confidence, job creation and economic growth. It is also important in a European context. The internal market cannot be successful if there is no mutual understanding and trust in the justice systems of other EU Members States. This mutual understanding and trust gives enterprises the necessary confidence to set up, employ and trade across borders and the necessary confidence allowing the public to move, work and buy across borders.<sup>6</sup>

## 1. Quality

The ENCJ Working Group on Quality Management describes quality as a product or service that satisfies the expectations of users and other stakeholders. **Quality** in the context of the justice system encompasses more than the quality of judicial decisions.<sup>7</sup> The justice system has to be evaluated in its wider context, i.e. in the interactions of justice with other variables (judges and lawyers, justice and police, case law and legislation, etc.), as most malfunctions of the justice system derive from lack of coordination between several actors.<sup>8</sup> Topics such as impartiality, integrity, unity of law, expertise, clarity of decisions, as well as good communication with the justice user, are considered to be of importance in this context.<sup>9</sup>

In the EU Justice Scoreboard, the European Commission acknowledges that there is no single agreed way of measuring the quality of justice systems and instead focuses on certain factors that are generally accepted as relevant and which can help to improve the quality of justice.<sup>10</sup> The factors cited by the European Commission show that the quality of the justice system is broader than the mere quality of a judicial decision.

The first relevant quality factor is the **accessibility of the justice system**. This implies, among other aspects, that information about the justice system should be provided, that legal aid is made available to those who lack sufficient resources, that the judiciary communicates with the parties and the media and that people have access to the judgments.<sup>11</sup>

The second element of a quality justice system is **adequate resources**. These should safeguard the good functioning of the justice system, the right conditions at courts and well-qualified staff. The European Commission emphasises that without a sufficient number of staff with the required qualifications and skills, as well as access to continuous training, the quality of the proceedings and decisions are at stake.<sup>12</sup>

A third element that can improve the quality of justice systems is **assessment tools**. These include surveys, IT tools for real-time case management, automated early warning systems, etc. Monitoring and evaluation of court activities helps to improve court performance, as they can identify deficiencies

<sup>6</sup> European Commission, *Quality of Public Administration. A Toolbox for Practitioners* (abridged version, Publications Office of the European Union 2015) 102

<sup>7</sup> European Network of Councils for the Judiciary (ENCJ), 'ENCJ Working Group on Quality Management. Final Report' (ENCJ 2008) 6-7 <[www.encj.eu/images/stories/pdf/workinggroups/reportqm20072008.pdf](http://www.encj.eu/images/stories/pdf/workinggroups/reportqm20072008.pdf)> accessed 20 January 2017

<sup>8</sup> Consultative Council of European Judges (CCJE), Opinion no 6 (2004) on Fair Trial within a Reasonable Time and Judge's Role in Trials Taking Into Account Alternative Means of Dispute Settlement <<https://wcd.coe.int/ViewDoc.jsp?p=&id=1046389&Site=COE&direct=true>> accessed 13 December 2016

<sup>9</sup> European Network of Councils for the Judiciary (ENCJ), 'ENCJ Working Group on Quality Management. Final Report' (ENCJ 2008) 6-7 <[www.encj.eu/images/stories/pdf/workinggroups/reportqm20072008.pdf](http://www.encj.eu/images/stories/pdf/workinggroups/reportqm20072008.pdf)> accessed 20 January 2017

<sup>10</sup> European Commission, *Communication from the Commission to the European Parliament, the Council, the European Central Bank, the European Economic and Social Committee and the Committee of the Regions - The 2016 EU Justice Scoreboard* (Publications Office of the European Union 2016) 17 <[http://ec.europa.eu/justice/effective-justice/files/justice\\_scoreboard\\_2016\\_en.pdf](http://ec.europa.eu/justice/effective-justice/files/justice_scoreboard_2016_en.pdf)> accessed 17 November 2016

<sup>11</sup> European Commission, *Communication from the Commission to the European Parliament, the Council, the European Central Bank, the European Economic and Social Committee and the Committee of the Regions - The 2016 EU Justice Scoreboard* (Publications Office of the European Union 2016) 17-23 <[http://ec.europa.eu/justice/effective-justice/files/justice\\_scoreboard\\_2016\\_en.pdf](http://ec.europa.eu/justice/effective-justice/files/justice_scoreboard_2016_en.pdf)> accessed 17 November 2016

<sup>12</sup> European Commission, *Communication from the Commission to the European Parliament, the Council, the European Central Bank, the European Economic and Social Committee and the Committee of the Regions - The 2016 EU Justice Scoreboard* (Publications Office of the European Union 2016) 24-28 <[http://ec.europa.eu/justice/effective-justice/files/justice\\_scoreboard\\_2016\\_en.pdf](http://ec.europa.eu/justice/effective-justice/files/justice_scoreboard_2016_en.pdf)> accessed 17 November 2016

and needs. This third element proves that there is an increasing focus on users' expectations in evaluating the quality of the justice system.<sup>13</sup>

Finally, the European Commission emphasises the need to use standards in order to raise the quality of justice systems. The **quality standards** used by the European Commission include timeframes, active case monitoring and allocation linked to workload.<sup>14</sup>

## 2. Independence

That **judicial independence** is an essential parameter of an effective justice system is not surprising. Judicial independence is a fundamental right safeguarded by Article 6 ECHR and Article 47 of the Charter of Fundamental Rights of the EU. Judicial independence ensures the fairness, predictability and certainty of the legal system and is therefore vital for gaining the trust of citizens and businesses in the legal system.<sup>15</sup> The independence of the judiciary protects citizens against the power of the government of the State.<sup>16</sup> Judicial independence is therefore essential in relation to society in general and in relation to the particular parties to any dispute, on which judges have to adjudicate, and in relation to the legislature and the executive.<sup>17</sup>

It is important to note that formal independence is not sufficient to attain the above-mentioned objectives. The judiciary must also be perceived to be independent by citizens and business in order to gain their trust.<sup>18</sup> Independence is a requirement that influences many, if not all, aspects related to the judiciary. It determines how judges are appointed and withdrawn, how they are trained, how cases are allocated among judges, among other aspects.<sup>19</sup>

## 3. Efficiency

The **efficiency** of a justice system relates to the **timeliness of justice** and it is essential for the smooth functioning of the justice system. The main parameters used by the European Commission

<sup>13</sup> European Commission, *Communication from the Commission to the European Parliament, the Council, the European Central Bank, the European Economic and Social Committee and the Committee of the Regions - The 2016 EU Justice Scoreboard* (Publications Office of the European Union 2016) 29-30 <[http://ec.europa.eu/justice/effective-justice/files/justice\\_scoreboard\\_2016\\_en.pdf](http://ec.europa.eu/justice/effective-justice/files/justice_scoreboard_2016_en.pdf)> accessed 17 November 2016

<sup>14</sup> European Commission, *Communication from the Commission to the European Parliament, the Council, the European Central Bank, the European Economic and Social Committee and the Committee of the Regions - The 2016 EU Justice Scoreboard* (Publications Office of the European Union 2016) 31-32 <[http://ec.europa.eu/justice/effective-justice/files/justice\\_scoreboard\\_2016\\_en.pdf](http://ec.europa.eu/justice/effective-justice/files/justice_scoreboard_2016_en.pdf)> accessed 17 November 2016

<sup>15</sup> European Commission, *Communication from the Commission to the European Parliament, the Council, the European Central Bank, the European Economic and Social Committee and the Committee of the Regions - The 2016 EU Justice Scoreboard* (Publications Office of the European Union 2016) 35 and 44 <[http://ec.europa.eu/justice/effective-justice/files/justice\\_scoreboard\\_2016\\_en.pdf](http://ec.europa.eu/justice/effective-justice/files/justice_scoreboard_2016_en.pdf)> accessed 17 November 2016

<sup>16</sup> European Network of Councils for the Judiciary (ENCJ), 'Independence and Accountability of the Judiciary. Report 2013-2014' (ENCJ, 2014) 10 <[www.encj.eu/images/stories/pdf/workinggroups/independence/encj\\_report\\_independence\\_accountability\\_adopted\\_version\\_sept\\_2014.pdf](http://www.encj.eu/images/stories/pdf/workinggroups/independence/encj_report_independence_accountability_adopted_version_sept_2014.pdf)> accessed 20 January 2017

<sup>17</sup> Consultative Council of European Judges (CCJE), Opinion no 1 (2014) on for the attention of the Committee of Ministers of the Council of Europe on Standards concerning the Independence of the Judiciary and the Irremovability of Judges <[https://wcd.coe.int/ViewDoc.jsp?p=&Ref=CCJE\(2001\)OP1&Sector=secDGHL&Language=lanEnglish&Ver=original&BackColorInternet=FEF2E0&BackColorIntranet=FEF2E0&BackColorLogged=c3c3c3&direct=true](https://wcd.coe.int/ViewDoc.jsp?p=&Ref=CCJE(2001)OP1&Sector=secDGHL&Language=lanEnglish&Ver=original&BackColorInternet=FEF2E0&BackColorIntranet=FEF2E0&BackColorLogged=c3c3c3&direct=true)> accessed 20 January 2017

<sup>18</sup> European Commission, *Communication from the Commission to the European Parliament, the Council, the European Central Bank, the European Economic and Social Committee and the Committee of the Regions - The 2016 EU Justice Scoreboard* (Publications Office of the European Union 2016) 44 <[http://ec.europa.eu/justice/effective-justice/files/justice\\_scoreboard\\_2016\\_en.pdf](http://ec.europa.eu/justice/effective-justice/files/justice_scoreboard_2016_en.pdf)> accessed 17 November 2016

European Network of Councils for the Judiciary (ENCJ), 'Independence and Accountability of the Judiciary. Report 2013-2014' (ENCJ, 2014) 12 <[www.encj.eu/images/stories/pdf/workinggroups/independence/encj\\_report\\_independence\\_accountability\\_adopted\\_version\\_sept\\_2014.pdf](http://www.encj.eu/images/stories/pdf/workinggroups/independence/encj_report_independence_accountability_adopted_version_sept_2014.pdf)> accessed 20 January 2017

<sup>19</sup> Consultative Council of European Judges (CCJE), Opinion no 1 (2014) on for the attention of the Committee of Ministers of the Council of Europe on Standards concerning the Independence of the Judiciary and the Irremovability of Judges <[https://wcd.coe.int/ViewDoc.jsp?p=&Ref=CCJE\(2001\)OP1&Sector=secDGHL&Language=lanEnglish&Ver=original&BackColorInternet=FEF2E0&BackColorIntranet=FEF2E0&BackColorLogged=c3c3c3&direct=true](https://wcd.coe.int/ViewDoc.jsp?p=&Ref=CCJE(2001)OP1&Sector=secDGHL&Language=lanEnglish&Ver=original&BackColorInternet=FEF2E0&BackColorIntranet=FEF2E0&BackColorLogged=c3c3c3&direct=true)> accessed 20 January 2017

European Commission, *Communication from the Commission to the European Parliament, the Council, the European Central Bank, the European Economic and Social Committee and the Committee of the Regions - The 2016 EU Justice Scoreboard* (Publications Office of the European Union 2016) 35-44 <[http://ec.europa.eu/justice/effective-justice/files/justice\\_scoreboard\\_2016\\_en.pdf](http://ec.europa.eu/justice/effective-justice/files/justice_scoreboard_2016_en.pdf)> accessed 17 November 2016

I to measure the efficiency of a justice system are the length of proceedings, clearance rate and number of cases pending.<sup>20</sup>

Timeliness of judicial proceedings is an important aspect of an effective justice system. However, an overemphasis on the speed of the process can lead to miscarriages of justice.<sup>21</sup> An effective justice system ‘*implies the ability to deliver judgments of high quality, within a reasonable period of time, and at a reasonable cost for the justice-seeker*’.<sup>22</sup> We can thus conclude that an effective justice system integrates three essential aspects: efficiency, quality and independence.<sup>23</sup>

In this report, we will examine how Supreme Courts contribute to the effectiveness of judicial systems. We will focus in particular on the research and documentation work within Supreme Courts, the Supreme Courts’ communication strategies and the administration of the Supreme Courts.

As will become clear in this report, the aim of many of the proposed practices is to increase the quality, independence and efficiency of the Supreme Court. For example, among other aspects, satisfaction surveys assess the perceived quality of the justice system. Access to case law and training of judges ensures that the latter are fully informed about relevant case law, making justice better served and leading to better quality decisions. Allocation rules based on pre-established and objective criteria safeguard the independence of the judges and contribute to trust in the justice system. Specialisation of judges is not only assumed to lead to better quality decisions, but also to faster decision-making. Proper case management increases the timeliness of proceedings and thus the efficiency.

The above-mentioned examples, which will be further elaborated in this report, demonstrate that the chosen topics are highly relevant to an examination of how Supreme Courts can contribute to an effective justice system.

## 4. BASIC PRINCIPLES FOR COURT MANAGEMENT

As the clarification of the three parameters of an effective justice system has already shown, the user’s expectations and the efficient functioning of the justice system are becoming increasingly important. In other words, running a court is becoming similar to running a business and traditional management insights have also found their way into institutions in the public sector.

We will briefly discuss the following aspects related to effective court management:

- culture;
- structures;
- processes;
- instruments;
- competences.

### 1. Culture

In order for court management to be successful and attain the desired goals, all members of the organisation should **share and internalise the same norms and values**. The **organisation’s culture** is therefore an important aspect of the success or failure of court management. Culture refers to the shared norms, values and implicit assumptions held by the members of an organisation. These norms,

<sup>20</sup> European Commission, *Communication from the Commission to the European Parliament, the Council, the European Central Bank, the European Economic and Social Committee and the Committee of the Regions – The 2016 EU Justice Scoreboard* (Publications Office of the European Union 2016) 6 and 16 <[http://ec.europa.eu/justice/effective-justice/files/justice\\_scoreboard\\_2016\\_en.pdf](http://ec.europa.eu/justice/effective-justice/files/justice_scoreboard_2016_en.pdf)> accessed 17 November 2016

<sup>21</sup> European Commission, *Quality of Public Administration. A Toolbox for Practitioners* (abridged version, Publications Office of the European Union 2015) 102

<sup>22</sup> ‘Effective Justice Systems in the EU’ <[http://ec.europa.eu/justice/events/assises-justice-2013/justice\\_systems\\_en.htm](http://ec.europa.eu/justice/events/assises-justice-2013/justice_systems_en.htm)> accessed 2 January 2017

<sup>23</sup> European Commission, *Communication from the Commission to the European Parliament, the Council, the European Central Bank, the European Economic and Social Committee and the Committee of the Regions – The 2016 EU Justice Scoreboard* (Publications Office of the European Union 2016) 6

European Commission, *Quality of Public Administration. A Toolbox for Practitioners* (abridged version, Publications Office of the European Union 2015) 102

values and assumptions will influence how they perceive their environment and how they will act within the organisation.<sup>24</sup>

Such shared values are especially important when introducing changes into the organisation. It is essential that the court staff and judges are committed to the changes, as well as the changes being supported by other stakeholders such as lawyers. A shared vision provides a source of motivation and helps all to remain focused.<sup>25</sup> For example, if a court wants to introduce timeframes for the different types of proceedings, it is important to involve stakeholders to determine these timeframes and to explain to all persons involved (court staff, judges, lawyers, etc.) why they are so important for the efficient functioning of the court. Good communication with everyone affected is therefore essential when introducing changes.<sup>26</sup>

This brings us to the next topic that is highly relevant to effective court management: **effective leadership**. Leaders must ensure that the organisation's **norms and values are protected and developed**.<sup>27</sup> They determine the culture of their organisation.

If a court wants to introduce changes in its functioning, the leader (the president of the court, but also other key judges) **must motivate others** to be dedicated to the proposed changes. They can do this by disseminating a vision of how the changes will improve the system; demonstrating how those who will be affected by the changes will benefit from them; and by showing their own ongoing commitment to the effective operation of the proposed changes by disseminating information on the progress achieved, and by rewarding those who are effective in assisting in the achievement of its goals. The leader must be an advocate of the newly introduced practices and must exercise leadership by building consensus and organisational support among the members of the court community, who are of course essential for the changes to succeed in attaining the desired goals.<sup>28</sup>

Should courts wish to implement some of the recommendations or best practices we present in this report, it is important that the court leaders **articulate a shared vision on the administration of the court** and that they **motivate everyone affected to commit to the changes** by informing them correctly about the objectives of the changes and, where possible, involving them in the process.

## 2. Structures

**Structure**, the second aspect of successful court management, refers to the **allocation of competences, tasks and responsibilities**. One person should be appointed responsible for every task.<sup>29</sup> For example, if a court wants to publish press releases to communicate certain events or decisions, the court should identify who is responsible for drafting the press release, for approval of the content of the press release and for the actual publication of the press release. If the person responsible for a task is not identified, it will most likely not be performed.

**When a court wants to introduce a certain practice, it is important that this is organised and managed in such a way that everyone can identify their tasks and objectives, and know who is to perform which function and within what timeframe.** An effective governance structure is important to ensure changes are brought to a good end. The people overseeing improvements must determine their scope, define their expectations, determine what resources will be needed, and how the people carrying out the improvement will go about their work.<sup>30</sup> Since the improvements are likely to alter established working relationships, implementing the improvements will only be successful if the key

<sup>24</sup> Patricia Popelier, 'Management of Legislation' in Ulrich Karpen and Helen Xanthaki (eds), *Legislation in Europe. A Comprehensive Guide for Scholars and Practitioners* (Hart Publishing 2017) 56

<sup>25</sup> David C. Steelman, 'Improving Caseflow Management: A Brief Guide' (National Center for State Courts 2008) 14-16 and 26-27 <<http://cdm16501.contentdm.oclc.org/cdm/ref/collection/ctadmin/id/1022>> accessed 13 January 2016

<sup>26</sup> David C. Steelman, 'Improving Caseflow Management: A Brief Guide' (National Center for State Courts 2008) 14-15 <<http://cdm16501.contentdm.oclc.org/cdm/ref/collection/ctadmin/id/1022>> accessed 13 January 2016

<sup>27</sup> Tom Christensen, Per Laegreid, Paul G. Roness and Kjell Arne Rovik, 'Organization Theory and the Public Sector. Instrument, Culture and Myth' (Routledge 2007) 47-48

<sup>28</sup> David C. Steelman, 'Improving Caseflow Management: A Brief Guide' (National Center for State Courts 2008) 4-5 <<http://cdm16501.contentdm.oclc.org/cdm/ref/collection/ctadmin/id/1022>> accessed 13 January 2016

<sup>29</sup> Patricia Popelier, 'Management of Legislation' in Ulrich Karpen and Helen Xanthaki (eds), *Legislation in Europe. A Comprehensive Guide for Scholars and Practitioners* (Hart Publishing 2017) 59

<sup>30</sup> David C. Steelman, 'Improving Caseflow Management: A Brief Guide' (National Center for State Courts 2008) 24 <<http://cdm16501.contentdm.oclc.org/cdm/ref/collection/ctadmin/id/1022>> accessed 13 January 2016

I stakeholders are involved in the process and understand the objectives. This is related to the first aspect of effective management discussed above, namely culture.

### 3. Processes

The third aspect of effective court management that we will discuss are processes. **Processes refer to the succession of activities.** Proceduralisation of activities makes these activities a natural step to follow in the workings of the court. An empirical study in Switzerland, for example, showed that the general utilisation of evaluations increases if evaluation is part of the routine.<sup>31</sup>

**In other words, practices will become more useful if they are embedded in the routines or daily practice of the court.** For example, information on the length of proceedings is available in almost every country. However, it is only when the length of proceedings is monitored continuously and in real-time that this increases the efficiency of the justice system. There should thus be routine monitoring of the length of proceedings from the moment the case arrives at the court until it is definitively handled (including administrative obligations such as filing, etc.), preferably in a system that automatically gives an early warning (see also part IV about the length of proceedings, the use of timeframes and an electronic case management system).

### 4. Instruments

The fourth aspect of effective court management is instruments. **Instruments are practical tools that should be used when managing the court.**<sup>32</sup> They include, for example, guidelines on how cases will be allocated, guidelines on how the court will interact with the media, training modules on the electronic case management system, and documents that record the agreed timeframes. These guidelines can either be laid down in internal documents or in legislation.

The Curia of Hungary expressly mentioned that one of the strengths of the Court's management is that each and every field of its institutional management is regulated in detail by presidential instructions that are regularly updated. In 2014, for example, they updated the Court's Internal Control Handbook. All the units of the Court were involved in the identification and setting up of in-house cooperation audit trails that covered every aspect of the Supreme Court's activities and also recorded the persons responsible for the completion of the various work phases. In addition to these audit trails, the Internal Control Handbook also includes procedural rules for handling infringements and rules related to risk management.

The Polish Supreme Administrative Court indicated that it regretted the lack of unified guidelines for granting or refusing the right to record the hearing.

Given the benefit of clear, unified 'rules' that are easy to find and refer to, courts should consider drafting instruments such as guidelines where appropriate.

### 5. Competences

**Competences refers to the knowledge, expertise and skills of the different court actors that are necessary to fulfil their tasks.** Competences should be developed and utilised. Therefore, a clear organisation chart is a minimum requirement. Defining the tasks and assigning each to specific staff members is not only important for getting things done (as already demonstrated in our discussion of structures above), it is also important to identify the target groups for training and forums in which to exchange experiences and good practices.<sup>33</sup>

<sup>31</sup> Patricia Popelier, 'Management of Legislation' in Ulrich Karpen and Helen Xanthaki (eds), *Legislation in Europe. A Comprehensive Guide for Scholars and Practitioners* (Hart Publishing 2017) 64

<sup>32</sup> Patricia Popelier, 'Management of Legislation' in Ulrich Karpen and Helen Xanthaki (eds), *Legislation in Europe. A Comprehensive Guide for Scholars and Practitioners* (Hart Publishing 2017) 65

<sup>33</sup> Patricia Popelier, 'Management of Legislation' in Ulrich Karpen and Helen Xanthaki (eds), *Legislation in Europe. A Comprehensive Guide for Scholars and Practitioners* (Hart Publishing 2017) 66-67



Supreme Courts should therefore attempt to develop the competences of their staff to the fullest potential. Press judges and communication advisors should, for example, build their expertise by participating in specific media training and by attending meetings with others who fulfil the same function in order to share experiences and learn from each other.

## **6. Conclusion**

Should a Supreme Court wish to introduce one of the recommendation or practices discussed in this report, the court leaders should ensure, above all, that this practice is embedded in the shared values of the organisation. In this context, it helps to involve all stakeholders in the process of introducing these changes and to communicate clearly about the objectives of the proposed changes and how they fit into the organisation's vision. In order for the practice to be successful, it is also important that everyone knows their role and that the tasks are clearly distributed. Furthermore, the practices should become embedded in the routines of the Supreme Court. It is convenient if people can refer to guidelines or other instruments when carrying out their tasks. Finally, court personnel and judges should be given the opportunity to further develop their competences by participating in ongoing training and attending meetings, etc.

# II

## Research and documentation work within the Supreme Court

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### 1. INTRODUCTION

#### A. Research and documentation work

In this part, we will discuss the institutional setup of the research and documentation units within the Supreme Courts and cooperation with academia. The research and documentation unit is the entity within the Court responsible for research on case law and legislation and is involved in the publication of the Court's decisions. Academia may also support courts in their research work. Therefore, we will also discuss cooperation with academia in this part of the report.

#### B. Why is research and documentation work important?

The introduction to this report emphasised that an effective justice system requires more than being able to present a case to a judge and receive a judgment. The judge, judgment and court proceedings should meet the requirements of quality, independence and efficiency.

A separate unit providing research support to the judges of the Supreme Court can reduce the workload of the judges and speed up the proceedings, as well as increase the quality thereof. A major component of the quality of justice is the **quality of judicial decisions**. The Consultative Council of European Judges (CCJE) considers a high-quality decision as one which **achieves a correct result – as far as the material available to the judge allows** – and does so fairly, speedily, clearly and definitively. The **case law** of the Supreme Courts should be **clear, consistent and constant** and the judgments should be well reasoned and drafted in clear language.<sup>34</sup>

The CCJE further states that the quality of a judicial decision is **directly conditioned by the funding made available to the judicial system**. Courts cannot operate efficiently with inadequate human and material resources.<sup>35</sup> The CCJE points out that a reduction in inappropriate tasks performed by judges can only occur by providing judges with assistants who have substantial qualifications in the legal field. The judge may delegate, under their own supervision and responsibility, the performance of specific activities, such as research or legislation and case law, the drafting of simple or standardised

<sup>34</sup> Consultative Council of European Judges (CCJE), Opinion no 11 (2008) to the attention of the Committee of Ministers of the Council of Europe on the quality of judicial decisions <[https://wcd.coe.int/ViewDoc.jsp?p=&Ref=CCJE\(2008\)OP11&Language=lanEnglish&Ver=original&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FD-C864&direct=true](https://wcd.coe.int/ViewDoc.jsp?p=&Ref=CCJE(2008)OP11&Language=lanEnglish&Ver=original&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FD-C864&direct=true)> accessed 2 January 2017

<sup>35</sup> Consultative Council of European Judges (CCJE), Opinion no 11 (2008) to the attention of the Committee of Ministers of the Council of Europe on the quality of judicial decisions <[https://wcd.coe.int/ViewDoc.jsp?p=&Ref=CCJE\(2008\)OP11&Language=lanEnglish&Ver=original&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FD-C864&direct=true](https://wcd.coe.int/ViewDoc.jsp?p=&Ref=CCJE(2008)OP11&Language=lanEnglish&Ver=original&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FD-C864&direct=true)> accessed 2 January 2017

documents and liaising with lawyers and/or the public.<sup>36</sup> The CCJE considers that the assistance of a qualified staff of clerks and the collaboration of judicial assistants who relieve judges of more routine work and prepare documents, evidently contributes to improving the quality of decisions delivered by a court. If such resources are lacking, effective functioning of the judicial system to achieve a high-quality product will be impossible.<sup>37</sup>

Moreover, the CCJE also underlines the role of the research and documentation units **in helping national judges to ensure the effective application of international and European law**. National legal systems increasingly have to deal with legal issues of an international nature, as a result of both globalisation and an increasing focus of international and European law on relations between persons rather than States. The CCJE believes that these developments necessitate changes in judicial training, practice and even culture. In addition, we would like to add to this that all regulations are becoming increasingly complex. Logically, information on international and European law, including the decisions of international and European courts, should be made readily available. Furthermore, the CCJE recommends that with the cooperation of court documentation services, libraries and judicial assistants, judges gain access to information that is properly indexed and annotated.<sup>38</sup> Monitoring of EU and international law is thus a task that should be assigned to a research and documentation unit.

In the context of EU and international law, it is also important for judges to know how these rules have been applied by other national judges. In this respect, the judge will often be confronted with a language barrier. The CCJE, therefore, notes that appropriate measures should be taken to ensure that judges gain full proficiency in foreign languages and that courts should have quality translation and interpretation services available in addition to the ordinary cost of the functioning of courts.<sup>39</sup>

### **C. How can an effective justice system be improved through research and documentation work?**

The previous sections clarified how research and documentation work within the Supreme Court can contribute to a more effective justice system by improving its quality.

In the following, we will therefore study how this research and documentation work might be organised within the Supreme Court (separate research and documentation department or support by research assistants), which tasks can be assigned to them and in what way cooperation with academia may contribute to the quality of the Supreme Court's decisions.

<sup>36</sup> Consultative Council of European Judges (CCJE), Opinion no 6 (2004) to the attention of the Committee of Ministers of the Council of Europe on fair trial within a reasonable time and judge's role in trials taking into account alternative means of dispute settlement <[https://wcd.coe.int/ViewDoc.jsp?p=&Ref=CCJE\(2004\)OP6&Sector=secDGHL&Language=lanEnglish&Ver=original&BackColorInternet=FEF2E0&BackColorIntranet=FEF2E0&BackColorLogged=c3c3c3&direct=true](https://wcd.coe.int/ViewDoc.jsp?p=&Ref=CCJE(2004)OP6&Sector=secDGHL&Language=lanEnglish&Ver=original&BackColorInternet=FEF2E0&BackColorIntranet=FEF2E0&BackColorLogged=c3c3c3&direct=true)> accessed 2 January 2017

<sup>37</sup> Consultative Council of European Judges (CCJE), Opinion no 11 (2008) to the attention of the Committee of Ministers of the Council of Europe on the quality of judicial decisions <[https://wcd.coe.int/ViewDoc.jsp?p=&Ref=CCJE\(2008\)OP11&Language=lanEnglish&Ver=original&BackColorInternet=DBDCF2&BackColorIntranet=FD864&BackColorLogged=FD864&direct=true](https://wcd.coe.int/ViewDoc.jsp?p=&Ref=CCJE(2008)OP11&Language=lanEnglish&Ver=original&BackColorInternet=DBDCF2&BackColorIntranet=FD864&BackColorLogged=FD864&direct=true)> accessed 2 January 2017

<sup>38</sup> Consultative Council of European Judges (CCJE), Opinion no 9 (2006) for the attention of the Committee of Ministers of the Council of Europe on the role of national judges in ensuring an effective application of international and European law <[https://wcd.coe.int/ViewDoc.jsp?p=&Ref=CCJE\(2006\)OP9&Sector=secDGHL&Language=lanEnglish&Ver=original&BackColorInternet=FEF2E0&BackColorIntranet=FEF2E0&BackColorLogged=c3c3c3&direct=true](https://wcd.coe.int/ViewDoc.jsp?p=&Ref=CCJE(2006)OP9&Sector=secDGHL&Language=lanEnglish&Ver=original&BackColorInternet=FEF2E0&BackColorIntranet=FEF2E0&BackColorLogged=c3c3c3&direct=true)> accessed 12 January 2017

<sup>39</sup> Consultative Council of European Judges (CCJE), Opinion no 9 (2006) for the attention of the Committee of Ministers of the Council of Europe on the role of national judges in ensuring an effective application of international and European law <[https://wcd.coe.int/ViewDoc.jsp?p=&Ref=CCJE\(2006\)OP9&Sector=secDGHL&Language=lanEnglish&Ver=original&BackColorInternet=FEF2E0&BackColorIntranet=FEF2E0&BackColorLogged=c3c3c3&direct=true](https://wcd.coe.int/ViewDoc.jsp?p=&Ref=CCJE(2006)OP9&Sector=secDGHL&Language=lanEnglish&Ver=original&BackColorInternet=FEF2E0&BackColorIntranet=FEF2E0&BackColorLogged=c3c3c3&direct=true)> accessed 12 January 2017

## II 2. INSTITUTIONAL SETUP OF THE RESEARCH AND DOCUMENTATION UNITS WITHIN SUPREME COURTS

### A. General observations

The previous sections explained why the judges should be supported in their research and documentation work. **Tasks** related to research and documentation work that can be delegated by a judge to a separate **research and documentation unit** are:

- research and analysis of legislation and case law;
- drafting of simple or standardised documents;
- monitoring international/EU legislation and case law.

As will be further elaborated in this report when discussing transparency, the research and documentation unit is also often responsible for the Supreme Court's case law database and the preparation of the decisions before they are entered into the case law database (e.g. anonymisation, drafting of a summary, etc.).

In addition to a separate research and documentation unit, judges may also be assisted by **research assistants whose general task is to support judges in the handling of their cases**.<sup>40</sup> Research assistants are non-judge staff who assist the judge in jurisdictional activities. Law clerks, in contrast, provide more administrative support. Given the benefits that encompass an efficient division of labour, research assistants are not exceptional at courts in European countries.<sup>41</sup> Their role, however, can be unclear due to the **different meaning that such positions may be given**.<sup>42</sup> Some countries are familiar with the notion of '*referendaries*' (e.g. Finland, Belgium) or trainees (e.g. Germany), while in other countries the clerk of the court also provides more legal support in addition to the administrative functions (e.g. Switzerland).<sup>43</sup>

The role of the different research assistants varies greatly. In some countries, research assistants are not only responsible for research work, but also have an advisory vote during deliberation (e.g. the '*rechtspfleger*' in the Czech Republic).<sup>44</sup> However, in almost every case, the following tasks are assigned to research assistants: assisting the judge with case law analysis and other legal research, preparing draft decisions and writing summaries.<sup>45</sup> In more detail the work of research assistants encompasses:<sup>46</sup>

<sup>40</sup> Marco Fabri, 'Exploratory Study on the Position of: Court President, Court Manager, Judicial Assistant, and Media Spokespersons in Selected Council of Europe Members States' (European Union, the Republic of Turkey and the Council of Europe 2013) 24 and 41-42 <[www.coe.int/t/DGHL/COOPERATION/CEPEJ/cooperation/Turkey\\_JPCOMASYT/Exploratory\\_study\\_marco\\_fabri\\_en.pdf](http://www.coe.int/t/DGHL/COOPERATION/CEPEJ/cooperation/Turkey_JPCOMASYT/Exploratory_study_marco_fabri_en.pdf)> accessed 25 January 2017

<sup>41</sup> Peter Bieri, 'Law Clerks in Switzerland – A Solution to Cope with the Caseload?' (2016) *International Journal for Court Administration*, 29, 32 <<http://ijca.ubiquitypress.com/articles/abstract/10.18352/ijca.201/>> accessed 2 January 2016  
European Commission for the Efficiency of Justice (CEPEJ), 'European Judicial Systems. Efficiency and Quality of Justice. Edition 2016 (2014 data)' (CEPEJ Studies no 23, 2016 CEPEJ) 146-154 <[www.coe.int/t/dghl/cooperation/cepej/evaluation/2016/publication/CEPEJ%20Study%202023%20report%20EN%20web.pdf](http://www.coe.int/t/dghl/cooperation/cepej/evaluation/2016/publication/CEPEJ%20Study%202023%20report%20EN%20web.pdf)> accessed 12 January 2017

<sup>42</sup> Marco Fabri, 'Exploratory Study on the Position of: Court President, Court Manager, Judicial Assistant, and Media Spokespersons in Selected Council of Europe Members States' (European Union, the Republic of Turkey and the Council of Europe 2013) 24 and 41-42 <[www.coe.int/t/DGHL/COOPERATION/CEPEJ/cooperation/Turkey\\_JPCOMASYT/Exploratory\\_study\\_marco\\_fabri\\_en.pdf](http://www.coe.int/t/DGHL/COOPERATION/CEPEJ/cooperation/Turkey_JPCOMASYT/Exploratory_study_marco_fabri_en.pdf)> accessed 25 January 2017

<sup>43</sup> Marco Fabri, 'Exploratory Study on the Position of: Court President, Court Manager, Judicial Assistant, and Media Spokespersons in Selected Council of Europe Members States' (European Union, the Republic of Turkey and the Council of Europe 2013) 25-26 <[www.coe.int/t/DGHL/COOPERATION/CEPEJ/cooperation/Turkey\\_JPCOMASYT/Exploratory\\_study\\_marco\\_fabri\\_en.pdf](http://www.coe.int/t/DGHL/COOPERATION/CEPEJ/cooperation/Turkey_JPCOMASYT/Exploratory_study_marco_fabri_en.pdf)> accessed 25 January 2017

<sup>44</sup> Marco Fabri, 'Exploratory Study on the Position of: Court President, Court Manager, Judicial Assistant, and Media Spokespersons in Selected Council of Europe Members States' (European Union, the Republic of Turkey and the Council of Europe 2013) 27 <[www.coe.int/t/DGHL/COOPERATION/CEPEJ/cooperation/Turkey\\_JPCOMASYT/Exploratory\\_study\\_marco\\_fabri\\_en.pdf](http://www.coe.int/t/DGHL/COOPERATION/CEPEJ/cooperation/Turkey_JPCOMASYT/Exploratory_study_marco_fabri_en.pdf)> accessed 25 January 2017

<sup>45</sup> Marco Fabri, 'Exploratory Study on the Position of: Court President, Court Manager, Judicial Assistant, and Media Spokespersons in Selected Council of Europe Members States' (European Union, the Republic of Turkey and the Council of Europe 2013) 27-28 <[www.coe.int/t/DGHL/COOPERATION/CEPEJ/cooperation/Turkey\\_JPCOMASYT/Exploratory\\_study\\_marco\\_fabri\\_en.pdf](http://www.coe.int/t/DGHL/COOPERATION/CEPEJ/cooperation/Turkey_JPCOMASYT/Exploratory_study_marco_fabri_en.pdf)> accessed 25 January 2017

<sup>46</sup> Genevieve Coonan, 'The role of judicial research assistants in supporting the decision-making role of the Irish judiciary' (2006) *Judicial Studies Institute Journal* 171, 182-187.

- writing memoranda in response to general queries: In essence, these are requests made by judges to have a particular area of the law researched, be it in light of the circumstances of a particular case or otherwise;
- preparing bench memoranda: the research assistants are often required to write memoranda setting out a brief history of the case while also summarising and analysing arguments raised by counsel. Where requested by the judge, such memoranda will also include a conclusion as to the outlook of the case;
- proof-reading: checking for typographical, spelling, grammatical or punctuation errors; verification of the accuracy of citations or quotations from legislation and case law and other material; pointing out obvious errors with a view to clarifying the meaning of the judgment;
- summarising cases with view to publish them in a database and on the website;
- compiling bench books: indexed folders containing all the relevant source material on a particular topic;
- writing handbooks: handbooks serve to provide guidance and assistance to members of the judiciary when carrying out their duties in court;
- carrying out extra-judicial work: they may have to write speeches or articles for judges or provide them with source material to enable them to better carry out these tasks themselves.

In other words, there seems to be a certain overlap between the role of the research assistants and the research and documentation units. We will discuss this further below under C. 'Recommendations and best practices'.

In addition to the research assistants' role, their organisation may also vary. In some cases, the research assistants are the personal employees of a judge, in other cases a pool-system exists. In a pool-system, the research assistants support all the judges of a court.<sup>47</sup>

Although the advantages of more support for judges are widely recognised, some literature also warns of certain risks. Courts should be careful not to allow research assistants to make the decision, since this would compromise the right to a lawful judge, as provided in Article 6 ECHR. Another issue is judicial independence. Like judges, law clerks should be independent from the litigants. The research assistant could in certain circumstance also jeopardise the independence of the judge. The judge must be independent from the research assistant, who prepares the proposal for the judgment. (S)he must be able to take a decision independently after considering the arguments advanced by the research assistant. Decision-making requires time and effort. Therefore, it is problematic if a judge does not have sufficient time for a critical examination of the matter. Although research assistants can help the judges, the latter should not supervise too many assistants, as this could lead to an over concentration on management tasks and insufficient care being taken concerning decision-making.<sup>48</sup>

<sup>47</sup> Peter Bieri, 'Law Clerks in Switzerland – A Solution to Cope with the Caseload?' (2016) *International Journal for Court Administration*, 29, 31-32 <<http://ijca.ubiquitypress.com/articles/abstract/10.18352/ijca.201/>> accessed 2 January 2016

<sup>48</sup> Peter Bieri, 'Law Clerks in Switzerland – A Solution to Cope with the Caseload?' (2016) *International Journal for Court Administration*, 29, 34 <<http://ijca.ubiquitypress.com/articles/abstract/10.18352/ijca.201/>> accessed 2 January 2016

## II

**B. Survey results**

Supreme Court	Research and documentation unit	Research assistants
Austria	X	
Austria (Administrative)	X	X
Belgium	X	X
Cyprus		X
Czech Republic	X	
Estonia	X	X
Finland		X
Germany		X
Hungary		X
Ireland		X
Italy	X	X
Latvia	X	X
Lithuania	X	X
Lithuania (Administrative)	X	X
Luxembourg		
Netherlands	X	
Poland	X	
Poland (Administrative)	X	
Portugal	X	
Portugal (Administrative)	X	
Romania	X	
Slovakia	X	
Slovenia	X	X
Spain	X	
Sweden		X
Sweden (Administrative)		X
<b>Total (26)</b>	<b>18</b>	<b>15</b>

**Role and responsibilities of the research and documentation units**

The majority of Supreme Courts have one or more separate research and documentation units (CZ, EE, NL, IT, PL, PL(A), LT, LT(A), SK, ES, AT(A), SL, LV, PT, PT(A), RO, BE). For example, in the *Czech Republic*, two separate units were established to follow up on European law and the case law of the European Court of Justice, and the European Court of Human Rights on the one hand and national case law on the other hand.

The *Supreme Court of Lithuania* expressly indicated that it considers its research and documentation unit as a strength. It offers the possibility to assign consultants to cases involving complex and/or novel issues, preparing research on legal acts and doctrine. Very often a special legal consultant is appointed in cases involving EU law. This is done at the very beginning of the procedure, before arriving at the Supreme Court, at the stage of selecting and accepting a cassation appeal through an internal mechanism. This allows a panel of judges involved in the selection of cases for the Supreme Court to signal to the president of a respective Chamber, and to the Legal Research and Summarisation Department of the Court, that the complexity of a case and issues raised therein are of such a nature to require the appointment of a special legal consultant from the Legal Research Department. The Lithuanian Supreme Court specified that appointing a consultant at the very beginning of the procedure enables the planning and management of the consultant's work in an efficient manner and allows appropriate time for careful analysis of a case.

As we pointed out in our general observations above, and according to the recommendations of the CCJE, the following tasks can be delegated to research and documentation units:

- research and analysis of legislation and case law
- drafting of simple or standardised documents
- monitoring international/EU legislation and case law

Most research and documentation units are responsible for **research on and analysis of legislation and case law** (e.g. CZ, EE, NL, LT, LT(A), SK, ES, SL, LV, PT). This might be legal research on a specific topic or more broader research. Questions that involve EU law are generally treated in the same way. At the *Supreme Administrative Court of Poland*, however, the judicial decisions bureau has a separate European law division that prepares legal opinions involving EU law.

Some research and documentation units also support the Supreme Court judges by **preparing draft decisions** (e.g. NL, LT, LT(A), ES, PT). The survey results, in other words, demonstrate that this task is only rarely delegated to the research and documentation units. It is possible that this task is assigned to research assistants, since it is closely related to a specific case. However, the survey did not specifically ask about the role of the research assistants (see also below). Further research should be conducted in this regard.

Several Supreme Courts indicated that even where a separate research and documentation unit exists the EU legislation and case law of the European Court of Justice is not constantly monitored (CZ, EE, NL, DE, RO). Most Supreme Courts, however, do **monitor the case law of the European Court of Justice** on a more regular basis (CZ, PL, PL(A), LT, LT(A), SK, ES, AT(A), SL, LV, PT).

The research and documentation unit of the *Supreme Court of Portugal* prepares a bimonthly summary of EU legislation and case law.

The European law division of the judicial decisions bureau of the *Supreme Administrative Court of Poland*, in contrast, has the specific task of collecting and analysing EU law provisions and case law of the ECJ related to matters falling within the jurisdiction of administrative courts. These analyses are presented in the form of summaries, notices and discussion papers. The European law division also prepares a monthly newsletter concerning the most important developments in EU law areas and the case law of the ECJ (and the European Court of Human Rights) in matters falling within the administrative jurisdiction.

The director of the technical cabinet of the *Supreme Court of Spain* provides a daily summary of the official journal of the European Union, together with the daily official Spanish bulletin, in order to keep pace with EU law.

These above-mentioned tasks are specifically focused on supporting the judge. The Supreme Courts also pointed out that the research and documentation unit provides **information for the general public**. For example, the research and documentation unit at the *Supreme Court of the Czech Republic*, which follows up on European law and the case law of the European Court of Justice and the European Court of Human Rights, prepares a quarterly bulletin that contains brief analyses of this legislation and case law. This bulletin is then published on the Court's website.

The *Curia of Hungary* compiles and publishes electronic monthly newsletters on its website informing legal practitioners and the general public about the published requests for preliminary rulings, the published decisions given in preliminary ruling proceedings, Curia decisions invoking European law, a summary of leading judgments of the European Court of Human Rights, decisions deemed to be of high significance and rulings concerning human rights.

### **Research assistants**

Although there was no specific question in the survey on this topic, most countries indicated that the Supreme Court judges are supported by **research assistants** (e.g. EE, FI, DE, IE, IT, HU, LT, LT(A), SE, SE(A), CY, AT(A), SL, LV, BE).

At the *Supreme Court of Estonia*, research support is provided by a legal information department as well as the law clerks. The law clerks are mainly involved in examining the admissibility of the concrete

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cases before the Court, and assist judges in adjudication of cases by conducting research and preparing draft decisions. The legal information department, however, deals primarily with broader research and studies legal matters and the case law of the Court. Another important task of the legal information department is the promotion of easy access to the case law of the Supreme Court. It administers the case law search section of the Supreme Court's website by updating the keyword tree that enables easy access to the relevant case law, and it also drafts annotations to Supreme Court decisions. Case law analyses and overviews of recent case law of the Supreme Court are also provided by the legal information department.

### **Cooperation with other units within the Supreme Court and with other research and documentation units**

The survey results show that communication with other units within the Supreme Court generally occurs in an informal way when needed (e.g. via email, phone calls) and that there are no formally organised methods of communication.

With regard to cross border cooperation between the research and documentation units, some networks have been established through which the research and documentation units cooperate. Within the Network of the Presidents of the Supreme Judicial Courts of the EU, for example, the Comparative Law Liaisons Group has been created, which serves as a very informal and flexible platform for communication among several European Supreme Courts. In 2014, the former president of the *Supreme Court of the Netherlands* created a network of members of academic staff in the civil and criminal law departments of the highest courts of Belgium, Germany, Finland, France, the Netherlands, the Czech Republic and the United Kingdom. The network was created to stimulate the simple and approachable exchange of information between the courts, especially for comparative law purposes. Such indirect cooperation between research and documentation units may also take place through ACA Europe, the Associations of Councils of State and Supreme Administrative Jurisdictions of the European Union.

Several Supreme Courts have joined the Superior Courts Network, set up by the European Court of Human Rights. This Network enables the Strasbourg Court and the members' superior courts to engage in dialogue and carry out comparative law research on Convention case law and related information.

## **C. Recommendations and best practices**

### **Provide support to judges by establishing a research and documentation unit as well as by appointing research assistants**

**To ensure high-quality judicial decisions without undue delays, judges must be supported in their research work**, meaning that they should be assisted in analysing national case law and legislation, in preparing draft decisions and in monitoring international as well as EU legislation and case law.

In an ideal scenario, judges would not only be supported by a research and documentation unit, but also by a research assistant. A separate research and documentation unit that assists all the judges avoids the need for every judge's research assistant to monitor the national and international case law and legislation. In addition, the research and documentation unit should also conduct research on broader topics, not related to a specific case. In this way, cases can be dealt with as efficiently as possible, since the judge has a general and broader information system on which to rely. Such broader research may also be published on the Court's website to inform the general public as well.

However, research assistants are better placed to prepare a draft decision.

### Define the task division between the research and documentation unit and the research assistants clearly

Research & documentation unit	Research assistant
Writing memoranda in response to general queries	Writing memoranda in response to case-related queries
Proof-reading (spelling, grammar, citations, uniformity...)	Preparing bench memoranda
Compiling bench books	Proof-reading (content-related)
Writing handbooks	Summarising cases
Monitoring national and EU legislation and the case law of the ECJ and the ECHR	Carrying out extra-judicial Work

We refer to the *Supreme Court of Estonia*, where there is a clear division of tasks between the research and documentation unit, on the one hand, which is primarily responsible for broader research and studies of legal matters, and the research assistants, on the other hand, who are responsible for examining the admissibility of the concrete cases before the Court and assist judges in adjudication of cases by conducting research and preparing draft decisions. The research and documentation department also drafts analyses and overviews of the recent case law of the Supreme Court, which are available to all interested parties. The Estonian Supreme Court stated that it considered these analyses very useful to all kinds of users, whether judges, lawyers, law students, etc.

### Monitor EU legislation and the case law of the Court of Justice continuously

Given the growing importance of EU law, **EU legislation and the case law of the EU Court of Justice must be monitored continuously** by the research and documentation unit so that judges are well informed of recent developments. The *Supreme Court of Lithuania* considers the constant monitoring of EU case law an advantage, improving their efficiency.

Related to this topic, we encourage initiatives, such as the Network of Legal Advisors on European Law in *Hungary*. This network consists of judges and is coordinated by the National Office for the Judiciary. Upon request, judges can ask for the assistance of the network's experts in relation to the application of EU law and in relation to questions regarding the scope of primary and secondary legislation and preliminary ruling procedures.

## 3. COOPERATION WITH ACADEMIA

### A. General observations

The survey asked the participants whether they cooperated with universities, research institutions or individual researchers in conducting various research projects. This cooperation could lead to higher quality judicial decisions, since it ensures that new insights in the legal literature reach the Supreme Courts faster. Furthermore, the survey asked what the main forms of cooperation were.

**Research has shown that the work of legal scholars influences judges.**<sup>49</sup> However, little to no research has been done regarding the forms of cooperation between academics and the judiciary.

<sup>49</sup> Neil Duxbury, *Jurists & Judges. An Essay on Influence* (Hart Publishing 2001) 1-3 and 117-118

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Indicative research on legal education and judicial training in Europe, conducted in the framework of the 'Menu for Justice Project', however, showed that, in general, cooperation between the courts and law schools could be further developed. In addition, a lot of this cooperation is neither standardised nor centralised at the national level.<sup>50</sup> This may be attributed to the fact that for the courts especially, this cooperation may seem difficult, since judges must be able to maintain judicial impartiality. The extent of cooperation thus depends on the capacity of the court to organise participation of its judges without jeopardising future judicial impartiality.<sup>51</sup> The researchers concluded that the least problematic forms of cooperation seem to be:

- judges participating in teaching;
- scholars giving courses for judges;
- involving courts and judges in seminars and research by law schools;
- organising internships for law students at courts.<sup>52</sup>

This cooperation safeguards the exchange of knowledge between judges and academia and involves judges in the education of new legal professionals. By involving judges in the education of law students (through teaching or by providing an internship at the court), these law students become more acquainted with the judiciary and the daily work of judges.<sup>53</sup>

One of the underlying aims of this cooperation is, of course, to safeguard the quality of justice by exchanging knowledge and experience. The Consultative Council of European Judges emphasised that the quality of justice is a constant and long-standing concern of the Council of Europe. **The quality of judicial decisions depends not only on the individual judge involved, but also on external elements, such as the quality of legal training.**<sup>54</sup> In this context, the CCJE stated that the continuous training of judges is indispensable and that it therefore encourages collaboration with other professional bodies responsible for continuous training in relation to matters of common interest (e.g. new legislation).<sup>55</sup> In our opinion, such collaboration could, for example, take the form of seminars organised in cooperation with the bar association regarding judicial reform, but also cooperation with academia in the form of attending/co-organising a seminar with a university or requesting a study on a certain topic. The study's topic is then logically specifically tailored to the court's needs, as it initiated the study.

## B. Survey results

### Conducting research projects

**The majority of the Supreme Courts responded that they generally do not cooperate with universities, research institutions or individual researchers in conducting various research projects** (e.g. CZ, EE, NL, DE, IE, IT, LU, PL, LT(A), SK, ES, SE, SE(A), CY, AT(A), PT, RO).

<sup>50</sup> Daniela Piana, Philip Langbroek, Tomas Berkmanas, Ole Hammerslev and Otilia Pacurari, *Legal Education and Judicial Training in Europe. The Menu for Justice Project Report* (Eleven International Publishing 2013), 37

<sup>51</sup> Daniela Piana, Philip Langbroek, Tomas Berkmanas, Ole Hammerslev and Otilia Pacurari, *Legal Education and Judicial Training in Europe. The Menu for Justice Project Report* (Eleven International Publishing 2013), 38

<sup>52</sup> Daniela Piana, Philip Langbroek, Tomas Berkmanas, Ole Hammerslev and Otilia Pacurari, *Legal Education and Judicial Training in Europe. The Menu for Justice Project Report* (Eleven International Publishing 2013), 38

<sup>53</sup> Daniela Piana, Philip Langbroek, Tomas Berkmanas, Ole Hammerslev and Otilia Pacurari, *Legal Education and Judicial Training in Europe. The Menu for Justice Project Report* (Eleven International Publishing 2013), 34

<sup>54</sup> Consultative Council of European Judges (CCJE), Opinion no 11 (2008) to the attention of the Committee of Ministers of the Council of Europe on the quality of judicial decisions <[https://wcd.coe.int/ViewDoc.jsp?p=&Ref=CCJE\(2008\)OP11&Language=lanEnglish&Ver=original&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FD-C864&direct=true](https://wcd.coe.int/ViewDoc.jsp?p=&Ref=CCJE(2008)OP11&Language=lanEnglish&Ver=original&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FD-C864&direct=true)> accessed 2 January 2017

<sup>55</sup> Consultative Council of European Judges (CCJE), Opinion no 4 (2003) 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 <[https://wcd.coe.int/ViewDoc.jsp?p=&Ref=CCJE\(2003\)OP4&Sector=secDGHL&Language=lanEnglish&Ver=original&BackColorInternet=FEF2E0&BackColorIntranet=FEF2E0&BackColorLogged=c3c3c3&direct=true](https://wcd.coe.int/ViewDoc.jsp?p=&Ref=CCJE(2003)OP4&Sector=secDGHL&Language=lanEnglish&Ver=original&BackColorInternet=FEF2E0&BackColorIntranet=FEF2E0&BackColorLogged=c3c3c3&direct=true)> accessed 2 January 2017

Consultative Council of European Judges (CCJE), Opinion no 11 (2008) to the attention of the Committee of Ministers of the Council of Europe on the quality of judicial decisions <[https://wcd.coe.int/ViewDoc.jsp?p=&Ref=CCJE\(2008\)OP11&Language=lanEnglish&Ver=original&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FD-C864&direct=true](https://wcd.coe.int/ViewDoc.jsp?p=&Ref=CCJE(2008)OP11&Language=lanEnglish&Ver=original&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FD-C864&direct=true)> accessed 2 January 2017

The *Supreme Court of Estonia* indicated that although it does not cooperate in conducting research projects (mostly due to the fact that the Court has its own legal information department), it has helped to fund research (e.g. different legal conferences) as well as having initiated some research projects (e.g. the compilation of commentary on the Courts Act presently in progress). The same can be said of the *Supreme Court of Poland*, which initiates and conducts research projects with its own staff of the research and analysis office.

The *Supreme Administrative Court of Poland*, however, does cooperate with universities, research institutions and individual researchers in conducting various research projects. The main forms of cooperation are:

- ordering comments and articles on case law and areas of law falling within the jurisdiction of administrative courts, for publication in the *Scientific Bulletin of Administrative Jurisdiction*, edited by the Supreme Administrative Court;
- and engaging academics as lecturers and speakers at training conferences.

In addition, the Polish Supreme Administrative Court also funds or initiates research projects. For example, the Court is a partner in a research project entitled ‘European judicial cooperation in the fundamental rights practice of the national court – The unexplored potential of judicial dialogue methodology’, co-financed by the European Commission within the framework of promoting judicial cooperation in the field of fundamental rights.

The *Supreme Court of Latvia* regularly commissions research papers, concentrating on topics that present regular or particular difficulties in the adjudication of cases. All these research papers (except those that are confidential due to the topic and issues analysed) are published on the Supreme Court’s homepage.

### **Conferences and training**

**Organising, facilitating or participating in conferences seems to be the most common way for the Supreme Court to cooperate with academia** (e.g. EE, NL, FI, PL, HU, LT(A), SE, SE(A), PT(A)). Another way in which academia is involved with judges of the Supreme Court is the **organisation of training given by academics** (e.g. IT, PL(A), HU, LT(A)). Supreme Court judges are also often **lecturers at law schools** (e.g. NL, DE, IE, PL, PL(A), HU, LT, LV).

Some interesting practices in this regard can be found in Italy. The *Supreme Court of Italy* has concluded an agreement with some universities to admit law school trainees to the Supreme Court to carry out support activities for magistrates. Further cooperation activities with academia are generally part of the training courses organised by the office for decentralised training of the School for the Judiciary at the Supreme Court. The topics of the training courses are chosen from those of greater interest for the professional development of the judges. Special attention is paid to current European law issues. The School for the Judiciary supports the European Gaius project, approved in 2011 by the High Council of the Judiciary. This project introduced judges specialised in European law into each court.

The *Supreme Administrative Court of Portugal* concluded a cooperation protocol with the Association of Magistrates of the Administrative and Tax Jurisdiction. The aim is to organise lectures, conferences and debates together, as well as to deliver legal studies and opinions in the field of administrative and tax jurisdiction. In addition, the Court also concluded a cooperation protocol with the Administrative Court of the People’s Republic of Mozambique, which aims to exchange knowledge and experience on issues submitted to both courts and to exchange computer systems to assist with procedural processing, management and control among other activities.

### **Traineeships**

Another form of cooperation with academia may take the form of a **traineeship at the Supreme Court** for doctoral students. This form of cooperation can be found at the *Curia of Hungary*, which believes that this cooperation, creating a link between practice and theory, contributes to both an increased level of legal training and to an increased effectiveness of the Court’s work. Therefore, a cooperation agreement was concluded with the doctoral school of the law faculties aiming to launch

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and implement a traineeship programme. PhD students can apply for a traineeship position at the Court for a renewable term of one year. The main tasks of the trainees are to:

- draft preparatory materials which are used in passing uniformity decisions;
- examine the conformity with EU law and international law of a decision to be adopted;
- participate in the performance of the Curia's international tasks;
- compare and contrast national court decisions with the case law of foreign states;
- examine compliance of national court decisions with the case law of the Court of Justice of the European Union;
- draft analyses about theoretical legal issues arising before the Curia;
- participate in the preparation, organisation and execution of Curia conferences and other events;
- monitor, analyse and summarise the Constitutional Court's decisions in connection with a given case or a given jurisprudence analysis or the issuance of a guideline on principles;
- carry out comparative studies and draft summaries in connection with certain proposed legislation;
- participate in judges' meetings and attend Court hearings and other events organised by the department to which the trainee is assigned.

Another practice that can be found at the *Curia of Hungary* is the system of senior advisors. These senior advisors are university professors and their role is to help judges carry out their adjudicating activities. Currently, the *Curia of Hungary* has sixteen senior advisors. The aim is to ensure that each judicial panel is supported by a senior advisor. The senior advisors carry out the following tasks:

- participate in the processing of the submissions and motions for uniformity decisions received from the department of the lower courts and participate in preparing draft opinions on such motions and submissions;
- participate in preparing motions for uniformity decisions and draft decisions and assist the judges in performing their tasks related to safeguarding the uniform application of law by courts;
- participate in the formulation of opinions on legislation, prepare draft observations and, upon invitation to that effect by the head of the department, take part in professional consultations;
- prepare analyses and draft opinions on subject matters specified by the head of department;
- draft or participate in the drafting of documents for the department or for the meetings of the heads of panels;
- participate in a jurisprudence analysis working group by providing information on national and international case law, by finding the relevant legal literature and by preparing drafts and preliminary or final analyses;
- provide information on national and international case law related to a field of law specified by a judge of the department, and find, analyse, critically examine and summarise the relevant legal literature;
- provide information on national and international case law relevant to a case allocated to a judicial panel, and find, analyse, critically examine and summarise the relevant legal literature.

The summary opinion on the analyses and conclusions from the case law analysis working group and the uniformity decisions prepared by the court trainees and senior advisors are published on the website of the *Curia*. Other preparatory materials amount to work material and are therefore not published online.

The *Supreme Courts of Italy, Slovakia and Spain* also cooperate with universities in the organisation of internships, but these internships are targeted at university students.

## C. Recommendations and best practices

### Take initiatives that aim to safeguard the exchange of knowledge between judges, academia and other law professionals

To safeguard the quality of judicial decisions and thus the quality of justice, **judges should receive continuous legal training**. Such training can be organised in collaboration with other professional bodies when it concerns matters of common interest, thereby safeguarding the exchange of knowledge. An excellent way to cooperate is to co-organise seminars, conferences, etc.

Cooperation with regard to training is only one of the possible **initiatives through which knowledge can be shared**. Supreme Courts can also fund or participate in research projects.

The *Supreme Court of Latvia*, for example, regularly commissions research papers. These research papers also have value for the broader public and other legal professionals, since most research papers are published on the Supreme Court's homepage.

The *Curia of Hungary* indicated that it regularly cooperates with universities and research institutions. The Curia also elaborated on the value and importance of knowledge-sharing. The goal and rationale of such cooperation is twofold, according to the *Curia*. On the one hand, a significant amount of knowledge and expertise has been accumulated at the *Curia of Hungary* and continues to accumulate. Sharing this knowledge and expertise may have an inspirational effect on academic research. On the other hand, the Curia of Hungary is keen on having direct access to and being familiar with the results of academic research in the relevant fields. This kind of cooperation enables Curia judges to meet law scholars and academics belonging to various schools and groups and to become acquainted with various and diverging thoughts, approaches and conclusions. The organisational framework and the institutional forms of this kind of cooperation were designed to ensure the fulfilment of these goals.

Several judges from the *Lithuanian* and *Spanish Supreme Courts* also emphasised the value of cooperation with academia, in particular with regard to judges who also have an academic background, since this promotes different views on legal issues.

### Offer traineeships at the Supreme Court

Supreme Courts should offer positions for **trainees**, given the mutual benefits for both parties. The trainees gain additional legal knowledge and professional experience, while the Supreme Courts receive extra support for their judges. When the trainees are recently graduated law students, the Supreme Court also becomes involved in the education of new legal professionals.

In this regard, we would like to refer specifically to the examples of the *Curia of Hungary* and the *Supreme Court of Italy*, where traineeships assist in the efficient division of labour and provide a link with the academic world.

The core activities of these trainees should include:

- prepare analyses of case law and legislation;
- compare national case law with international and foreign case law;
- assist in preparing summaries of the judgments for publication online.

Given their close relationship with the academic world, these trainees can also assist in the preparation, organisation and execution of Supreme Court conferences, seminars, etc.

# III

## Transparency of the judiciary: focus on access to case law

### 1. INTRODUCTION

#### A. Transparency of the justice system

Transparency is a fundamental value for modern democracies and is a mechanism that allows the control of and participation by citizens in public matters. In practice, there are three components to transparency: requests from citizens for access to public information about the justice system and the courts, the obligation for the State to generate information and make it available to citizens in ways that allow for broad access (proactive transparency), and the empowerment of citizens to demand that the State comply with its obligations.<sup>56</sup> This demand for information can encompass different elements of the justice system: it can include information on a court's resources and how they are managed, information on how judges are appointed, information on statistics about aspects such as the length of proceedings, etc.

In this part, we limit the discussion to transparency about judicial decisions and in particular to the publication of Supreme Court rulings and national case law databases.

#### B. Why is transparency important?

Transparency has a **positive impact** on **access to justice**.<sup>57</sup> Access to justice is an **important aspect of quality in the judicial system** and thus plays a pivotal role in safeguarding an effective justice system. In other words, transparency leads to better access to justice and therefore to a more effective justice system.

Moreover, access to an effective justice system is a **fundamental human right** under the European Convention on Human Rights and under the Charter of Fundamental Rights of the European Union. Proceedings that are too intimidating, too time-consuming or too difficult to understand jeopardise this right. Judgments should thus be explained in a more user-friendly language to ensure that judicial decisions are well understood by all parties.<sup>58</sup> The justice system itself should also be explained to society.<sup>59</sup>

<sup>56</sup> Álvaro Herrero and Gaspar López, 'Access to Information and Transparency in the Judiciary. A Guide to Good Practices from Latin America' (World Bank Institute 2010) 9 <[http://siteresources.worldbank.org/WBI/Resources/213798-1259011531325/6598384-1268250334206/Transparency\\_Judiciary.pdf](http://siteresources.worldbank.org/WBI/Resources/213798-1259011531325/6598384-1268250334206/Transparency_Judiciary.pdf)> accessed 24 January 2017

<sup>57</sup> Álvaro Herrero and Gaspar López, 'Access to Information and Transparency in the Judiciary. A Guide to Good Practices from Latin America' (World Bank Institute 2010) 11 <[http://siteresources.worldbank.org/WBI/Resources/213798-1259011531325/6598384-1268250334206/Transparency\\_Judiciary.pdf](http://siteresources.worldbank.org/WBI/Resources/213798-1259011531325/6598384-1268250334206/Transparency_Judiciary.pdf)> accessed 24 January 2017

<sup>58</sup> European Commission, *Quality of Public Administration. A Toolbox for Practitioners* (Publications Office of the European Union 2015) 364

<sup>59</sup> Consultative Council of European Judges (CCJE), Opinion no 7 (2005) to the attention of the Committee of Ministers of the Council of Europe on justice and society <[https://wcd.coe.int/ViewDoc.jsp?p=&Ref=CCJE\(2005\)OP7&Sector=secDGHL&Language=lanEnglish&Ver=original&BackColorInternet=FEF2E0&BackColorIntranet=FEF2E0&BackColorLogged=c3c3c3&direct=true](https://wcd.coe.int/ViewDoc.jsp?p=&Ref=CCJE(2005)OP7&Sector=secDGHL&Language=lanEnglish&Ver=original&BackColorInternet=FEF2E0&BackColorIntranet=FEF2E0&BackColorLogged=c3c3c3&direct=true)> accessed 2 January 2017

Access to justice is considered the foundation of a functioning democracy and prospering economy.<sup>60</sup> Moreover, the public character of proceedings protects litigants against the administration of justice in secret with no public scrutiny and is therefore also a means to ensure public confidence in the justice system.<sup>61</sup>

*By rendering the administration of justice visible, publicity contributes to the achievement of the aim of Article 6 § 1, namely a fair trial, the guarantee of which is one of the fundamental principles of any democratic society, within the meaning of the Convention.*<sup>62</sup>

Improving access to justice and the public character of court proceedings in other words also **implies ensuring access to case law**. According to the European Commission, ‘justice is better served when legal representatives have all necessary information to present their cases fully and represent their clients’ interests fairly’.<sup>63</sup> Judges should also be fully informed on relevant case law before making judgments, which ensures legal certainty and consistency.<sup>64</sup>

Safeguarding the right to access to an effective justice system thus requires that citizens, lawyers and judges have access to the legislation as well as the case law.

### C. How can the transparency of justice systems be improved?

**Access to justice can be improved in various ways**, for example, by providing general information about the length and costs of proceedings, by providing legal aid, the provision of judgments online, etc.<sup>65</sup> Making the justice system more transparent is therefore just one of the ways to make justice more accessible and thus more effective.

In this part of the report we will **focus on transparency of the justice system, in particular through the publication of Supreme Court rulings and national case law databases**.

In what follows, we will examine the extent to which court rulings are published and whether the Supreme Court has access to a national case law database. The second section focuses more on the publication of the decisions of the Supreme Court itself, while the third section presents a more general view on access to national case law databases.

## 2. PUBLICATION OF SUPREME COURT RULINGS

### A. General observations

IT has of course opened new ways to provide access to justice in general and access to case law in particular. Public access to justice presupposes delivery of suitable information on the functioning of the judicial system. General information for the public can be supplemented by more precise information concerning,

<sup>60</sup> European Commission, *Quality of Public Administration. A Toolbox for Practitioners* (Publications Office of the European Union 2015) 359

<sup>61</sup> Eva Ondřejová, Robin Callender Smith, Liis Lindström, Timo Ligi, Enrico Francesconi, Ginevra Peruginelli and Olga Demian, ‘Report on the Accessibility to Judicial Decisions through Publication Standards’ (European Union and Council of Europe 2015) 4 <[www.coe.int/t/dghl/standardsetting/cdcj/co-operation\\_projects/criminal\\_justice\\_reform\\_kazakhstan/Press-Release-18-01-2016/EN\\_CoE%20%20Kazakhstan%20Report\\_11%2001%202016.pdf](http://www.coe.int/t/dghl/standardsetting/cdcj/co-operation_projects/criminal_justice_reform_kazakhstan/Press-Release-18-01-2016/EN_CoE%20%20Kazakhstan%20Report_11%2001%202016.pdf)> accessed 25 January 2017

<sup>62</sup> Eva Ondřejová, Robin Callender Smith, Liis Lindström, Timo Ligi, Enrico Francesconi, Ginevra Peruginelli and Olga Demian, ‘Report on the Accessibility to Judicial Decisions through Publication Standards’ (European Union and Council of Europe 2015) 4 <[www.coe.int/t/dghl/standardsetting/cdcj/co-operation\\_projects/criminal\\_justice\\_reform\\_kazakhstan/Press-Release-18-01-2016/EN\\_CoE%20%20Kazakhstan%20Report\\_11%2001%202016.pdf](http://www.coe.int/t/dghl/standardsetting/cdcj/co-operation_projects/criminal_justice_reform_kazakhstan/Press-Release-18-01-2016/EN_CoE%20%20Kazakhstan%20Report_11%2001%202016.pdf)> accessed 25 January 2017

<sup>63</sup> European Commission, *Quality of Public Administration. A Toolbox for Practitioners* (Publications Office of the European Union 2015) 364

<sup>64</sup> European Commission, *Quality of Public Administration. A Toolbox for Practitioners* (Publications Office of the European Union 2015) 364

<sup>65</sup> European Commission, *Communication from the Commission to the European Parliament, the Council, the European Central Bank, the European Economic and Social Committee and the Committee of the Regions – The 2016 EU Justice Scoreboard* (Publications Office of the European Union 2016) 17-23

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in particular, some of the landmark decisions delivered by the courts. The CCJE recommends the general use of computer technology to provide members of the public with information on the principal decisions delivered, among other notices. In relation to case law, at the very least, the landmark decisions should be made available on the internet free of charge, in an easily accessible form, and taking into account personal data protection.<sup>66</sup>

Although public access to case law should increase the quality of the justice system, it may also entail certain problems. Firstly, the parties involved might claim that their right to privacy is violated. Secondly, while the new technologies make it possible to publish numerous judgments online, an overload of information may lead to less access to justice, unless there are adequate search options that help individuals find what they are looking for.<sup>67</sup>

### 1. Anonymisation

Although the CCJE recognises that the use of IT improves access to justice and that it increases its effectiveness and transparency, the CCJE also warns that the **online availability of judicial decisions** could place the privacy rights of individuals at risk and jeopardise the interests of companies. They therefore recommend courts and judiciaries ensure that appropriate measures are taken to safeguard data in conformity with the appropriate laws.<sup>68</sup>

As the right of access to justice could indeed interfere with the **right to privacy** safeguarded by Article 8 ECHR, a balance between these two rights should be sought. The need to seek a balance is also recognised by the European Data Protection Supervisor (EDPS), which stated that *'the right to protection of personal data and the right to public access to documents are two fundamental democratic principles which together enforce the position of the individual against the administration and which normally go along together very well. In those cases in which the underlying interests of these principles collide, a reasonable assessment should be made departing from the fact that both are of equal importance'*.<sup>69</sup>

Currently, there is software that simplifies the process of anonymisation. However, there is a question concerning whether **anonymisation** should be applied **systematically** or only in **certain circumstances**. For example, documents in proceedings before the European Court of Human Rights are public. Thus, all information that is submitted in connection with an application in both written and oral proceedings, including information about the applicant or third parties, are accessible to the public. The statement of

<sup>66</sup> Consultative Council of European Judges (CCJE), Opinion no 6 (2004) to the attention of the Committee of Ministers of the Council of Europe on fair trial within a reasonable time and judge's role in trials taking into account alternative means of dispute settlement <[https://wcd.coe.int/ViewDoc.jsp?p=&Ref=CCJE\(2004\)OP6&Sector=secDGHL&Language=lanEnglish&Ver=original&BackColorInternet=FEF2E0&BackColorIntranet=FEF2E0&BackColorLogged=c3c3c3&direct=true](https://wcd.coe.int/ViewDoc.jsp?p=&Ref=CCJE(2004)OP6&Sector=secDGHL&Language=lanEnglish&Ver=original&BackColorInternet=FEF2E0&BackColorIntranet=FEF2E0&BackColorLogged=c3c3c3&direct=true)> accessed 2 January 2017

Consultative Council of European Judges (CCJE), Opinion no 7 (2005) to the attention of the Committee of Ministers of the Council of Europe on justice and society <[https://wcd.coe.int/ViewDoc.jsp?p=&Ref=CCJE\(2005\)OP7&Sector=secDGHL&Language=lanEnglish&Ver=original&BackColorInternet=FEF2E0&BackColorIntranet=FEF2E0&BackColorLogged=c3c3c3&direct=true](https://wcd.coe.int/ViewDoc.jsp?p=&Ref=CCJE(2005)OP7&Sector=secDGHL&Language=lanEnglish&Ver=original&BackColorInternet=FEF2E0&BackColorIntranet=FEF2E0&BackColorLogged=c3c3c3&direct=true)> accessed 2 January 2017

Consultative Council of European Judges (CCJE), Opinion no 14 (2011) to the attention of the Committee of Ministers of the Council of Europe on justice and information technologies (IT) <[https://wcd.coe.int/ViewDoc.jsp?p=&Ref=C-CJE\(2011\)2&Language=lanEnglish&Ver=original&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864&direct=true](https://wcd.coe.int/ViewDoc.jsp?p=&Ref=C-CJE(2011)2&Language=lanEnglish&Ver=original&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864&direct=true)> accessed 2 January 2017

<sup>67</sup> Stéphanie De Somer and Claire Fornoville, 'Rechtspraakpublicatie anno 2011: historische beschouwingen, hedendaagse bedenkingen en toekomstperspectieven' (2011) *Rechtskundig Weekblad*, 206, 218-219

<sup>68</sup> Consultative Council of European Judges (CCJE), Opinion no 6 (2004) to the attention of the Committee of Ministers of the Council of Europe on fair trial within a reasonable time and judge's role in trials taking into account alternative means of dispute settlement <[https://wcd.coe.int/ViewDoc.jsp?p=&Ref=CCJE\(2004\)OP6&Sector=secDGHL&Language=lanEnglish&Ver=original&BackColorInternet=FEF2E0&BackColorIntranet=FEF2E0&BackColorLogged=c3c3c3&direct=true](https://wcd.coe.int/ViewDoc.jsp?p=&Ref=CCJE(2004)OP6&Sector=secDGHL&Language=lanEnglish&Ver=original&BackColorInternet=FEF2E0&BackColorIntranet=FEF2E0&BackColorLogged=c3c3c3&direct=true)> accessed 2 January 2017

Consultative Council of European Judges (CCJE), Opinion no 14 (2011) to the attention of the Committee of Ministers of the Council of Europe on justice and information technologies (IT) <[https://wcd.coe.int/ViewDoc.jsp?p=&Ref=C-CJE\(2011\)2&Language=lanEnglish&Ver=original&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864&direct=true](https://wcd.coe.int/ViewDoc.jsp?p=&Ref=C-CJE(2011)2&Language=lanEnglish&Ver=original&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864&direct=true)> accessed 2 January 2017

<sup>69</sup> European Data Protection Supervisor, 'Public access to documents containing personal data after the Bavarian Lager ruling' (European Data Protection Supervisor 2011) 15 <[https://secure.edps.europa.eu/EDPSWEB/webdav/shared/Documents/EDPS/Publications/Papers/BackgroundP/11-03-24\\_Bavarian\\_Lager\\_EN.pdf](https://secure.edps.europa.eu/EDPSWEB/webdav/shared/Documents/EDPS/Publications/Papers/BackgroundP/11-03-24_Bavarian_Lager_EN.pdf)> accessed 25 January 2017

facts, decisions and judgments of the Court are usually published online in HUDOC on the Court's website. Parties, however, can obtain a derogation pursuant to Rules 33 or 47 of the Rules of Court. Public access to a document or to any part of it may be restricted in the interests of morals, public order or national security in a democratic society where the interests of juveniles or the protection of the private life of the parties or of any person concerned so require, or to the extent strictly necessary in the opinion of the President of the Chamber in special circumstances, where publicity would prejudice the interests of justice. The parties can submit a reasoned request thereto or the President of the Chamber can decide on confidentiality through their own motion.<sup>70</sup>

A similar principle is applied by the Court of Justice. Generally, all information is public. Where the referring court or tribunal or party considers it necessary that a party's identity or certain information concerning it should not be disclosed in a case brought before the Court of Justice, they can request that the Court anonymise the relevant case, in whole or in part.<sup>71</sup>

## 2. User-friendly search facilities

In recent years, legal information has become available in increasing quantities. The use of IT makes it possible to publish all judgments online. This offers interesting opportunities for citizens but also for large-scale consumers of legal information, such as academia and the judiciary itself. The other side of the coin is that courts have the responsibility to **unlock the large amounts of case law in a user-friendly way**.<sup>72</sup>

**Search options** help individuals (whether judges, lawyers or other citizens) find the information they need. By providing these options it is possible to publish all Supreme Court judgments, while ensuring it is possible to find the relevant information. The information entered into a database thus needs to be processed so that it remains accessible and understandable.<sup>73</sup> This could, for example, be done by adding search options such as the date of the ruling, keywords, the law that has been applied, etc.<sup>74</sup>

Another option that facilitates the search for case law are **importance level indicators**, as used by the European Court of Human Rights in its database. The European Court of Human Rights distinguishes four categories, the highest level of importance being Case Reports, followed by levels 1, 2 and 3. Case Reports are judgments, decisions and advisory opinions which have been published or selected for publication in the Court's official Reports of Judgments and Decisions. Level 1 consists of cases of high importance that are not included in the Case Reports, but do make a significant contribution to the development, clarification or modification of its case law, either generally or in relation to a particular State. Level 2 cases are of medium importance, meaning that although they do not make a significant contribution to the case law, they nevertheless go beyond merely applying existing case law. Finally, level 3 cases are of low importance, insofar as the judgments, decisions and advisory opinions are of little legal interest because they simply apply existing case law, are friendly settlements or strike outs (unless raising a particular point of interest).<sup>75</sup> When searching for the European Court of Human Rights' case law in the HUDOC database, it is possible to refine the results according to these importance level indicators.

The search for case law should also be **facilitated across borders**. The European Parliament has emphasised the need for cross-border access to national case law to enable national judges to fulfil their role in the European legal order.<sup>76</sup> A European area of freedom, security and justice in which judicial cooperation

<sup>70</sup> European Court of Human Rights, 'Practice Directions - Requests for Anonymity' (19 September 2016) <[www.echr.coe.int/Documents/PD\\_anonymity\\_ENG.pdf](http://www.echr.coe.int/Documents/PD_anonymity_ENG.pdf)> accessed 2 January 2017

European Court of Human Rights, 'Rules of Court' (rule 33 and rule 47, 14 November 2016) <[www.echr.coe.int/Documents/Rules\\_Court\\_ENG.pdf](http://www.echr.coe.int/Documents/Rules_Court_ENG.pdf)> accessed 2 January 2017

<sup>71</sup> Court of Justice, 'Anonymity in Judicial Proceedings before the Court of Justice' <[http://curia.europa.eu/jcms/upload/docs/application/pdf/2015-11/tra-doc-en-div-c-0000-2015-201508723-05\\_00.pdf](http://curia.europa.eu/jcms/upload/docs/application/pdf/2015-11/tra-doc-en-div-c-0000-2015-201508723-05_00.pdf)> accessed 2 January 2017

<sup>72</sup> Marc van Opijnen, 'Rechtspraak en digitale rechtsbronnen: nieuwe kansen, nieuwe plichten' (2010) *Rechtstreeks* <[www.rechtspraak.nl/SiteCollectionDocuments/Rechtstreeks-2010-1.pdf](http://www.rechtspraak.nl/SiteCollectionDocuments/Rechtstreeks-2010-1.pdf)> accessed 2 January 2017

<sup>73</sup> Stéphanie De Somer and Claire Fornoville, 'Rechtspraakpublicatie anno 2011: historische beschouwingen, hedendaagse bedenkingen en toekomstperspectieven' (2011) *Rechtskundig Weekblad*, 206, 219

<sup>74</sup> Stéphanie De Somer and Claire Fornoville, 'Rechtspraakpublicatie anno 2011: historische beschouwingen, hedendaagse bedenkingen en toekomstperspectieven' (2011) *Rechtskundig Weekblad*, 206, 219

<sup>75</sup> European Court of Human Rights, 'HUDOC FAQ: Frequently Asked Questions' <[http://www.echr.coe.int/Documents/HUDOC\\_FAQ\\_ENG.pdf](http://www.echr.coe.int/Documents/HUDOC_FAQ_ENG.pdf)> accessed 24 January 2017

<sup>76</sup> Council Notices 2011/C 127/01 Council conclusions inviting the introduction of the European Case Law Identifier (ECLI)

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can take place not only requires **knowledge of European law** but **mutual knowledge of the legal systems of other Member States in particular**. To facilitate the further development of European case law databases and to serve legal professionals and citizens in their use of these databases, a common system for the identification, citation and metadata of case law is regarded as indispensable by the Council of the European Union.<sup>77</sup> For this reason, the EU introduced the **European Case Law Identifier (ECLI)**, which can be implemented by Member States. The purpose is to unify the format for identifying case law in different national databases, in addition to a minimum set of uniform metadata for case law to improve search facilities.<sup>78</sup>

The following example, given on the website of the EU, illustrates the need for and the advantage of the ECLI more clearly:

*Before ECLI, it was difficult and time-consuming to find relevant case law. Take, for example, a case where a ruling of the Supreme Court of Member State A was known to be of interest for a specific legal debate. The case was registered in various national and cross-border case law databases, but in each database the ruling had a different identifier. All these identifiers – if known at all – had to be cited to enable readers of the citation to find the case in the database of their preference. Different citation rules and styles complicated the search. Moreover, users had to go to all the databases to find out whether this Supreme Court case was available – summarised, translated or annotated. With the ECLI system one search via one search interface using just one identifier will suffice to find all occurrences of the ruling in all participating national and cross-border databases.<sup>79</sup>*

The use of the ECLI should thus make it easier to search for judgments from European and national courts and the benefits should increase with the number of participating Member States.<sup>80</sup>

## B. Survey results

### 1. Publication

The survey inquired as to whether all rulings of the Supreme Court are made available to the public or whether a selection is made (and if so, by whom and based on what criteria).

**Except for Cyprus, Finland, Latvia and Portugal, every Supreme Court publishes most if not all their rulings online** (CZ, EE, NL, DE, IE, IT, LU, PL, PL(A), HU, LT, LT(A), SK, ES, SE, SE(A), AT(A), SL, AT, PT(A), RO).

The *Supreme Administrative Court of Finland* publishes only those decisions that have relevance for the application of law in identical or similar cases or decisions that are otherwise of public interest. This selection is made by the chair of the session or by the president of the court. At the *Supreme Court of Latvia* only the decisions that are important for the development of the case law or have another particular point of legal interest are published on the Court's website. The selection is made by the division of case law and research in cooperation with the departments. While this selection ensures that citizens and legal professionals find the most important case law, the same result could be obtained if all decisions were published and an importance level indicator was used.

Although the *Supreme Court of Portugal* does not make all its rulings available to the public, it does publish a summary of all the decisions on its website.

In addition to online publication, many Supreme Courts also have a printed compendium which contains the most important rulings (e.g. DE, LU, LT, LT(A), PL, PL(A), HU, SK, SE, SE(A), CY, SL, LV, RO). The selection criteria are: the importance of the ruling and/or practical impact (e.g. DE, PL SL), or a case

and a minimum set of uniform metadata for case law [2011] OJ C 127/1

<sup>77</sup> Council Notices 2011/C 127/01 Council conclusions inviting the introduction of the European Case Law Identifier (ECLI) and a minimum set of uniform metadata for case law [2011] OJ C 127/1

<sup>78</sup> European Commission, *Quality of Public Administration. A Toolbox for Practitioners* (Publications Office of the European Union 2015) 368

<sup>79</sup> 'European Case Law Identifier (ECLI)' <[https://e-justice.europa.eu/content\\_european\\_case\\_law\\_identifier\\_ecli-175-en.do?init=true](https://e-justice.europa.eu/content_european_case_law_identifier_ecli-175-en.do?init=true)> accessed 2 January 2017

<sup>80</sup> European Commission, *Quality of Public Administration. A Toolbox for Practitioners* (Publications Office of the European Union 2015) 369

that concerns the public interest (e.g. HU). The selection is made by the judges of the chamber concerned (e.g. DE, SE(A)) or by a specific selection committee (e.g. PL, HU).

## 2. Anonymisation

The majority of the Supreme Courts' rulings are anonymised before they are made available to the public (CZ, NL, FI, DE, LU, PL, PL(A), HU, LT, LT(A), SK, ES, SE, SE(A), AT(A), SL, AT, LV, PT, PT(A), RO). The *Supreme Court of Lithuania* indicated that courts are provided with a software tool which helps them to find the data which must be anonymised. The assistant of the judge is responsible for the correctness of the anonymisation. In Spain, a separate institution, the Judicial Documentation Centre, is responsible for the data processing. In most cases, all information that would enable identification of the person involved (e.g. name, place of residence, date of birth, social security number, vehicle registration number) is anonymised. Not only personal data, but also sensitive information (such as business secrets, information regarding health status, bank account number) may be anonymised (e.g. NL, PL, PL(A), LT, LT(A), SK, LV) and in some cases even information regarding the income of the parties (e.g. DE).

At a minority of Supreme Courts the general rule is that decisions are not anonymised (EE, IE, IT, CY). Parties may, however, request anonymisation (e.g. EE, IT) or the Court can decide on its own motion to anonymise the decision (e.g. EE). Although, in principle, anonymisation must be requested, in *Italy* it is prohibited to publish data regarding children and parties to judicial proceedings concerning family law and civil status.

## 3. User-friendly search facilities

Supreme Court	Keywords	ECLI	References related cases	References legislation
Austria				
Austria (Administrative)				
Belgium	X			
Cyprus	No electronic database	No electronic database	No electronic database	No electronic database
Czech Republic	X			
Estonia	X			
Finland		X	X	
Germany	X	X		
Hungary				
Ireland				
Italy				
Latvia	X		X	X
Lithuania				
Lithuania (Administrative)				
Luxembourg				
Netherlands	X	X	X	
Poland				
Poland (Administrative)	X			
Portugal	X		X	X
Portugal (Administrative)	X		X	
Romania	X			X
Slovakia	X	X		
Slovenia	X	X		
Spain	X	X		
Sweden				
Sweden (Administrative)				
<b>Total (26)</b>	<b>13</b>	<b>6</b>	<b>5</b>	<b>3</b>

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Most Supreme Courts use **additional methods to facilitate the online search for relevant case law**.

A method that is quite often used is adding **keywords** to facilitate the search of case law (CZ, EE, NL, DE, PL(A), SK, ES, SL, LV, PT, PT(A), RO, BE).

Some Supreme Courts have already started using the **ECLI** (NL, FI, DE, SK, ES, SL). In *Estonia* and *Latvia*, the project for adopting ECLI is currently ongoing. In *Belgium*, negotiations are currently taking place to introduce the use of ECLI.

A less frequently used search facility, according to the survey results, is **adding references to related cases** (NL, FI, LV,<sup>81</sup> PT, PT(A)) or to **legal acts** (LV, PT, RO). The *Supreme Administrative Court of Lithuania* considers the lack of interactive links to legislation and case law as a weakness of the national case law database.

The *Supreme Court of Latvia* explicitly acknowledged that well-functioning search engines are essential to ensure the consistent and uniform application of law. Therefore, the system of publishing the Supreme Court's decision is currently being revised, with the aim to introduce a new, more user-friendly version. To facilitate the search for case law, the Supreme Court of Latvia currently provides a **document** on its homepage **that contains instructions on how to search for the Supreme Court's decisions**.

#### 4. Summaries

Search facilities are already assisting citizens and legal professionals to find what they are looking for. However, the amount of information retrieved can still be extensive. A **summary** of the decision would thus be useful, as it is then easier and quicker to decide whether or not the decisions found are relevant.

Most of the Supreme Courts provide such a summary of the main points of each case (CZ, EE, NL, FI, IT, PL(A), ES, AT(A), SL, AT, LV, PT, PT(A), RO).<sup>82</sup> The *Federal Administrative Court of Germany* and the *Supreme Court* and *Supreme Administrative Court of Lithuania* also publish summaries but only with regard to the rulings that are considered particularly important.

As already indicated in this report in our discussion of research and documentation units, the **preparation of such summaries is often one of the tasks of these units**. The legal information department of the *Supreme Court of Estonia* drafts an annotation, in cooperation with the chamber which rendered the decision. This summary of the most important points of the decisions is made available to the public on the website of the Supreme Court and is approved by the reporting judge prior to publication. In *the Netherlands*, the Supreme Court's research service is responsible for preparing a short summary of the case highlighting the most important issues in the ruling. At the *Supreme Administrative Court of Lithuania*, the legal research and documentation unit also drafts the summaries. These summaries are subject to revision by the legal staff working in the department and by the judges themselves before publication.

In *Hungary*, the judges of the Curia are obliged to prepare a short summary of decisions of great importance or of a complex nature on the same day as the delivery of the judgment, which is immediately published on the Curia's website.

### C. Recommendations and best practices

**Make all judgments available to the public via an online database, accessible free of charge, and provide user-friendly search facilities and summaries of the decisions**

As discussed in the theoretical framework, access to justice also requires access to relevant case law. Modern technologies currently make it possible to publish all Supreme Court judgments. The survey

<sup>81</sup> When the related cases are cited in the decision.

<sup>82</sup> Please note that in the following chapter we will discuss the summaries provided in the national case law database.

results suggest that the majority of the Supreme Courts already publish most if not all of their decisions online. Given this common practice and the fact that this contributes to full transparency and to legal research, Supreme Courts should publish all their judgments online in a database that is accessible to the public free of charge. This responsibility can be assigned to the research and documentation unit.

**Paradoxically, the publication of all judgments may lead to a less informed public, due to an overload of information.** This is a risk that the Supreme Court of Latvia expressly pointed out in the survey. The mere publication of all case law is not sufficient for the purpose of research and for the uniform application of case law. To ensure transparency, the Supreme Court considers it its task to disseminate the case law in such a way that it allows a reasonably well-informed user to find the relevant case law.

In other words, Supreme Courts should **provide search facilities** that make it easy for the interested parties to find the case law that is relevant to them. These search facilities should include a keyword search function, providing references to similar cases, etc. To facilitate the search for foreign case law, the legislator should introduce the use of the European Case Law Identifier.

A **summary** of the case should also be provided to efficiently narrow down the search results to the most relevant case law (preferably prepared by the research and documentation unit of the court or by a judicial assistant, in cooperation with the judges who rendered the decision).

### **Categorise each decision in the database with an importance level indicator**

In order to make the database even more user-friendly an importance level can be attributed to every decision.

Such practice can be found in Spain. The *Spanish national database* uses an **importance level indicator** similar to the one used by the European Court of Human Rights. Before judgments are entered into the national database they are subject to analysis, and a summary is prepared by a team consisting of members of the Supreme Court's research and documentation unit and members of the different high courts. In addition to a summary and keywords, the database also indicates whether the decision in question follows previous tendencies, whether it contains a new development or whether it is a new conception. Unfortunately, however, at present this search facility is only available to the judges and other magistrates and not to the public.

### **Take appropriate measures to safeguard data by providing the possibility for the parties to request anonymisation of the judgment**

As a **general rule**, the **full version of the judgment** should be published. This ensures that resources for anonymisation are only spent when necessary and facilitates legal research. In this regard, we refer to the system adopted by the European Court of Human Rights and the Court of Justice. The full version of the judgment is accessible to the public unless one of the parties submits a **reasoned request for anonymisation** or the **president decides on confidentiality through their own motion**. Grounds for anonymisation include morals, public order or national security in a democratic society, the interests of juveniles, the protection of the private life of the parties or of any person concerned, or special circumstances where publicity would prejudice the interests of justice. This, of course, requires that parties are informed of the possibility to request anonymisation.

The research and documentation unit, which is also responsible for publication of the decisions on the Supreme Court's database, or the judges' assistants, may be held responsible for the proper anonymisation when decided by the judges.

## III 3. CENTRALISED CASE LAW DATABASE

### A. General observations

Since this chapter is closely related to the previous (Publication of Supreme Court Rulings), we refer to the general observations made in that chapter. The information contained in this chapter distinguishes itself from the previous one insofar as the following sections only relate to a national case law database (if existent) and not to a separate database of the Supreme Court.

The **advantage** of such a **centralised case law database** is that there is a **single gateway to access the decisions** of different courts and court instances, and even those of international and European courts. The user does not have to search in all of the individual databases of the courts.

### B. Survey results

#### 1. Centralised case law database

A minority of Supreme Courts indicated that there is no official<sup>83</sup> centralised case law database (CZ, SE, SE(A), CY).

In the **vast majority of countries**, however, there is a **central case law database** (sometimes in addition to the Supreme Court's own database on their website) (EE, NL, FI, DE, IE, IT,<sup>84</sup> LU, PL, PL(A), HU, LT, LT(A), SK, ES,<sup>85</sup> AT(A), SL, AT, LV,<sup>86</sup> PT,<sup>87</sup> PT(A), RO).

The instance responsible for the administration of these databases is very diverse. Some of these national databases are administered by the Ministry of Justice (e.g. EE, FI, PL, SK), others by the IT service provider for the judiciary (e.g. NL), by the Council for the Judiciary (e.g. ES), or by the National Office for Court Administration (e.g. HU, LT, LT(A), LV).

#### 2. Summaries

Some centralised case law databases contain a **summary** of all the published Supreme Court decisions (e.g. EE, NL, FI, LU,<sup>88</sup> PL, ES, AT(A), SL, PT, PT(A)), others only provide a summary of those cases that are considered important (e.g. DE, IT, RO).

In most cases, the research and documentation unit of the Supreme Court that rendered the decision is partly or entirely responsible for drafting the summary for the central database (EE,<sup>89</sup> NL, DE, IT, ES, AT(A), SL, PT). The *Supreme Court of Portugal* specified that the summary is drawn up by the judge-rapporteur or by the research and documentation unit, after which it has to be revised by the judge-rapporteur. At the *Supreme Administrative Court of Portugal* there is a separate case law Computerisation Commission (composed of three judges and one assistant attorney general) in charge of drafting these summaries.

The *Federal Administrative Court of Germany* clarified that if the court author of the decision did not provide a summary or guideline, the documentation unit would add a summary on behalf of the national database. This summary will be marked as non-official and is thus not subject to discussion with the respective court before publication.

<sup>83</sup> As opposed to privately owned commercial databases, which can often be found and contain a selection of decisions of all courts.

<sup>84</sup> The database collects all the criminal and civil judgments of the Supreme Court, disciplinary judgments against members of the judiciary, judgments of the Constitutional Court and administrative courts, as well as the main judgments of the ECHR and ECJ. For decisions of first instance courts and courts of appeal, a private database is used.

<sup>85</sup> The database contains all decisions of the Supreme Court as well as all decisions of the 17 higher regional courts and provincial courts. Only a select number of judgments is available from the lower courts.

<sup>86</sup> Contrary to the database on the website of the Supreme Court itself, the national case law database contains all judgments that have come into force.

<sup>87</sup> The database only contains rulings from the Supreme Court, the second instance courts, the Constitutional Court, the Supreme Administrative Court and the Administrative Central Courts.

<sup>88</sup> Please note that although a summary is made of every published decision, only the important decisions are made available to the public via the database.

<sup>89</sup> The summaries provided in the database of the Supreme Court are drafted by the legal information department in cooperation with the relevant chamber. This summary is approved by the reporting judge before publication. The summaries of the Supreme Court cases in the national case law database are drafted by the Ministry of Justice and are not subject to approval by the Supreme Court.

In *Luxembourg*, the Prosecutor General's office is responsible for the maintenance of the central case law database. It also elaborates the summaries without discussion with the Supreme Court. Other central case law databases do not contain any summaries (e.g. PL(A)).

### 3. Accessibility of the case law database

The majority of Supreme Courts specified that the central case law database is **accessible to the general public free of charge** (e.g. EE, NL, FI, PL, PL(A), HU, LT, LT(A), SK, ES, AT(A), SL, LV, PT, PT(A), RO).

In *Germany*, *Italy* and *Luxembourg*, however, users (other than the judges) must pay a fee in order to search for case law.

In addition to the Supreme Court's own database and the central database, the *Supreme Court of Estonia* and *Latvia* indicated that there is also a central database for internal use (used by judges and court officials). The levels of access to this system are determined according to the user, and the system is not available to the general public.

A differentiation of levels of access is also applied in *Lithuania* and *Spain*. The general public only has access to the anonymised decisions, while judges and court employees have full access to the court decisions through the same database (and not via a separate internal database). When a case is conducted in electronic form in Lithuania, judges, legal staff working on the case and the parties to the case also have access to all files of the case via this database.

### 4. Access of Supreme Courts to private databases

**Most Supreme Courts also have access to private databases** (CZ, FI, DE, IT, LU, PL, PL(A), HU, LT, LT(A), SK, ES, SE, SE(A), CY, AT(A), SL, LV, PT(A), RO). The advantages indicated are that these databases also contain all legal provisions (CZ, PL) and a vast collection of literature (CZ, DE, PL); that they provide better linkages between legislation, preparatory materials and cases (FI, PL); and that they are more functional due to more search criteria (e.g. LT, LT(A), SK, ES).

Of the Supreme Courts that responded to this question, only the *Supreme Court of Estonia*, the *Supreme Court of Portugal* and the *Supreme Court of Austria* stated that they do not have access to private case law databases.

### 5. Language

**Translation of judgments into other languages increases access to these judgments for users from outside the country or for users from another linguistic region.** This could be **especially helpful in cases concerning European law**. Many Supreme Courts, nevertheless, indicated that they do not translate their judgments into other languages (NL, IE, IT, LU, PL, ES, AT(A), AT, LV, PT, PT(A)).

However, several other Supreme Courts have decided to translate their most important decisions.

The *Supreme Court of Romania* translates a selection of their case law into French in order to publish this case law in Juricaf, an international case law database of French Supreme Court decisions. The decisions are chosen by the chambers and the cost of translation is covered by the Court's budget.

The department of analytics and comparative law of the *Supreme Court of the Czech Republic* publishes abstracts of some of the important decisions of the Court in English on the international pages of the website. The department itself decides which summaries will be translated (around 15-20 per year), but the translation itself is usually done by a private commercial translation company. The costs of this translation are covered by the Court's budget. The choice of the decision is based on the probability that it has a benefit for other jurisdictions. A European law component is almost always present.

In *Estonia*, the relevant parts of the most important decisions of the Constitutional Review Chamber of the Supreme Court are translated into English. The chamber itself decides which decisions will be translated, and the translation costs are covered by the Supreme Court. The *Supreme Court of Slovenia* also translates its most important decisions into English. The *Curia of Hungary* provides short

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English-language summaries of its most important decisions and specified that the translation costs are covered by the Court's budget.

The *Supreme Administrative Court of Finland* cooperates with the other Supreme Courts of the Nordic countries. These Supreme Courts have made an agreement according to which decisions related to EU or European human rights law are reported separately on each court's website (in Swedish) so that they can be easily found. The reason for this agreement is that such issues often arise in several Nordic countries at the same time.

The *Federal Administrative Court of Germany* is starting a project to provide an English translation of more rulings in all fields of public law (currently, such translation is only provided in asylum, immigration and citizenship cases). The chambers which rendered the decisions determine which ones will be translated or not and the costs of this translation are covered by the Court's budget.

The survey results showed that a translation of administrative law decisions is often done in the framework of ACA Europe. The *Supreme Courts of Estonia*<sup>90</sup> and *Slovakia*,<sup>91</sup> and the *Supreme Administrative Courts of Finland, Poland, Lithuania and Sweden* forward their most important decisions concerning EU law to ACA Europe. ACA Europe generally organises the translation of these decisions and covers the translation costs. ACA Europe makes the translated decisions available to its members via an internal database called JuriFast.

### C. Recommendations and best practices

**States must provide a central case law database that has user-friendly search facilities and has adequate safeguards for the protection of personal data**

**States must provide a central case law database.** In addition to all the Supreme Court decisions, the database should contain a selection of the decisions of the lower courts and also contain the case law from the European Court of Justice and the European Court of Human Rights. Many Supreme Courts specified that they consider it a great advantage that all their rulings are accessible to the public (e.g. EE, LT(A), LV).

**This central case law database has the advantage that people can find all relevant case law in one integrated database** and do not have to search the databases of each separate court. By facilitating access to justice, a central case law database contributes to an effective justice system. It also allows judges to search for the relevant case law more efficiently and thus increases the efficiency of the adjudication of cases and the quality of judgments.

To ensure that such a central case law database is efficient, in the sense that people can find what they need, this database should have **user-friendly search facilities** (see also part III, 2, C). The same rules for anonymisation as discussed with regard to the publication of Supreme Court rulings should be applied.

**Translate the most important decisions that involve EU law**

**To facilitate the trans-national search for case law, especially in areas involving EU law, the most important decisions should be translated into English.** The CCJE emphasised that appropriate

<sup>90</sup> The chamber that rendered the decision determines whether it should be forwarded to ACA Europe.

<sup>91</sup> The decisions are made by the department of documentation, analytics and comparatistics.

measures should be taken to ensure that courts have translation and interpretation services of quality available, in addition to the ordinary cost of the functioning of courts.<sup>92</sup>

When judges have knowledge of all relevant case law, the quality of judicial decisions and, therefore, of the judicial system increases. In addition, the translation of the most important decisions that involve EU law also increases public access to justice and thus contributes to a more effective justice system.

The department of analytics and comparative law of the *Supreme Court of the Czech Republic*, for example, publishes abstracts of some of the important decisions of the Court in English on the international pages of its website. The choice of a decision is based on the probability that it has a benefit for other jurisdictions. A European law component is almost always present.

**Cooperation that promotes the capacity to search for internationally relevant case law and to translate these decisions, such as ACA Europe, is highly encouraged.** Other forms of cooperation are also possible. The *Supreme Administrative Court of Finland*, for example, agreed with the other Supreme Courts of the Nordic countries to translate decisions related to EU or European human rights law and to report them separately on each court's website so that they can be easily found.

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<sup>92</sup> Consultative Council of European Judges (CCJE), Opinion no 9 (2006) for the attention of the Committee of Ministers of the Council of Europe on the role of national judges in ensuring an effective application of international and European law <[https://wcd.coe.int/ViewDoc.jsp?p=&Ref=CCJE\(2006\)OP9&Sector=secDGHL&Language=lanEnglish&Ver=original&BackColorInternet=FEF2E0&BackColorIntranet=FEF2E0&BackColorLogged=c3c3c3&direct=true](https://wcd.coe.int/ViewDoc.jsp?p=&Ref=CCJE(2006)OP9&Sector=secDGHL&Language=lanEnglish&Ver=original&BackColorInternet=FEF2E0&BackColorIntranet=FEF2E0&BackColorLogged=c3c3c3&direct=true)> accessed 12 January 2017

# IV

## Administration of Supreme Courts: focus on the allocation of cases and length of proceedings

### 1. INTRODUCTION

#### A. What does administration of courts mean?

Judicial administration consists of the practices, procedures and offices that deal with the management of the system of the courts. Judicial administration, or administration of courts, has traditionally been concerned with overseeing budgets, selecting juror pools, assigning judges to cases, creating court calendars of activities and supervising non-judicial personnel.<sup>93</sup>

Administration of courts is thus a broad term and encompasses the management of workloads, finances, infrastructure, human resources and communications.<sup>94</sup> In this report we will focus on case management, more precisely, on case flow, the length of proceedings and the allocation of cases. Case management is the effort by the courts (using any measures such as administrative measures, managerial tools or regulations) to handle cases in such a manner that they are resolved fairly and as promptly and efficiently as is reasonable in the circumstances of the case.<sup>95</sup> **Case flow management** involves **all actions that a court takes to monitor and control the progress of cases**, from the moment the case arrives at the court until the completion of all post-disposition court work, to ensure that justice is done promptly.<sup>96</sup>

Increasing caseloads in many courts has led to the emergence of case management, initiating major reforms in the processing of cases and in how cases are scheduled and allocated.<sup>97</sup>

Management principles, strategies and techniques can also be applied to the justice system and may make significant contributions to the efficient and effective functioning of justice.<sup>98</sup> Moreover, the

<sup>93</sup> 'Judicial Administration' <[www.law.cornell.edu/wex/judicial\\_administration](http://www.law.cornell.edu/wex/judicial_administration)> accessed 5 December 2016

<sup>94</sup> Council of Europe, Committee of Ministers Recommendation (95)12 of 11 September 1995 on the management of criminal justice <<https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=536554&SecMode=1&DocId=527282&Usage=2>> accessed 5 December 2016

<sup>95</sup> Erwin J. Rooze, 'Differentiated Use of Electronic Case Management Systems' (2010) *International Journal for Court Administration*, 1, 2 <[www.iajournal.org/articles/abstract/10.18352/ijca.53/](http://www.iajournal.org/articles/abstract/10.18352/ijca.53/)> accessed 5 December 2016

Wayne Stewart Martin AC, 'Court Administrators and the Judiciary - Partners in the Delivery of Justice' (2014) *International Journal for Court Administration*, 1, 11 <[www.iajournal.org/articles/abstract/10.18352/ijca.158/](http://www.iajournal.org/articles/abstract/10.18352/ijca.158/)> accessed 5 December 2016

<sup>96</sup> David C. Steelman, 'Improving Caseflow Management: A Brief Guide' (National Center for State Courts 2008) 1 <<http://cdm16501.contentdm.oclc.org/cdm/ref/collection/ctadmin/id/1022>> accessed 5 December 2016

<sup>97</sup> Wayne Stewart Martin AC, 'Court Administrators and the Judiciary - Partners in the Delivery of Justice' (2014) *International Journal for Court Administration*, 1, 11 <[www.iajournal.org/articles/abstract/10.18352/ijca.158/](http://www.iajournal.org/articles/abstract/10.18352/ijca.158/)> accessed 5 December 2016

<sup>98</sup> Council of Europe, Committee of Ministers Recommendation (95)12 of 11 September 1995 on the management of criminal justice <<https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=536554&SecMode=1&DocId=527282&Usage=2>> accessed 5 December 2016

CCJE pointed out that *‘there is an obvious link between, on the one hand, the funding and management of courts and, on the other, the principles of the European Convention on Human Rights: access to justice and the right to fair proceedings are not properly guaranteed if a case cannot be considered within a reasonable time by a court that has appropriate funds and resources at its disposal in order to perform efficiently’*.<sup>99</sup>

## B. Why is proper administration of courts important?

*‘Justice delayed is justice denied’*. This quote underlines the importance of timeliness. **Timeliness is one aspect of efficiency, which, in turn, is one of the parameters of an effective justice system**, in addition to quality and independence. According to the Council of Europe, *‘court efficiency plays a crucial role for upholding the rule of law, by ensuring that all persons, institutions and entities, both public and private, including the State, are accountable, and by guaranteeing timely, just and fair remedies’*.<sup>100</sup> Timeliness of judicial decisions is without doubt **essential to ensure the smooth functioning of the justice system**.

Moreover, **Article 6 of the European Convention on Human Rights ensures the right to a fair trial within a reasonable delay**. The European Commission for the Efficiency of Justice (CEPEJ) states that the **‘reasonable time’ standard is the lower limit** which draws the line between the violation and non-violation of the Convention. The **goal** must, however, be the **timeliness** of judicial proceedings which means cases are managed and then disposed in due time, **without undue delays**.<sup>101</sup>

The main parameters used by the EU Justice Scoreboard to measure the efficiency of justice are the length of proceedings (disposition time),<sup>102</sup> clearance rate<sup>103</sup> and number of cases pending.<sup>104</sup> In this report, we will examine the length of proceedings at the European Supreme Courts, as well as the system of allocation of cases, which can in turn influence the length of proceedings.

## C. How can Supreme Courts manage the case flow?

The way a court organises and divides work and duties (i.e. the allocation of cases) is an important operational aspect in improving case flow and influences the length of proceedings. **Proper organisation of the allocation of cases is a necessary requirement for the timely delivery of justice**.<sup>105</sup> A certain specialisation may, for example, help to speed up proceedings. This specialisation may concern the subject

<sup>99</sup> Consultative Council of European Judges (CCJE), Opinion no 2 (2001) for the attention of the Committee of Ministers of the Council of Europe on the funding and management of courts with reference to the efficiency of the judiciary and to article 6 of the European Convention on Human Rights <<https://wcd.coe.int/ViewDoc.jsp?p=&id=1046365&Site=COE&direct=true>> accessed 5 December 2016

<sup>100</sup> European Commission for the Efficiency of Justice (CEPEJ), ‘European Judicial Systems. Efficiency and Quality of Justice. Edition 2016 (2014 Data)’ (CEPEJ Studies no 23, CEPEJ 2016) 184 <<http://www.coe.int/t/dghl/cooperation/cepej/evaluation/2016/publication/CEPEJ%20Study%202023%20report%20EN%20web.pdf>> accessed 5 December 2016

<sup>101</sup> European Commission for the Efficiency of Justice (CEPEJ), ‘Compendium of “Best Practices” on Time Management of Judicial Proceedings’ (CEPEJ 2006) <[https://wcd.coe.int/ViewDoc.jsp?p=&Ref=CEPEJ\(2006\)13&Sector=secDGHL&Language=lanEnglish&Ver=original&BackColorInternet=eff2fa&BackColorIntranet=eff2fa&BackColorLogged=c1cbe6&direct=true](https://wcd.coe.int/ViewDoc.jsp?p=&Ref=CEPEJ(2006)13&Sector=secDGHL&Language=lanEnglish&Ver=original&BackColorInternet=eff2fa&BackColorIntranet=eff2fa&BackColorLogged=c1cbe6&direct=true)> accessed 5 December 2016

<sup>102</sup> The disposition time is the number of unresolved cases, divided by the number of resolved cases at the end of the year, multiplied by 365 days.

European Commission, Communication from the Commission to the European Parliament, the Council, the European Central Bank, the European Economic and Social Committee and the Committee of the Regions - The 2016 EU Justice Scoreboard (Publications Office of the European Union 2016) 6 <[http://ec.europa.eu/justice/effective-justice/files/justice\\_scoreboard\\_2016\\_en.pdf](http://ec.europa.eu/justice/effective-justice/files/justice_scoreboard_2016_en.pdf)> accessed 17 November 2016

<sup>103</sup> The clearance rate is the ratio of the number of resolved cases to the number of incoming cases. It measures whether a court is keeping up with its incoming caseload.

European Commission, Communication from the Commission to the European Parliament, the Council, the European Central Bank, the European Economic and Social Committee and the Committee of the Regions - The 2016 EU Justice Scoreboard (Publications Office of the European Union 2016) 8 <[http://ec.europa.eu/justice/effective-justice/files/justice\\_scoreboard\\_2016\\_en.pdf](http://ec.europa.eu/justice/effective-justice/files/justice_scoreboard_2016_en.pdf)> accessed 17 November 2016

<sup>104</sup> European Commission, Communication from the Commission to the European Parliament, the Council, the European Central Bank, the European Economic and Social Committee and the Committee of the Regions - The 2016 EU Justice Scoreboard (Publications Office of the European Union 2016) 6 <[http://ec.europa.eu/justice/effective-justice/files/justice\\_scoreboard\\_2016\\_en.pdf](http://ec.europa.eu/justice/effective-justice/files/justice_scoreboard_2016_en.pdf)> accessed 17 November 2016

<sup>105</sup> Marco Fabri and Philip Langbroek, ‘Is There a Right Judge for Each Case? A Comparative Study of Case Assignment in Six European Countries’ (2007) 292, 292 European Journal of Legal Studies <[www.ejls.eu/2/31UK.pdf](http://www.ejls.eu/2/31UK.pdf)> accessed 5 December 2016

## IV

of the case (e.g. family matters, insolvency), but also the kind of procedure (e.g. ordinary and summary proceedings).<sup>106</sup> The way in which cases are allocated may thus increase the capacity of the court.

The improvement of court case flow has traditionally been connected to the introduction of **timeframes** and their active management.<sup>107</sup> Timeframes are the tool that enables courts to assess whether cases have been disposed in due time, to quantify delays and to assess the policies and practices implemented to reduce the length of case processing. Without these timeframes it is not possible to evaluate the results of the efforts made to improve the length of proceedings.<sup>108</sup> We will discuss these timeframes in more depth in section 3 below concerning the length of proceedings.

There are plenty of other ways to improve timeliness besides the allocation of cases and setting timeframes. The caseload, for example, can be reduced by restricting the appeals (e.g. leave to appeal to the Supreme Court) or by requiring parties to be represented by a specialised lawyer admitted to the Supreme Court's bar. The latter is the case in Belgium. The court's capacity can also be increased by allocating more cases to a single judge rather than a panel (e.g. to evaluate the admissibility of a case), by assigning judicial assistants to the judge, etc. These measures, however, fall outside the scope of this part.

## 2. ALLOCATION OF CASES

### A. General observations

Allocation of cases is a core element of court administration because it is closely related to the workload of judges and it **affects the length of proceedings and consequently the efficiency of justice**.<sup>109</sup> Specialisation, for example, increases efficiency and therefore positively influences the length of proceedings.<sup>110</sup> Of course, sometimes the court size does not allow for specialisation.

The requirement of judicial independence and impartiality is another reason why the allocation of cases is a core element of court administration.<sup>111</sup> Cases cannot be allocated to judges who have, or

<sup>106</sup> European Caseflow Management Development Network, 'Caseflow Management Handbook: Guide for Enhanced Court Administration in Civil Proceedings' (European Caseflow Management Development Network 2016) 4 <[www.lut.fi/documents/27578/419707/Caseflow+Management+Handbook+%28English%29\\_02122016.pdf/21819866-5667-4929-ad7a-26ddd2798a03](http://www.lut.fi/documents/27578/419707/Caseflow+Management+Handbook+%28English%29_02122016.pdf/21819866-5667-4929-ad7a-26ddd2798a03)> accessed 5 December 2016

Philip Langbroek and Matthew Kleiman, 'Backlog Reduction Programmes and Weighted Caseload Methods for South East Europe, Two Comparative Inquiries. Final Report. Lot 3: Analysis of Backlog Reduction Programmes and Case Weighting Systems' (Regional Cooperation Council 2016) 22 <[www.rcc.int/pubs/32/backlog-reduction-programmes-and-weighted-caseload-methods-for-south-east-europe-two-comparative-inquiries](http://www.rcc.int/pubs/32/backlog-reduction-programmes-and-weighted-caseload-methods-for-south-east-europe-two-comparative-inquiries)> accessed 13 December 2016

European Network of Councils for the Judiciary (ENCJ), 'Timeliness Report 2010-2011' (ENCJ 2011) 8 <[www.encj.eu/images/stories/pdf/GA/Vilnius/report\\_on\\_timeliness.pdf](http://www.encj.eu/images/stories/pdf/GA/Vilnius/report_on_timeliness.pdf)> accessed 12 December 2016

<sup>107</sup> European Caseflow Management Development Network, 'Caseflow Management Handbook: Guide for Enhanced Court Administration in Civil Proceedings' (European Caseflow Management Development Network 2016) 4 <[www.lut.fi/documents/27578/419707/Caseflow+Management+Handbook+%28English%29\\_02122016.pdf/21819866-5667-4929-ad7a-26ddd2798a03](http://www.lut.fi/documents/27578/419707/Caseflow+Management+Handbook+%28English%29_02122016.pdf/21819866-5667-4929-ad7a-26ddd2798a03)> accessed 5 December 2016

<sup>108</sup> European Commission for the Efficiency of Justice (CEPEJ), 'Compendium of "Best Practices" on Time Management of Judicial Proceedings' (CEPEJ 2006) <[https://wcd.coe.int/ViewDoc.jsp?p=&Ref=CEPEJ\(2006\)13&Sector=secDGHL&Language=lanEnglish&Ver=original&BackColorInternet=eff2fa&BackColorIntranet=eff2fa&BackColorLogged=c1cbef6&direct=true](https://wcd.coe.int/ViewDoc.jsp?p=&Ref=CEPEJ(2006)13&Sector=secDGHL&Language=lanEnglish&Ver=original&BackColorInternet=eff2fa&BackColorIntranet=eff2fa&BackColorLogged=c1cbef6&direct=true)> accessed 5 December 2016

<sup>109</sup> European Network of Councils for the Judiciary (ENCJ), 'Minimum Judicial Standards IV: Allocation of Cases. ENCJ Report 2013-2014' (ENCJ 2014) 5 <[www.encj.eu/images/stories/pdf/workinggroups/encj\\_report\\_standards\\_iv\\_allocation\\_of\\_cases\\_2014.pdf](http://www.encj.eu/images/stories/pdf/workinggroups/encj_report_standards_iv_allocation_of_cases_2014.pdf)> accessed 5 December 2016

<sup>110</sup> Philip Langbroek and Matthew Kleiman, 'Backlog Reduction Programmes and Weighted Caseload Methods for South East Europe, Two Comparative Inquiries. Final Report. Lot 3: Analysis of Backlog Reduction Programmes and Case Weighting Systems' (Regional Cooperation Council 2016) 22 <[www.rcc.int/pubs/32/backlog-reduction-programmes-and-weighted-caseload-methods-for-south-east-europe-two-comparative-inquiries](http://www.rcc.int/pubs/32/backlog-reduction-programmes-and-weighted-caseload-methods-for-south-east-europe-two-comparative-inquiries)> accessed 13 December 2016

European Network of Councils for the Judiciary (ENCJ), 'Timeliness Report 2010-2011' (ENCJ 2011) 8 <[www.encj.eu/images/stories/pdf/GA/Vilnius/report\\_on\\_timeliness.pdf](http://www.encj.eu/images/stories/pdf/GA/Vilnius/report_on_timeliness.pdf)> accessed 12 December 2016

<sup>111</sup> European Commission for the Efficiency of Justice (CEPEJ), 'Compendium of "Best Practices" on Time Management of Judicial Proceedings' (CEPEJ 2006) <[https://wcd.coe.int/ViewDoc.jsp?p=&Ref=CEPEJ\(2006\)13&Sector=secDGHL&Language=lanEnglish&Ver=original&BackColorInternet=eff2fa&BackColorIntranet=eff2fa&BackColorLogged=c1cbef6&direct=true](https://wcd.coe.int/ViewDoc.jsp?p=&Ref=CEPEJ(2006)13&Sector=secDGHL&Language=lanEnglish&Ver=original&BackColorInternet=eff2fa&BackColorIntranet=eff2fa&BackColorLogged=c1cbef6&direct=true)> accessed 5 December 2016

Marco Fabri and Philip Langbroek, 'Is There a Right Judge for Each Case? A Comparative Study of Case Assignment in Six European Countries' (2007) 292, 292 *European Journal of Legal Studies* <[www.ejls.eu/2/31UK.pdf](http://www.ejls.eu/2/31UK.pdf)> accessed 5 December 2016

appear to have, an interest in a case, or who may appear prejudiced for other reasons. If society has the opinion that the judges are not independent and impartial, it may not accept the judgments.<sup>112</sup>

As the Charter of Fundamental Rights ensures the right to a fair trial and effective legal remedies, everyone has the right to a **pre-established and reviewable determination of which judge will hear their case**. It is, therefore, essential that **case allocation processes are well organised and transparent**.<sup>113</sup>

In accordance with the recommendation of the Committee of Ministers of the Council of Europe, the allocation of cases within a court should follow **objective pre-established criteria** to safeguard the right to an independent and impartial judge. It should not be influenced by the wishes of a party to the case or to anyone otherwise interested in the outcome of the case.<sup>114</sup> This does not mean, however, that the internal allocation of cases to judges, panels, boards or chambers of judges within courts should be regulated by law. Research has shown that the allocation and reallocation of cases to a particular judge within the court is generally not regulated by law, but rather by an internal court regulation.<sup>115</sup>

Within these normative margins of respect for the timeliness of proceedings, as well as judicial independence and impartiality, there are many other ways to organise case allocation processes.<sup>116</sup>

Consequently, one can distinguish a great variety of systems across Europe. The allocation of cases generally follows the specialisation of judges, but in Denmark, for example, judges are generalists and deal with all kinds of cases. In some countries, judges may informally exchange cases, in others this is strictly prohibited. We will look at these systems in more detail when we discuss the survey results. Notwithstanding this variety, according to the research findings of Marco Fabri and Philip M. Langbroek, the priority of all these allocation systems is to balance the caseload among the judges.

Although there is a great variety in allocation systems, the **Project Team on the Development of Minimum Judicial Standards IV: Allocation of Cases**, established by the European Network of Councils for the Judiciary, nevertheless identified the following **eleven minimum standards** in the field of allocation of cases:

1. *All cases should be allocated on a basis that is compatible with Article 6 ECHR.*
2. *There should be an established method of allocation of cases. The method of allocation should be made available to the public. This method of allocation may be governed by statute, regulation or judicial or administrative practice.*
3. *The method for the allocation of cases should ensure the fair and time efficient administration of justice, and the enhancing of public confidence.*
4. *The following principles and criteria to be applied in the allocation of cases should be taken into account in all established methods of allocation, including administration or electronic allocation, and allocation by a senior judge, Presiding Judge or President of a Court.*
5. *The principles and criteria to be considered in the methodology for allocating cases should be objective and include:*
  - *The right to a fair trial;*
  - *The independence of the judiciary;*
  - *The legality of the procedure;*

<sup>112</sup> Marco Fabri and Philip M. Langbroek, 'Is There a Right Judge for Each Case? A Comparative Study of Case Assignment in Six European Countries' (2007) 292, 292 *European Journal of Legal Studies* <[www.ejls.eu/2/31UK.pdf](http://www.ejls.eu/2/31UK.pdf)> accessed 5 December 2016

<sup>113</sup> European Network of Councils for the Judiciary (ENCJ), 'Minimum Judicial Standards IV: Allocation of Cases. ENCJ Report 2013-2014' (ENCJ 2014) 3-4 <[www.encj.eu/images/stories/pdf/workinggroups/encj\\_report\\_standards\\_iv\\_allocation\\_of\\_cases\\_2014.pdf](http://www.encj.eu/images/stories/pdf/workinggroups/encj_report_standards_iv_allocation_of_cases_2014.pdf)> accessed 5 December 2016

<sup>114</sup> Council of Europe, Committee of Ministers Recommendation (2010) 12 of 17 November 2010 and Explanatory Memorandum on Judges: Independence, Efficiency and Responsibilities, 9 <[www.coe.int/t/dghl/standardsetting/cdcj/CDCJ%20Recommendations/CMRec\(2010\)12E\\_%20judges.pdf](http://www.coe.int/t/dghl/standardsetting/cdcj/CDCJ%20Recommendations/CMRec(2010)12E_%20judges.pdf)> accessed 5 December 2016

<sup>115</sup> European Network of Councils for the Judiciary (ENCJ), 'Minimum Judicial Standards IV: Allocation of Cases. ENCJ Report 2013-2014' (ENCJ 2014) 5 <[www.encj.eu/images/stories/pdf/workinggroups/encj\\_report\\_standards\\_iv\\_allocation\\_of\\_cases\\_2014.pdf](http://www.encj.eu/images/stories/pdf/workinggroups/encj_report_standards_iv_allocation_of_cases_2014.pdf)> accessed 5 December 2016

<sup>116</sup> Marco Fabri and Philip M. Langbroek, 'Is There a Right Judge for Each Case? A Comparative Study of Case Assignment in Six European Countries' (2007) 292, 305 *European Journal of Legal Studies* <[www.ejls.eu/2/31UK.pdf](http://www.ejls.eu/2/31UK.pdf)> accessed 5 December 2016

## IV

- *The nature and complexity of the case;*
  - *The competence, experience and specialism of the judge;*
  - *The availability and/or workload of the judge;*
  - *The impartiality of the judge;*
  - *The public perception of the independence and impartiality of the allocation.*
6. *When considering complexity, it may be defined as including some or all of the following factors:*
    - *The number of parties or defendants;*
    - *The number of witnesses;*
    - *The value of the issue in question;*
    - *The number of pages of the papers in the case;*
    - *The extent of the dispute of facts;*
    - *The legal issues involved;*
    - *The number of expert witnesses;*
    - *The estimated length of the trial;*
    - *The interest of the media or public or profile of the case in so far as it impacts upon the logistics of the case.*
  7. *The method of allocation should be applied uniformly according to the criteria of the fifth principle; differences in the application of the principles and criteria may be required due to the nature of the jurisdiction, the size of the Court, the level of the Court and the judicial district where the case is heard.*
  8. *Allocation should be the responsibility of the President, Senior Judge of the Court or a Court Board, but the practical arrangements for the allocation of cases can be delegated to either another judge or a civil servant authorised for the purpose of the allocation of cases.*
  9. *The motivating/reasoning for any derogation from the established method of allocation should be reordered.*
  10. *The method for the allocation of cases should comply with the principles and criteria set out herein whether the judge is sitting alone or as part of a panel. When judges sit as a panel, it is the combined composition of the panel that should comply with the principles and criteria.*
  11. *The parties to a case are entitled to be informed about the allocation of the case at a time prior to the start of the hearing/consideration of the case that is reasonable taking into account the nature and complexity of the case, and the time by which the party has to exercise any right to challenge the allocation of the case to the specific judge/judges. This may be done in writing, electronically, or by the publishing of a court list or any other means.<sup>117</sup>*

## B. Survey results

### 1. Normative enactment of allocation rules

The survey first asked about the manner and principles of allocation of cases and whether this was determined by any external or internal normative enactments.

**Most Supreme Courts confirmed that the allocation of cases was determined by a normative enactment** (CZ, EE, DE, IT, PL, PL(A), HU, LT, LT(A), SK, ES, AT(A), SL, LV, PT, PT(A)). This, however, does not always guarantee a foreseeable and uniform allocation procedure. For example, at the *Curia of Hungary* various methods of allocation are allowed under the case allocation order, so the different departments use different allocation rules. The Internal Rules of the *Supreme Court of Estonia* are not very precise. Pursuant to the Internal Rules, the Chairs of the Chambers are responsible for the allocation of the judges at random. Therefore, each chamber of the Supreme Court has some liberty to decide on the precise procedure of allocation of cases as long as the principle of randomness is followed.

In a minority of countries, there is no internal or external normative enactment that prescribes the allocation rules (NL, LU, SE(A), SE).

<sup>117</sup> European Network of Councils for the Judiciary (ENCJ), 'Minimum Judicial Standards IV: Allocation of Cases. ENCJ Report 2013-2014' (ENCJ 2014) 8-10 <[www.encj.eu/images/stories/pdf/workinggroups/encj\\_report\\_standards\\_iv\\_allocation\\_of\\_cases\\_2014.pdf](http://www.encj.eu/images/stories/pdf/workinggroups/encj_report_standards_iv_allocation_of_cases_2014.pdf)> accessed 5 December 2016

## 2. Criteria used when allocating cases

Supreme Court	Specialisation	Workload	EU law
Austria	No information	No information	No information
Austria (Administrative)	X	X	
Belgium	X	X	
Cyprus			
Czech Republic	X	X	
Estonia		X	
Finland	X	X	
Germany	X	X	
Hungary	X	X	
Ireland	No information	No information	No information
Italy	X	X	
Latvia		X	
Lithuania	X	X	
Lithuania (Administrative)	X	X	
Luxembourg			
Netherlands		X	
Poland		X	
Poland (Administrative)	X	X	
Portugal	X	X	
Portugal (Administrative)	X	X	
Romania	X	X	
Slovakia		X	
Slovenia	X	X	
Spain	X	X	
Sweden	No information	No information	No information
Sweden (Administrative)	X	X	
<b>Total (26)</b>	<b>16</b>	<b>21</b>	<b>0</b>

### a. Specialisation

In many Supreme Courts the judges' specialisation or expertise is a criterion that is used to allocate the incoming cases between the chambers or panels (e.g. CZ, FI, DE, IT, PL(A), HU, LT, LT(A), SE(A), AT(A), SL, PT, PT(A), RO, BE). This is not the case in the Supreme Court of Slovakia, which considers the lack of specialisation a weakness.

At the *Supreme Court of Poland*, the civil chamber, criminal chamber, military chamber and labour law, social security and public affairs chambers are divided into departments. While cases are not allocated according to the specialisation of the departments, every department is competent for appeals against judgments issued by courts of a given appellate district. The judges are, however, not assigned to departments. As a consequence, changes can be made to the adjudicating panel in the course of the examination in civil cases. Changes during the examination of the case are not possible in criminal cases, as the judgment may only be issued by judges who were present at all the hearings.

At the *Supreme Court of Latvia* cases are allocated according to an annually amended plan approved by the Chief Justice. The allocation of cases in the administrative, criminal and civil departments is done following the alphabetical order of judges' names. At the administrative department, the specialisation of the judge is also taken into account, but this is, in other words, not the case for every department.

### b. Workload

When distributing cases between judges (or panels), most Supreme Courts also indicated that they take the workload of the judges into account (e.g. CZ, DE, IT, PL, PL(A), HU, LT, LT(A),

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ES, AT(A), SL, PT, PT(A), RO, BE). Workload is taken into account even when the principle is to allocate the cases at random (EE, NL, SK, ES, LV).

At the *Supreme Court of the Czech Republic*, for example, the cases are allocated to panels by the registry according to the internal normative enactment that stipulates the field of specialisation of each panel. Within each panel, the executive president allocates the case to the judge rapporteur, who has the competence to ensure an equal workload among the judges. At the *Supreme Court of Latvia*, cases are generally allocated at random, according to the alphabetical order of the name of the judges. However, the allocation plan can be amended in the case of work overload for a judge, in the case of an insufficient workload for a judge, or in the case a judge is unable to perform their duties.

Courts can, however, take further steps in this regard. Sometimes the workload is solely taken into account through randomly selecting a judge. A **weighted caseload system** that considers the complexity and the time needed for every case allocated to a judge (and not just the number of cases assigned to the judge in question) ensures an even better allocation of cases with regard to an equal workload among the judges.

The *Supreme Court of Italy*, for example, applies such a weighted caseload system. Each case is classified according to a complexity indicator. Each judge receives a number of cases equivalent in complexity to that of their colleagues.

The *Supreme Court of Lithuania* also uses a complexity factor. Every case receives a complexity indicator from 1 to 3, with 1 being the least complex. Generally, a judge may not be allocated more than two cases on the same day, and not more than one of these cases may be of the highest complexity.

Since the number of cases assigned and handled by a judge does not always give a true picture of their workload, the number of rulings prepared by a judge should not be the only parameter to determine the efficiency of a judge's work. **Almost no Supreme Court sets a standard on the absolute number of rulings to be prepared by a judge** (e.g. CZ, EE, NL, DE, IE, LU, HU, SK, ES, LT, SE, SE(A), AT(A), SL, AT, PT PT(A)). However, the judges of the *Supreme Court of Latvia* working in the administrative department have a concrete number of cases to examine each year. In 2016, the standard was set at 109 cases. Although the efficiency of a judge's work is measured according to this standard, other factors (such as absence, taking part in educational activities, lecturing, etc.) are also taken into account.

### c. EU law

**The fact that a case involves a question of EU law is in general not taken into account when allocating the cases** (CZ, EE, NL, FI, DE, IE, ES, LU, PL, PL(A), HU, LT, LT(A), SK, ES, SE, SE(A), CY, AT(A), SL, AT, LV, PT, PT(A), RO). Some Supreme Courts indicated that this is not possible, given the fact that EU law is involved in many areas of the law (e.g. competition law, intellectual property law).

In *Hungary*, the National Office for the Judiciary coordinates the Network of Legal Advisors on European Law. In cases where EU law needs to be applied, judges can request the assistance of the expert judges of this network.

### 3. Method of case allocation

**The majority of the Supreme Courts indicated that they did not use an IT system for the allocation of cases** (CZ, EE, NL, FI, DE, IE, ES, LU, PL, PL(A), HU, SE, SE(A), AT(A), SL, LV, PT(A)).

The exceptions are the *Supreme Court of Spain*, the *Supreme Court of Slovakia*, the *Supreme Court of Portugal*, the *Supreme Court of Romania*, the *Supreme Court of Lithuania* and the *Supreme Administrative Court of Lithuania*, which do use an electronic system for the allocation of cases.

The IT system used by the *Supreme Court* and the *Supreme Administrative Court of Lithuania* to allocate the cases among the judges is quite advanced. It uses the following data to assign a case to a judge-rapporteur: the judge's specialisation, permanent judicial panels (that are formed every year in the Supreme Administrative Court of Lithuania and for shorter periods in the Supreme Court), the judge's holidays, training and other periods they cannot hear cases and the judge's workload, as well

as the randomness factor. As mentioned above, the complexity of the cases is taken into account by evaluating the complexity of each case from 1 to 3. Generally, a judge may not be allocated more than two cases on the same day, and not more than one of these cases may be of the highest complexity. The result generated by the IT system has to be confirmed by an authorised staff member. If the judge-rapporteur offered by the IT system has not been assigned (e.g. the judge has heard the same case before), the president of the court has to take a reasoned decision and another judge-rapporteur is suggested by the IT system. Although the IT program ensures that cases are allocated at random and safeguards principles such as impartiality, the system also has negative aspects. The formula used for the allocation of cases cannot properly reflect the uneven workload of judges. In addition, there is one program for all courts. One formula for all instances is, however, not sufficient. Lithuania is planning to undertake a study and set new principles and formulas for the allocation of cases for the different instances.

The *Supreme Court of Spain* also explained that an IT system is used for the first step in allocation, but the president of every chamber may decide to reassign the case on grounds of organisational need, always taking into account the equal distribution of workload. The same applies at the *Supreme Administrative Court of Portugal*. The allocation is performed on a daily basis, presided over by the vice-president, who answers the questions of the secretary of the court regarding the classification of a certain procedural act. In cases perceived as highly complex, the judge rapporteur can be exempted from case allocation for a certain limited period.

The IT system of the *Supreme Court of Slovakia* allocates cases to the divisions (civil, commercial, administrative and criminal), according to the legal nature of the matter, and then randomly selects a judge, which it considers an optimal guarantee of the right to a fair trial.

Under the case allocation order of the *Curia of Hungary*, various methods are used to allocate cases. They include allocation of cases according to the initial letter of the respondent's name, according to specialisation, according to the length of judgeship, or automatic allocation via software, as well as the joint application of various methods. The head or deputy-head of each department (Criminal, Civil, or Administrative and Labour Departments) is responsible for the allocation of cases. The administrative section of the Administrative and Labour Department, as well as the Criminal Department, uses an IT system for the allocation of cases.

For those courts that do not use an IT system, the survey results show that there is great diversity regarding the person responsible for the allocation of cases. Sometimes the registry is responsible for the allocation of cases between the different chambers and within the chamber to the judge rapporteur. In other countries, the president of the Supreme Court or the division is responsible for the allocation of cases.

#### **4. Information to the parties**

The European Network of Councils for the Judiciary considers it a **minimum standard** that the **parties to a case are informed about the allocation of the case at a time prior to the start of the hearing/consideration of the case** that is reasonable, taking into account the nature and complexity of the case, and the time in which the party has to exercise any right to challenge the allocation of the case to the specific judge/judges. The manner in which parties are informed is free to be determined. It may be done in writing, electronically, or by the publishing of a court list or any other means.

**At some Supreme Courts, parties are informed about the judges to which the case has been allocated** (CZ, EE, IE, IT, LT, SK, ES, LV, RO).

At the *Supreme Court of Spain*, the parties are informed electronically via an electronic notification system called Lexnet. If the parties want to recuse a judge, they must also do this through Lexnet.

**In some cases, the parties are not automatically informed by the Court about the allocation decision, but can search for the information themselves** (PL, PL(A), HU, PT, PT(A)). In addition to the notification sent by the *Supreme Court of Latvia* about the date of the hearing, which also contains information about the composition of the court, the parties can search for information about the judges who have been assigned to their case in the public database.

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In most cases, parties are informed by the registry. At the *Supreme Court of Poland*, however, parties can access this information themselves. All cases are registered in the electronic register of cases, which is part of the internal database called ‘Supremus’. A part of this system is available to the public and published on the website of the Supreme Court as an E-Case, which contains the following information: number of the case, dates and numbers of the judgments issued by the lower instances regarding the case, the department of the Supreme Court to which the case has been assigned, date of submission to the Supreme Court, the type of complaint initiating the proceedings before the Supreme Court, information on the date of the hearing, information about whether or not the proceedings before the Supreme Court have been completed, information about the outcome of the case and, generally, the judgment of the Supreme Court.

In *Lithuania*, the case allocation protocols of the Supreme Court and the Supreme Administrative Court are public and may be accessed by anyone on the website. The case allocation protocol describes in detail how the case was allocated and if the judge-rapporteur suggested by the IT system was assigned to the case; if not, the protocol shows the reasons for the decision of the president.

**In other countries, the parties are not formally informed about the judges to whom their case has been allocated, but they will find this information in later correspondence from the Court, and/or they may ask the registry for this information (FI, DE, HU, SL, AT(A)).**

### **5. Safeguards for uniform case law**

**The allocation of cases to different judges and chambers could lead to a divergence in case law.** Therefore, the survey asked the participants how the exchange of information regarding allocated cases is ensured among the judges. **The techniques used to ensure uniform case law vary between the Supreme Courts** and in one case even within the Supreme Court itself. Since the situation is so diverse, it is not possible to group the different solutions applied by the Supreme Courts. Therefore, below we will give some examples of the practices implemented.

The research and documentation unit of the *Supreme Court of Spain* provides weekly summaries of the Supreme Court’s decisions. At least once a month it also provides a summary of the main decisions from the Court of Justice, the European Court of Human Rights. Summaries of EU law are distributed daily.

At the *Supreme Court of Estonia* every chamber applies a different technique. In one of the chambers, all cases are brought to the weekly meeting of the chamber with judges and advisors. In another chamber, the draft decision is sent to all the members of the chamber, who may provide comments and make suggestions for amendments to the text.

The *Supreme Court of the Netherlands* uses a system whereby all pending cases within their own chamber are brought to the attention of all the judges, even those to whom the case is not allocated, and they also attend the hearing in chambers.

The *Supreme Administrative Court of Finland* and the *Federal Administrative Court of Germany* consider the existence of specialised chambers a guarantee against divergent strands in the case law. The chair and the president of the Supreme Administrative Court of Finland may remove a pending case to a plenary session of the Court or chamber. In Germany, a chamber that intends to diverge from the judgment of another chamber must ask their colleagues from that chamber whether they uphold the opinion developed in the past. If they do, a decision of the Grand Chamber is required.

In *Poland*, the Act on the Supreme Court expressly stipulates that the Supreme Court shall ensure compliance with the law and uniformity of judicial decisions. In order to fulfil this requirement, the *Supreme Court of Poland* is competent to adopt resolutions adjudicating questions of law. The president of the chamber must inform the First President of the Supreme Court about discrepancies in the interpretation of the law and the need to issue the resolution unifying the interpretation of the law. The First President is competent to request adjudication by the Supreme Court of the discrepancies between decisions of common courts, military courts and the Supreme Court. Such a request by the First President is examined by a bench of seven judges or by another extended bench of the Court. If the Supreme Court decides that the question submitted requires clarification, it must adopt a

resolution which is binding for other panels of the Supreme Court. Otherwise, it will refuse to adopt a resolution and issue a decision which is not binding for the other judges of the Supreme Court. In other countries, there is no risk of divergent case law as there are no separate chambers, given the limited size of the Court (IE, LU).

### C. Recommendations and best practices

#### **Implement the minimum standards regarding allocation of cases as identified by the European Network of Councils for the Judiciary**

In our general observations we already touched upon the minimum standards for case allocation systems established by the European Network of Councils for the Judiciary. **All Supreme Courts should ensure that their case allocation rules comply with these minimum standards.**

The survey results indicate that not all Supreme Courts have adopted all minimum standards. For example, the case allocation rules are not yet transparent in every Court or automatically available to the public (e.g. in legislation or on the website of the Supreme Court) and parties are not always automatically informed about the judge or chamber to whom their case has been allocated.

The Supreme Courts could use the system adopted at the *Supreme Court of Spain* as a model. Here, the parties are **informed via an electronic notification system called Lexnet**. If the parties want to recuse a judge, they also have to do this through Lexnet.

#### **The allocation criteria include the independence and impartiality of the judge and the judiciary, the competence, experience and specialism of the judge and the weighted workload of the judge**

The minimum standards developed by the European Network of Councils for the Judiciary also require that the allocation of cases is based on **pre-established objective criteria determined by an normative enactment, including** the independence and impartiality of the judge and the judiciary, the competence, experience and specialism of the judge. Nevertheless, differences in the application of the criteria may of course be required due to the size of the Court. In smaller Supreme Courts for example specialised chambers are most likely not realistic.

Besides the independence and specialism of the judge, the judge's workload is also an important criterion as the even distribution of the workload safeguards the timeliness of proceedings. Since the total number of cases assigned to a judge does not always give a true picture of their workload, the **weighted workload** of every judge should be taken into account. The caseload and time needed to dispose of a case can vary considerably between case types.

For example, civil cases can be divided into different categories of complexity based on the approximate time they need to be handled: ordinary, average and laborious. If the case in question involves a new question of law, it could be categorised as laborious. If the case, on the contrary, is inadmissible, it might be categorised as ordinary. Extra 'points' can also be rewarded in certain circumstances that entail more working hours (e.g. duration of the main hearing, large number of parties involved).

A good example of such a weighted caseload system can be found in *Italy*, where the Supreme Court attributes a **complexity indicator** to every case. Each judge receives a number of cases equivalent in complexity to that of their colleagues. After a preliminary assessment, the complexity indicator is based on several parameters, including the complexity and novelty of the legal questions raised, the subject, the number of briefs, the number of parties involved and the number of pages of the briefs. The Italian Supreme Court itself considers this method of case allocation one of their most important strengths.

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The **IT system** used by the *Supreme Court of Lithuania* and the *Supreme Administrative Court of Lithuania* to allocate the cases among the judges **also takes the weighted caseload of the judges into account** by evaluating the complexity of each case from 1 to 3. Generally, a judge may not be allocated more than two cases on the same day, and not more than one of these cases may be of the highest complexity.

Applying a weighted caseload system requires estimation and evaluation of the workload that is generated by a certain type of case. To make these estimations more valid, it is important that practitioners are involved in the design of the weighted caseload system and that opportunities to develop guidelines and give feedback are provided throughout the design process and afterwards. This will not only improve the system, but also ensure the approval of it.<sup>118</sup>

### 3. LENGTH OF PROCEEDINGS

The length of proceedings may cover many topics. The scope of this research is limited to the use of timeframes, statistical data and informing the public regarding the length of proceedings, suppression of procedural abuses and electronic documents.

#### A. General observations

##### 1. Timeframes and processing times

The Committee of Ministers of the Council of Europe have considered that *'regular and on-going monitoring procedures should be in place, designed to appraise the functioning of criminal justice agencies, to evaluate their efficiency and effectiveness and to promote useful improvements'*.<sup>119</sup> If the length of proceedings is not measured, it cannot be evaluated and improved.

As already mentioned in the introduction to this part, timeframes are an important tool when setting measurable targets and practices for timeliness in case processing. Their objective is to monitor and improve the timeliness of proceedings.

##### a. Developing realistic and measurable timeframes

Individuals or organisations that have specified the target of their task usually perform better than those with vague targets.<sup>120</sup> The goal of having a trial without undue delay is, however, a rather vague target.

**Timeframes set measurable targets** without which it is not possible to measure and compare case processing delays, which can then be defined as the difference between the actual situation and the expected timeframes. They are also a prerequisite to assess the policies implemented to reduce the length of case processing. Statistics thus form an important tool for studying and managing judicial administration. The ENCJ has emphasised that the responsibility for collecting, processing and publishing the data should rest with the judiciary itself or an independent body, in order to respect the independence of the judges; for example, the Councils for the Judiciary.<sup>121</sup>

Timeframes should be established at three levels: State level, Court level and judge level. At the State level the main aim is to set the overall mission and vision.<sup>122</sup>

<sup>118</sup> European Caseflow Management Development Network, 'Caseflow Management Handbook: Guide for Enhanced Court Administration in Civil Proceedings' (European Caseflow Management Development Network 2016) 26 <[www.lut.fi/documents/27578/419707/Caseflow+Management+Handbook+%28English%29\\_02122016.pdf/21819866-5667-4929-ad7a-26ddd2798a03](http://www.lut.fi/documents/27578/419707/Caseflow+Management+Handbook+%28English%29_02122016.pdf/21819866-5667-4929-ad7a-26ddd2798a03)> accessed 5 December 2016

<sup>119</sup> Council of Europe, Committee of Ministers Recommendation (95)12 of 11 September 1995 on the management of criminal justice <<https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=536554&SecMode=1&DocId=527282&Usage=2>> accessed 5 December 2016

<sup>120</sup> European Caseflow Management Development Network, 'Caseflow Management Handbook: Guide for Enhanced Court Administration in Civil Proceedings' (European Caseflow Management Development Network 2016) 23 <[www.lut.fi/documents/27578/419707/Caseflow+Management+Handbook+%28English%29\\_02122016.pdf/21819866-5667-4929-ad7a-26ddd2798a03](http://www.lut.fi/documents/27578/419707/Caseflow+Management+Handbook+%28English%29_02122016.pdf/21819866-5667-4929-ad7a-26ddd2798a03)> accessed 5 December 2016

<sup>121</sup> European Network of Councils for the Judiciary (ENCJ), 'Timeliness Report 2010-2011' (ENCJ 2011) 13 <[www.encj.eu/images/stories/pdf/GA/Vilnius/report\\_on\\_timeliness.pdf](http://www.encj.eu/images/stories/pdf/GA/Vilnius/report_on_timeliness.pdf)> accessed 12 December 2016

<sup>122</sup> European Caseflow Management Development Network, 'Caseflow Management Handbook: Guide for Enhanced Court Administration in Civil Proceedings' (European Caseflow Management Development Network 2016) 22 <[www.lut.fi/documents/27578/419707/Caseflow+Management+Handbook+%28English%29\\_02122016.pdf/21819866-5667-4929-ad7a-26ddd2798a03](http://www.lut.fi/documents/27578/419707/Caseflow+Management+Handbook+%28English%29_02122016.pdf/21819866-5667-4929-ad7a-26ddd2798a03)> accessed 5 December 2016

Finally, the timeframes should be **clearly measurable and realistic if they are to be an effective tool** for case management processing.<sup>123</sup>

### **Support of the stakeholders**

The process by which the targets are defined and set is almost as important as the timeframes themselves.<sup>124</sup> The literature regarding timeframes emphasises the need to **develop and implement these timeframes with the active support of stakeholders**, such as court personnel and lawyers. The timeframes should consider stakeholders' expectations and opinions. If individual courts and judges have an influence on these targets, they will be more committed to achieving them.<sup>125</sup>

### **Differentiated approach**

To make these timeframes even more effective, courts should adopt a differentiated approach to timeframes on three levels.

Firstly, the timeframes should differ according to the different kinds of procedures. Research shows that, for example, criminal procedures are generally disposed more quickly than civil procedure cases. **Therefore, different timeframes should be set for the different kinds of procedures.**<sup>126</sup>

Secondly, the timeframes **should also take into consideration the main procedural stages** so that cases whose progress is impeded can be identified early.<sup>127</sup>

Thirdly, the timeframes should take into account the **different categories of cases and, more precisely, the case complexity**. This is the 'multi-track approach' to case management, where each case is assigned to a specific procedural track based on its complexity: there is an 'expedited' track for cases that involve little or no judgment; a 'standard' track for those cases that do require conference and hearing, but are otherwise not exceptional; and finally, there is a 'complex' track for those cases requiring special attention.<sup>128</sup>

<sup>123</sup> European Commission for the Efficiency of Justice (CEPEJ), 'Compendium of "Best Practices" on Time Management of Judicial Proceedings' (CEPEJ 2006) <[https://wcd.coe.int/ViewDoc.jsp?p=&Ref=CEPEJ\(2006\)13&Sector=secDGHL&Language=lanEnglish&Ver=original&BackColorInternet=eff2fa&BackColorIntranet=eff2fa&BackColorLogged=c1cbe6&direct=true](https://wcd.coe.int/ViewDoc.jsp?p=&Ref=CEPEJ(2006)13&Sector=secDGHL&Language=lanEnglish&Ver=original&BackColorInternet=eff2fa&BackColorIntranet=eff2fa&BackColorLogged=c1cbe6&direct=true)> accessed 5 December 2016

<sup>124</sup> European Caseflow Management Development Network, 'Caseflow Management Handbook: Guide for Enhanced Court Administration in Civil Proceedings' (European Caseflow Management Development Network 2016) 21 <[www.lut.fi/documents/27578/419707/Caseflow+Management+Handbook+%28English%29\\_02122016.pdf/21819866-5667-4929-ad7a-26ddd2798a03](http://www.lut.fi/documents/27578/419707/Caseflow+Management+Handbook+%28English%29_02122016.pdf/21819866-5667-4929-ad7a-26ddd2798a03)> accessed 5 December 2016

<sup>125</sup> European Commission for the Efficiency of Justice (CEPEJ), 'Compendium of "Best Practices" on Time Management of Judicial Proceedings' (CEPEJ 2006) <[https://wcd.coe.int/ViewDoc.jsp?p=&Ref=CEPEJ\(2006\)13&Sector=secDGHL&Language=lanEnglish&Ver=original&BackColorInternet=eff2fa&BackColorIntranet=eff2fa&BackColorLogged=c1cbe6&direct=true](https://wcd.coe.int/ViewDoc.jsp?p=&Ref=CEPEJ(2006)13&Sector=secDGHL&Language=lanEnglish&Ver=original&BackColorInternet=eff2fa&BackColorIntranet=eff2fa&BackColorLogged=c1cbe6&direct=true)> accessed 5 December 2016

European Caseflow Management Development Network, 'Caseflow Management Handbook: Guide for Enhanced Court Administration in Civil Proceedings' (European Caseflow Management Development Network 2016) 21 <[www.lut.fi/documents/27578/419707/Caseflow+Management+Handbook+%28English%29\\_02122016.pdf/21819866-5667-4929-ad7a-26ddd2798a03](http://www.lut.fi/documents/27578/419707/Caseflow+Management+Handbook+%28English%29_02122016.pdf/21819866-5667-4929-ad7a-26ddd2798a03)> accessed 5 December 2016

<sup>126</sup> European Commission for the Efficiency of Justice (CEPEJ), 'Compendium of "Best Practices" on Time Management of Judicial Proceedings' (CEPEJ 2006) <[https://wcd.coe.int/ViewDoc.jsp?p=&Ref=CEPEJ\(2006\)13&Sector=secDGHL&Language=lanEnglish&Ver=original&BackColorInternet=eff2fa&BackColorIntranet=eff2fa&BackColorLogged=c1cbe6&direct=true](https://wcd.coe.int/ViewDoc.jsp?p=&Ref=CEPEJ(2006)13&Sector=secDGHL&Language=lanEnglish&Ver=original&BackColorInternet=eff2fa&BackColorIntranet=eff2fa&BackColorLogged=c1cbe6&direct=true)> accessed 5 December 2016

Council of Europe, Committee of Ministers Recommendation (95)12 of 11 September 1995 on the management of criminal justice <<https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=536554&SecMode=1&DocId=527282&Usage=2>> accessed 5 December 2016

<sup>127</sup> European Commission for the Efficiency of Justice (CEPEJ), 'Compendium of "Best Practices" on Time Management of Judicial Proceedings' (CEPEJ 2006) <[https://wcd.coe.int/ViewDoc.jsp?p=&Ref=CEPEJ\(2006\)13&Sector=secDGHL&Language=lanEnglish&Ver=original&BackColorInternet=eff2fa&BackColorIntranet=eff2fa&BackColorLogged=c1cbe6&direct=true](https://wcd.coe.int/ViewDoc.jsp?p=&Ref=CEPEJ(2006)13&Sector=secDGHL&Language=lanEnglish&Ver=original&BackColorInternet=eff2fa&BackColorIntranet=eff2fa&BackColorLogged=c1cbe6&direct=true)> accessed 5 December 2016

David C. Steelman, 'Improving Caseflow Management: A Brief Guide' (National Center for State Courts 2008) 6-7 <<http://cdm16501.contentdm.oclc.org/cdm/ref/collection/ctadmin/id/1022>> accessed 5 December 2016

<sup>128</sup> David C. Steelman, 'Improving Caseflow Management: A Brief Guide' (National Center for State Courts 2008) 19-20 <<http://cdm16501.contentdm.oclc.org/cdm/ref/collection/ctadmin/id/1022>> accessed 5 December 2016

European Commission for the Efficiency of Justice (CEPEJ), 'Compendium of "Best Practices" on Time Management of Judicial Proceedings' (CEPEJ 2006) <[https://wcd.coe.int/ViewDoc.jsp?p=&Ref=CEPEJ\(2006\)13&Sector=secDGHL&Language=lanEnglish&Ver=original&BackColorInternet=eff2fa&BackColorIntranet=eff2fa&BackColorLogged=c1cbe6&direct=true](https://wcd.coe.int/ViewDoc.jsp?p=&Ref=CEPEJ(2006)13&Sector=secDGHL&Language=lanEnglish&Ver=original&BackColorInternet=eff2fa&BackColorIntranet=eff2fa&BackColorLogged=c1cbe6&direct=true)> accessed 5 December 2016

## IV

**b. Enforcing the timeframes**

The **organisational environment supporting and enforcing timeframes** is affected by the institutional setting of the justice system (e.g. structure of the judiciary, role of the chief judge, sensitiveness about judges' internal independence, etc.). In addition, bar associations and other agencies should also support enforcement. Lawyers can also influence the length of proceedings.<sup>129</sup>

The enforcement of timeframes can be achieved by **internal actions** (e.g. intervention from the court manager or chief justice). Judges should be immediately informed about delays. The caseload may then be reallocated, or, if the excessive delay is the responsibility of the judge, this may result in disciplinary action. In *Austria*, for example, at the Linz District Court, all the judges receive a summary, including the numbers of all the cases pending classified by duration. The heads of courts undertake activities consistent with this information, such as balancing the caseload or commencing disciplinary proceedings. Furthermore, parties can request the Court of Appeal to set a time limit for specific parts of the proceedings if they believe the judge's activities are not timely.<sup>130</sup>

**External pressure** (e.g. from the ombudsman, media or bar association) that emphasises the importance of the timeliness of judicial proceedings may also help to enforce timeframes.<sup>131</sup>

**c. Monitoring the data**

According to the 2016 report by the CEPEJ on the use of IT, a very large majority of States and other entities reported the use of statistical tools to measure court activity. These tools may or may not be linked directly to the case management system and may be used to count the number of incoming cases, cases handled and cases pending.<sup>132</sup>

Statistics are necessary to monitor the courts.<sup>133</sup> **If the length of proceedings is not measured, it cannot be evaluated and improved. Constant monitoring** is thus a key element in the setting and development of timeframes. This requires more than traditional court statistics: the data must be finalised in reports that can be used to monitor and highlight the length of proceedings. This may be done manually or by an automated information system.<sup>134</sup>

The CEPEJ conducted extensive research on the use of technology by the judiciary and concluded that a number of technologies have a particularly significant influence on the efficiency and quality of the judicial system. Having a computerised system for managing judicial proceedings significantly increases the speed with which cases are processed.<sup>135</sup> More specifically, although it is impossible

<sup>129</sup> European Commission for the Efficiency of Justice (CEPEJ), 'Compendium of "Best Practices" on Time Management of Judicial Proceedings' (CEPEJ 2006) <[https://wcd.coe.int/ViewDoc.jsp?p=&Ref=CEPEJ\(2006\)13&Sector=secDGHL&Language=lanEnglish&Ver=original&BackColorInternet=eff2fa&BackColorIntranet=eff2fa&BackColorLogged=c1cbe6&direct=true](https://wcd.coe.int/ViewDoc.jsp?p=&Ref=CEPEJ(2006)13&Sector=secDGHL&Language=lanEnglish&Ver=original&BackColorInternet=eff2fa&BackColorIntranet=eff2fa&BackColorLogged=c1cbe6&direct=true)> accessed 5 December 2016

<sup>130</sup> European Commission for the Efficiency of Justice (CEPEJ), 'Compendium of "Best Practices" on Time Management of Judicial Proceedings' (CEPEJ 2006) <[https://wcd.coe.int/ViewDoc.jsp?p=&Ref=CEPEJ\(2006\)13&Sector=secDGHL&Language=lanEnglish&Ver=original&BackColorInternet=eff2fa&BackColorIntranet=eff2fa&BackColorLogged=c1cbe6&direct=true](https://wcd.coe.int/ViewDoc.jsp?p=&Ref=CEPEJ(2006)13&Sector=secDGHL&Language=lanEnglish&Ver=original&BackColorInternet=eff2fa&BackColorIntranet=eff2fa&BackColorLogged=c1cbe6&direct=true)> accessed 5 December 2016

<sup>131</sup> European Commission for the Efficiency of Justice (CEPEJ), 'Compendium of "Best Practices" on Time Management of Judicial Proceedings' (CEPEJ 2006) <[https://wcd.coe.int/ViewDoc.jsp?p=&Ref=CEPEJ\(2006\)13&Sector=secDGHL&Language=lanEnglish&Ver=original&BackColorInternet=eff2fa&BackColorIntranet=eff2fa&BackColorLogged=c1cbe6&direct=true](https://wcd.coe.int/ViewDoc.jsp?p=&Ref=CEPEJ(2006)13&Sector=secDGHL&Language=lanEnglish&Ver=original&BackColorInternet=eff2fa&BackColorIntranet=eff2fa&BackColorLogged=c1cbe6&direct=true)> accessed 5 December 2016

<sup>132</sup> European Commission for the Efficiency of Justice (CEPEJ), 'European Judicial Systems. Efficiency and Quality of Justice. Thematic report: Use of Information Technology in European courts' (CEPEJ Studies no 24, CEPEJ 2016) 24 <[www.coe.int/t/dghl/cooperation/cepej/evaluation/2016/publication/REV1/2016\\_2%20-%20CEPEJ%20Study%2024%20-%20IT%20Report%20-%20EN.pdf](http://www.coe.int/t/dghl/cooperation/cepej/evaluation/2016/publication/REV1/2016_2%20-%20CEPEJ%20Study%2024%20-%20IT%20Report%20-%20EN.pdf)> accessed 12 December 2016

<sup>133</sup> European Network of Councils for the Judiciary (ENCJ), 'Timeliness Report 2010-2011' (ENCJ 2011) 11 <[www.encj.eu/images/stories/pdf/GA/Vilnius/report\\_on\\_timeliness.pdf](http://www.encj.eu/images/stories/pdf/GA/Vilnius/report_on_timeliness.pdf)> accessed 12 December 2016

<sup>134</sup> European Commission for the Efficiency of Justice (CEPEJ), 'Compendium of "Best Practices" on Time Management of Judicial Proceedings' (CEPEJ 2006) <[https://wcd.coe.int/ViewDoc.jsp?p=&Ref=CEPEJ\(2006\)13&Sector=secDGHL&Language=lanEnglish&Ver=original&BackColorInternet=eff2fa&BackColorIntranet=eff2fa&BackColorLogged=c1cbe6&direct=true](https://wcd.coe.int/ViewDoc.jsp?p=&Ref=CEPEJ(2006)13&Sector=secDGHL&Language=lanEnglish&Ver=original&BackColorInternet=eff2fa&BackColorIntranet=eff2fa&BackColorLogged=c1cbe6&direct=true)> accessed 5 December 2016

<sup>135</sup> European Commission for the Efficiency of Justice (CEPEJ), 'European Judicial Systems. Efficiency and Quality of Justice. Thematic report: Use of Information Technology in European courts' (CEPEJ Studies no 24, CEPEJ 2016) 48 <[www.coe.int/t/dghl/cooperation/cepej/evaluation/2016/publication/REV1/2016\\_2%20-%20CEPEJ%20Study%2024%20-%20IT%20Report%20-%20EN.pdf](http://www.coe.int/t/dghl/cooperation/cepej/evaluation/2016/publication/REV1/2016_2%20-%20CEPEJ%20Study%2024%20-%20IT%20Report%20-%20EN.pdf)> accessed 12 December 2016

to establish a definite link between computerisation and the efficiency of judicial systems, it may nevertheless be concluded from the CEPEJ's observations related to clearance rates and disposition times that there is a clear improvement in the majority of States and other entities engaged in the computerisation of their courts.<sup>136</sup>

### **Real-time data and early warning**

For the courts to be able to respond adequately to changing circumstances and to influence the achievement of targets, it is important that the monitoring data are based on **accurate and real-time performance data**.<sup>137</sup> Monitoring should thus be done continuously and in real-time.

Research has shown that **early court control** is clearly correlated with shorter times to disposition in civil cases. In practice, early control means that the commencement of a case triggers a monitoring process. The registry, having recorded the initial filing, applies a system by which the case will be reviewed at a fixed time in the future to determine whether the next anticipated event has occurred in keeping with time standards for interim stages in the case's progress. This monitoring process should be part of the court's automated case management system. In addition, the monitoring process should be **continuous**, meaning that each scheduled control point or event triggers the next scheduled control point to be applied.<sup>138</sup>

The 2016 report by the CEPEJ on the use of information technology in European courts indicated that all the States or other entities that replied to the question had an **electronic case management system**. These electronic case management systems may also have **early warning functions**, allowing proactive case management. These warnings may, for example, relate to deadlines, to prevent the accumulation of cases or the exceeding of predefined limits. Contrary to the existence of an electronic case management system, the use of such early warning devices is far more limited, according to the CEPEJ report.<sup>139</sup> In Finland, for example, a timeframe alarm system has been established in several courts to advance personal work planning, to reduce backlogs and to eliminate delays. If a case has exceeded a set timeframe at some procedural stage, alarm symbols appear in the case listings of the person responsible for the next handling phase. Alarm case listings are updated daily.

The time management checklist of the European Commission for the Efficiency of Justice is a helpful tool that can be used by courts that want to introduce or improve their use of timeframes.<sup>140</sup>

## **2. Statistical data and information to the public**

It is not only important to provide general information about the judicial system via websites, but also to **provide court users with information on the expected timeframe of a court procedure**. This information can only be given by States that have set up an efficient case management system. Although this is not easy (factors such as an increase in the court's caseload or the complexity of the case make this requirement difficult to meet), increasing numbers of Member States are, according

<sup>136</sup> European Commission for the Efficiency of Justice (CEPEJ), 'European Judicial Systems. Efficiency and Quality of Justice. Thematic report: Use of Information Technology in European courts' (CEPEJ Studies no 24, CEPEJ 2016) 61 <[www.coe.int/t/dghl/cooperation/cepej/evaluation/2016/publication/REV1/2016\\_2%20-%20CEPEJ%20Study%2024%20-%20IT%20Report%20-%20EN.pdf](http://www.coe.int/t/dghl/cooperation/cepej/evaluation/2016/publication/REV1/2016_2%20-%20CEPEJ%20Study%2024%20-%20IT%20Report%20-%20EN.pdf)> accessed 12 December 2016

<sup>137</sup> European Caseflow Management Development Network, 'Caseflow Management Handbook: Guide for Enhanced Court Administration in Civil Proceedings' (European Caseflow Management Development Network 2016) 24 <[www.lut.fi/documents/27578/419707/Caseflow+Management+Handbook+%28English%29\\_02122016.pdf/21819866-5667-4929-ad7a-26ddd2798a03](http://www.lut.fi/documents/27578/419707/Caseflow+Management+Handbook+%28English%29_02122016.pdf/21819866-5667-4929-ad7a-26ddd2798a03)> accessed 5 December 2016

<sup>138</sup> D. C. Steelman, 'Improving Caseflow Management: A Brief Guide' (National Center for State Courts 2008) 8 <<http://cdm16501.contentdm.oclc.org/cdm/ref/collection/ctadmin/id/1022>> accessed 5 December 2016

<sup>139</sup> European Commission for the Efficiency of Justice (CEPEJ), 'European Judicial Systems. Efficiency and Quality of Justice. Thematic report: Use of Information Technology in European courts' (CEPEJ Studies no 24, CEPEJ 2016) 22-23 <[www.coe.int/t/dghl/cooperation/cepej/evaluation/2016/publication/REV1/2016\\_2%20-%20CEPEJ%20Study%2024%20-%20IT%20Report%20-%20EN.pdf](http://www.coe.int/t/dghl/cooperation/cepej/evaluation/2016/publication/REV1/2016_2%20-%20CEPEJ%20Study%2024%20-%20IT%20Report%20-%20EN.pdf)> accessed 12 December 2016

<sup>140</sup> European Commission for the Efficiency of Justice (CEPEJ), 'Time Management Checklist' (CEPEJ 2005) <[https://wcd.coe.int/ViewDoc.jsp?p=&Ref=CEPEJ\(2005\)12&Sector=secDGHL&Language=lanEnglish&Ver=rev&BackColorInternet=eff-2fa&BackColorIntranet=eff2fa&BackColorLogged=c1cbe6&direct=true](https://wcd.coe.int/ViewDoc.jsp?p=&Ref=CEPEJ(2005)12&Sector=secDGHL&Language=lanEnglish&Ver=rev&BackColorInternet=eff-2fa&BackColorIntranet=eff2fa&BackColorLogged=c1cbe6&direct=true)> accessed 12 December 2016

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to the CEPEJ's research, obliged to provide this information, at least in certain circumstances.<sup>141</sup> In addition to informing court users, and in this way improving access to the courts, the judiciary must also be accountable to the public for the functioning of the courts, including the processing of cases without undue delay. **Statistics concerning the workload and processing time of the courts should also be published to increase transparency.**<sup>142</sup>

### 3. Suppression of procedural abuses

**The judiciary is not the only player that influences the length of proceedings.** The parties themselves may sometimes have reasons to stall the proceedings or to abuse the right to trial. Only **judges** are able to set the pace of litigation independent of the parties' interests. Therefore, the literature emphasises that they should have a **proactive role in case management** to guarantee the fairness and timeliness of case processing.<sup>143</sup>

One element of this proactive approach, and a key feature of a successful case flow management system, is setting firm and credible trial dates. If case participants doubt that hearings will be held at the scheduled time and date, they will not be prepared. The court should apply a reasonable but firm policy limiting the grant of continuances.<sup>144</sup>

The CEPEJ has pointed out that *'all attempts to willingly and knowingly delay proceedings should be discouraged'* and that there should be **procedural sanctions** (applied to the parties or their representatives) for causing delay and vexatious behaviour. *'If a member of a legal profession grossly abuses procedural rights or significantly delays the proceedings, it should be reported to the respective professional organisation'*.<sup>145</sup>

### 4. Electronic documents

In addition to improving the efficiency of judicial systems, IT can also improve the relationship between courts and court professionals or between courts and court users. In part V of this report regarding communication by the judiciary, we offer some examples of this. These relationships can also be improved through electronic communication between courts and lawyers, for example by bringing a case to the court using email or through an electronic application, or to submit the memoranda electronically.

**Electronic exchange of information should be faster and more cost-efficient** compared to paper-

<sup>141</sup> European Commission for the Efficiency of Justice (CEPEJ), 'European Judicial Systems. Efficiency and Quality of Justice. Edition 2016 (2014 Data)' (CEPEJ Studies no 23, CEPEJ 2016) 178 <<http://www.coe.int/t/dghl/cooperation/cepej/evaluation/2016/publication/CEPEJ%20Study%2023%20report%20EN%20web.pdf>> accessed 5 December 2016

<sup>142</sup> European Network of Councils for the Judiciary (ENCJ), 'Timeliness Report 2010-2011' (ENCJ 2011) 11 <[www.encj.eu/images/stories/pdf/GA/Vilnius/report\\_on\\_timeliness.pdf](http://www.encj.eu/images/stories/pdf/GA/Vilnius/report_on_timeliness.pdf)> accessed 12 December 2016  
European Commission for the Efficiency of Justice (CEPEJ), 'Compendium of "Best Practices" on Time Management of Judicial Proceedings' (CEPEJ 2006) <[https://wcd.coe.int/ViewDoc.jsp?p=&Ref=CEPEJ\(2006\)13&Sector=secDGHL&Language=lanEnglish&Ver=original&BackColorInternet=eff2fa&BackColorIntranet=eff2fa&BackColorLogged=c1cbe6&direct=true](https://wcd.coe.int/ViewDoc.jsp?p=&Ref=CEPEJ(2006)13&Sector=secDGHL&Language=lanEnglish&Ver=original&BackColorInternet=eff2fa&BackColorIntranet=eff2fa&BackColorLogged=c1cbe6&direct=true)> accessed 5 December 2016

<sup>143</sup> European Commission for the Efficiency of Justice (CEPEJ), 'Length of Court Proceedings in the Member States of the Council of Europe based on the Case-law of the European Court of Human Rights' (CEPEJ 2006) 43 <<https://wcd.coe.int/ViewDoc.jsp?p=&id=1073329&Site=COE&direct=true>> accessed 12 December 2016  
European Caseflow Management Development Network, 'Caseflow Management Handbook: Guide for Enhanced Court Administration in Civil Proceedings' (European Caseflow Management Development Network 2016) 14 <[www.lut.fi/documents/27578/419707/Caseflow+Management+Handbook+%28English%29\\_02122016.pdf/21819866-5667-4929-ad7a-26ddd2798a03](http://www.lut.fi/documents/27578/419707/Caseflow+Management+Handbook+%28English%29_02122016.pdf/21819866-5667-4929-ad7a-26ddd2798a03)> accessed 5 December 2016

<sup>144</sup> European Commission for the Efficiency of Justice (CEPEJ), 'Compendium of "Best Practices" on Time Management of Judicial Proceedings' (CEPEJ 2006) 10 <[https://wcd.coe.int/ViewDoc.jsp?p=&Ref=CEPEJ\(2006\)13&Sector=secDGHL&Language=lanEnglish&Ver=original&BackColorInternet=eff2fa&BackColorIntranet=eff2fa&BackColorLogged=c1cbe6&direct=true](https://wcd.coe.int/ViewDoc.jsp?p=&Ref=CEPEJ(2006)13&Sector=secDGHL&Language=lanEnglish&Ver=original&BackColorInternet=eff2fa&BackColorIntranet=eff2fa&BackColorLogged=c1cbe6&direct=true)> accessed 5 December 2016

David C. Steelman, 'Improving Caseflow Management: A Brief Guide' (National Center for State Courts 2008) 1 <<http://cdm16501.contentdm.oclc.org/cdm/ref/collection/ctadmin/id/1022>> accessed 5 December 2016

<sup>145</sup> European Commission for the Efficiency of Justice (CEPEJ), 'Revised Saturn Guidelines for Judicial Time Management' (CEPEJ 2014) 4 <[https://wcd.coe.int/ViewDoc.jsp?p=&Ref=CEPEJ\(2014\)16&Language=lanEnglish&Ver=original&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864&direct=true](https://wcd.coe.int/ViewDoc.jsp?p=&Ref=CEPEJ(2014)16&Language=lanEnglish&Ver=original&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864&direct=true)> accessed 12 December 2016

based communication. Timely, fair and cost-efficient communication between the court and the parties is considered an important aspect of effective case administration.<sup>146</sup>

One of the aims of this electronic communication is thus to **not only facilitate and speed up communication itself but also the handling of documents in court** when preparing the case for trial or preparing the written judgments.<sup>147</sup> These **objectives are not fully attained when parties also have to submit a hard copy** of the electronically transmitted document. One reason for still having to submit a hard copy is that the integrity and source of an electronic document cannot always be reviewed. Therefore, the States should consider introducing **electronic signatures** in communications between the courts, users and professionals. An electronic signature guarantees the integrity of an electronic document through a digital-key management system. An electronic signature must have certain characteristics and be recognised by the courts as authentic, unforgeable, non-reusable, tamper-proof and non-repudiable. Nevertheless, according to the CEPEJ's research, less than one State in two currently allows electronic signature of documents.<sup>148</sup>

### 5. Increased influx of cases

Even when a Supreme Court applies all the measures discussed above, it is still possible that the length of proceedings will increase due to a **significant influx of cases**. The question of what actions a Supreme Court can take in such a situation thus arises.

Creating a **flexible case assignment system** will help a court to better adapt to unforeseen changes in the caseload.<sup>149</sup> The Committee of Ministers considers caseload and overburdening as valid reasons for the distribution or removal of cases from one judge to another, provided that such decisions are taken on the basis of objective criteria, given the independence of judges.<sup>150</sup>

In the Netherlands, Denmark and Sweden, for example, 'flying brigades' of judges have been created. They are deployed on a needs-first basis and may be put in place for a limited period to write judgments for a district court which is temporarily unable to cope with its workload.<sup>151</sup>

Another measure is the flexible reallocation of judges between courts. In the Netherlands, for example, the judges are competent to judge cases in all districts. They are appointed as a judge in one district court and as deputy-judge in all other courts. Therefore, judges can easily deal with cases in another court.<sup>152</sup> The CCJE emphasises that, although such flexibility is generally desirable, the independence of each individual judge has to be respected and in the case of the transfer of a judge they must consent.<sup>153</sup>

<sup>146</sup> European Caseflow Management Development Network, 'Caseflow Management Handbook: Guide for Enhanced Court Administration in Civil Proceedings' (European Caseflow Management Development Network 2016) 30 <[www.lut.fi/documents/27578/419707/Caseflow+Management+Handbook+%28English%29\\_02122016.pdf/21819866-5667-4929-ad7a-26ddd2798a03](http://www.lut.fi/documents/27578/419707/Caseflow+Management+Handbook+%28English%29_02122016.pdf/21819866-5667-4929-ad7a-26ddd2798a03)> accessed 5 December 2016

<sup>147</sup> European Network of Councils for the Judiciary (ENCJ), 'Timeliness Report 2010-2011' (ENCJ 2011) 27 <[www.encj.eu/images/stories/pdf/GA/Vilnius/report\\_on\\_timeliness.pdf](http://www.encj.eu/images/stories/pdf/GA/Vilnius/report_on_timeliness.pdf)> accessed 12 December 2016

European Caseflow Management Development Network, 'Caseflow Management Handbook: Guide for Enhanced Court Administration in Civil Proceedings' (European Caseflow Management Development Network 2016) 32 <[www.lut.fi/documents/27578/419707/Caseflow+Management+Handbook+%28English%29\\_02122016.pdf/21819866-5667-4929-ad7a-26ddd2798a03](http://www.lut.fi/documents/27578/419707/Caseflow+Management+Handbook+%28English%29_02122016.pdf/21819866-5667-4929-ad7a-26ddd2798a03)> accessed 5 December 2016

<sup>148</sup> European Commission for the Efficiency of Justice (CEPEJ), 'European Judicial Systems. Efficiency and Quality of Justice. Thematic report: Use of Information Technology in European courts' (CEPEJ Studies no 24, CEPEJ 2016) 29-38 <[www.coe.int/t/dghl/cooperation/cepej/evaluation/2016/publication/REV1/2016\\_2%20-%20CEPEJ%20Study%2024%20-%20IT%20Report%20-%20EN.pdf](http://www.coe.int/t/dghl/cooperation/cepej/evaluation/2016/publication/REV1/2016_2%20-%20CEPEJ%20Study%2024%20-%20IT%20Report%20-%20EN.pdf)> accessed 12 December 2016

<sup>149</sup> European Commission for the Efficiency of Justice (CEPEJ), 'Compendium of "Best Practices" on Time Management of Judicial Proceedings' (CEPEJ 2006) <[https://wcd.coe.int/ViewDoc.jsp?p=&Ref=CEPEJ\(2006\)13&Sector=secDGH&Language=lanEng&Ver=original&BackColorInternet=eff2fa&BackColorIntranet=eff2fa&BackColorLogged=c1cbe6&direct=true](https://wcd.coe.int/ViewDoc.jsp?p=&Ref=CEPEJ(2006)13&Sector=secDGH&Language=lanEng&Ver=original&BackColorInternet=eff2fa&BackColorIntranet=eff2fa&BackColorLogged=c1cbe6&direct=true)> accessed 5 December 2016

<sup>150</sup> Council of Europe, Committee of Ministers Recommendation (2010) 12 of 17 November 2010 and Explanatory Memorandum on Judges: Independence, Efficiency and Responsibilities, 24 <[www.coe.int/t/dghl/standardsetting/cdcj/CDCJ%20Recommendations/CMRec\(2010\)12E\\_%20judges.pdf](http://www.coe.int/t/dghl/standardsetting/cdcj/CDCJ%20Recommendations/CMRec(2010)12E_%20judges.pdf)> accessed 5 December 2016

<sup>151</sup> European Network of Councils for the Judiciary (ENCJ), 'Timeliness Report 2010-2011' (ENCJ 2011) 22 <[www.encj.eu/images/stories/pdf/GA/Vilnius/report\\_on\\_timeliness.pdf](http://www.encj.eu/images/stories/pdf/GA/Vilnius/report_on_timeliness.pdf)> accessed 12 December 2016

<sup>152</sup> European Network of Councils for the Judiciary (ENCJ), 'Timeliness Report 2010-2011' (ENCJ 2011) 21 <[www.encj.eu/images/stories/pdf/GA/Vilnius/report\\_on\\_timeliness.pdf](http://www.encj.eu/images/stories/pdf/GA/Vilnius/report_on_timeliness.pdf)> accessed 12 December 2016

<sup>153</sup> Consultative Council of European Judges (CCJE), Opinion no 6 (2004) on Fair Trial within a Reasonable Time and Judge's Role in Trials Taking Into Account Alternative Means of Dispute Settlement <<https://wcd.coe.int/ViewDoc.jsp?p=&id=1046389&Site=COE&direct=true>> accessed 13 December 2016

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Other measures could include the filling of vacancies, or increasing the number of juridical assistants, etc. Given the specific task exercised by the Supreme Court, the question of whether these measures may also be applied by them arises.

Finally, we would like to emphasise that to prevent overloaded courts, which in turn leads to backlogs and excessive length of judicial proceedings, some European countries have introduced restrictions on the right to file a case before the Supreme Court.<sup>154</sup> To ensure that the Supreme Court has sufficient capacity to fulfil its role as supervisor of the uniform application and development of the law, the national legislator might consider introducing various filter mechanisms, such as a leave to appeal to the Supreme Court, or a filter based on the value of the case. When doing so, the legislator must ensure that such measures comply with the provisions contained in Article 6 of the European Convention on Human Rights. In the context of higher courts, the case law of the European Court of Human Rights acknowledges that leave to appeal systems comply with the European Convention on Human Rights and that the admissibility of appeals to Supreme Courts may be subject to more formal conditions.<sup>155</sup>

### 6. Correlation between the use of IT and the length of proceedings

Many of the practices proposed to improve the length of proceedings involve the use of IT (e.g. to facilitate monitoring and collect statistical data related to the length of proceedings). However, the research conducted by the CEPEJ shows that **a good level of development of IT tools cannot be systematically linked to a good level of court performance**. Indeed, **IT is not an end in itself but must be seen as a tool for improvement**. The efficiency of the court is also influenced by other factors, such as resources allocated, which must also be considered. The use of IT may improve the efficiency of the court (and thus the length of proceedings), but it must be integrated into an organisational performance process, coupled with a policy of change management involving all stakeholders. As the CEPEJ concluded: *'IT is essential, but it is not the only key to improved performance'*.<sup>156</sup>

## B. Survey results

### 1. Timeframes and processing times

As the above-mentioned literature has shown, timeframes are expected to have a positive impact on the length of proceedings. **Nonetheless, most Supreme Courts have not yet introduced these target timeframes** (CZ, EE, IE, IT, LU, PL, PL(A), HU, LT(A), SK, ES, AT(A), AT, PT).

**Only a minority of the Supreme Courts have introduced these timeframes** (NL, FI, DE, SE(A), SL, LV), but **not all at the same level**. The *Supreme Court of the Netherlands* has agreed upon a general timeframe: the aim is to have a final ruling within one year for 90% of the cases. However, there are no timeframes for different kinds of procedures and the various procedural steps. By contrast, the

<sup>154</sup> European Caseflow Management Development Network, 'Caseflow Management Handbook: Guide for Enhanced Court Administration in Civil Proceedings' (European Caseflow Management Development Network 2016) 12 <[www.lut.fi/documents/27578/419707/Caseflow+Management+Handbook+%28English%29\\_02122016.pdf/21819866-5667-4929-ad7a-26ddd2798a03](http://www.lut.fi/documents/27578/419707/Caseflow+Management+Handbook+%28English%29_02122016.pdf/21819866-5667-4929-ad7a-26ddd2798a03)> accessed 5 December 2016

European Commission for the Efficiency of Justice (CEPEJ), 'Compendium of "Best Practices" on Time Management of Judicial Proceedings' (CEPEJ 2006) <[https://wcd.coe.int/ViewDoc.jsp?p=&Ref=CEPEJ\(2006\)13&Sector=secDGHL&Language=lanEnglish&Ver=original&BackColorInternet=eff2fa&BackColorIntranet=eff2fa&BackColorLogged=c1cbe6&direct=true](https://wcd.coe.int/ViewDoc.jsp?p=&Ref=CEPEJ(2006)13&Sector=secDGHL&Language=lanEnglish&Ver=original&BackColorInternet=eff2fa&BackColorIntranet=eff2fa&BackColorLogged=c1cbe6&direct=true)> accessed 5 December 2016

<sup>155</sup> Rusen Ergec, 'Preventing Backlog in Administrative Justice. General Report' (XXII<sup>nd</sup> Congress of the Association of Councils of State and Supreme Administrative Jurisdictions of the European Union 2010), 3-9 <[www.juradmin.eu/colloquia/2010/General\\_Report\\_2010\\_EN.pdf](http://www.juradmin.eu/colloquia/2010/General_Report_2010_EN.pdf)> accessed 13 March 2017

European Caseflow Management Development Network, 'Caseflow Management Handbook: Guide for Enhanced Court Administration in Civil Proceedings' (European Caseflow Management Development Network 2016) 13 <[www.lut.fi/documents/27578/419707/Caseflow+Management+Handbook+%28English%29\\_02122016.pdf/21819866-5667-4929-ad7a-26ddd2798a03](http://www.lut.fi/documents/27578/419707/Caseflow+Management+Handbook+%28English%29_02122016.pdf/21819866-5667-4929-ad7a-26ddd2798a03)> accessed 5 December 2016

Matthias Van der Haegen, 'Het Hof van Cassatie op het Kruispunt van Publieke en Private Belangen: Pleidooi voor een Versterking van de Cassatierechtspraak' (2015) Tijdschrift voor Privaatrecht 1235, 1258-1259

<sup>156</sup> European Commission for the Efficiency of Justice (CEPEJ), 'European Judicial Systems. Efficiency and Quality of Justice. Thematic report: Use of Information Technology in European courts' (CEPEJ Studies no 24, CEPEJ 2016) 5 and 66 <[www.coe.int/t/dghl/cooperation/cepej/evaluation/2016/publication/REV1/2016\\_2%20-%20CEPEJ%20Study%2024%20-%20IT%20Report%20-%20EN.pdf](http://www.coe.int/t/dghl/cooperation/cepej/evaluation/2016/publication/REV1/2016_2%20-%20CEPEJ%20Study%2024%20-%20IT%20Report%20-%20EN.pdf)> accessed 12 December 2016

*Supreme Administrative Court of Finland* does have timeframes for various stages of the proceedings and for the proceedings as a whole. These timeframes were decided upon by a working group consisting of representatives of the different personnel groups.

The civil and criminal department of the *Supreme Court of Latvia* has set targets for the duration of proceedings in the department's work plan, approved by the Chief Justice of the Supreme Court.

**In some Supreme Courts, no 'optimum timeframes' are in place, but the law stipulates specific requirements for processing times** (e.g. a judgment has to be issued within a fixed number of days after the hearing) (e.g. CZ, HU, LT, LT(A), SK, ES, PT, PT(A), RO). The disadvantage of fixed deadlines in law is that they cannot take into account the nature and complexity of each case. Consequently, they may fail to ensure the quality of the proceedings and the decision in some cases.<sup>157</sup>

**Some Supreme Courts monitor each case's progress consistently and continuously, usually by digital means** (NL, FI, HU, ES, SL, LV, PT(A), LT). The *Supreme Court of Slovenia* expressly indicated that their electronic case register has a **warning system**. Such an early warning system is also present at the *Curia of Hungary*.

**However, survey results show that most Supreme Courts do not consistently or formally monitor each case's progress** but leave it to, for example, the President of the Chamber, the judge concerned or the registry (EE, DE, IE, IT, PL, PL(A), LT(A), SK, AT(A), AT, RO). The *Supreme Court of the Czech Republic* specified that, although there are no timeframes in place, they do statistically monitor the average length of cases and also the number of cases that have been running for more than a year.

## 2. Statistical data and information to the public

**The majority of the Supreme Courts publish information about the length of proceedings annually**, mostly in their annual report and/or on their website (CZ, NL, DE, IT, LU, PL, PL(A), HU, LT, LT(A), ES, AT(A), LV, PT(A)). **Some Supreme Courts publish this data more frequently**. The *Supreme Administrative Court of Finland* and the *Criminal and Military Chamber of the Supreme Court of Poland* publish monthly statistics on their websites, both in general and under main subject categories. The *Supreme Court of Slovenia* publishes these data quarterly.

**Other Supreme Courts do not publish official data on the average length of proceedings** (EE, IE, SK,<sup>158</sup> SE, SE(A), AT, PT).

The Supreme Courts that responded to this question pointed out that **in general there is no difference between cases involving EU law and other cases** (CZ, IE, LU, PL(A), HU, LT, SK, ES, AT(A), AT, PT, RO), but that a reference for a preliminary ruling to the European Court of Justice increases the length of proceedings. Generally, however, there is no official data or statistics on this topic.

## 3. Suppression of procedural abuse

**Almost all Supreme Courts indicated that they are able to take measures to prevent the abuse of right to trial** (i.e. with regard to vexatious litigants or parties attempting to hinder and delay court proceedings). Only the *Supreme Court of the Czech Republic* responded that it could not take such measures.

The measures that a Supreme Court can take to prevent the abuse of right to trial varies. These measures may include a **conviction to pay the legal costs of the other party** (e.g. LT, LT(A), FI, PT), imposing a **fine** (e.g. HU, LT, LT(A), SK, SL, LV, PT, PT(A)), **declaring belated submissions inadmissible** (e.g. LT, LT(A), EE, PL, SK), a **claim may be deemed withdrawn** if a party is not present at the first hearing (e.g. SL), **strict hearing dates** (e.g. at the *Supreme Court of Slovenia* a hearing can only be postponed due to serious illness of a party).

Although not specifically introduced to prevent the abuse of right to trial, the amended Dutch Judiciary Act proves to be a useful tool in this regard. It allows the *Supreme Court of the Netherlands* to **declare inadmissible an appeal immediately at the beginning of the procedure if this appeal apparently cannot**

<sup>157</sup> European Network of Councils for the Judiciary (ENCJ), 'Timeliness Report 2010-2011' (ENCJ 2011) 14 <[www.encj.eu/images/stories/pdf/GA/Vilnius/report\\_on\\_timeliness.pdf](http://www.encj.eu/images/stories/pdf/GA/Vilnius/report_on_timeliness.pdf)> accessed 12 December 2016

<sup>158</sup> The Ministry of Justice of Slovakia publishes graphs showing the length of proceedings, but these statistics concern the average length of proceedings before all courts, and not only before the Supreme Court.

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**lead to cassation or if the applicant apparently does not have sufficient interest.** The *Supreme Court of the Netherlands* considers this procedure to be very valuable. The criminal section of the Supreme Court, which faces many unmeritorious appeals, has especially benefited from the introduction of this new rule. Within a short period of time, the backlog of criminal cases was reduced from a few thousand to almost zero, although recently the number of criminal cases has been increasing.

The *Supreme Court of Estonia* noted that the issue of the abuse of right to trial is not pressing, since the Supreme Court has the competence to decide which cases are accepted for proceedings and which are not. When a case is accepted for proceedings, deadlines are set for the parties. If the deadline is not met, the Supreme Court has no obligation to accept submissions from the parties.

The same applies for the *Supreme Court of Ireland* and the *Supreme Court of Lithuania*: a leave to appeal to the Supreme Court is not granted to vexatious litigants. The *Supreme Court of Italy* also indicated that a strengthening of the admissibility factor is an excellent remedy.

As was discussed above, one way to prevent parties delaying proceedings is to take a proactive role regarding case management and to set firm and credible trial dates.

Often the Supreme Court judges or registry are responsible for setting the dates for the hearing (e.g. CZ, EE, NL, DE, IE, IT, LU, PL, PL(A), HU, LT, LT(A), SK, ES, SE, SE(A), AT(A), SL, AT, PT(A)) and the delivery of a judgment (e.g. CZ, FI, IE, IT, LU, HU, SK, ES, SE, SE(A), AT, PT(A)). The survey did not ask about the continuance policy applied by the Supreme Courts (for example if good cause is necessary to be granted a continuance).

Sometimes the legislation sets a timeframe for delivery of a judgment (e.g. within 30 days of the last court session or within 30 days of the date of expiry of the term for submission of requests and documents) (e.g. EE, PL, LT, LT(A), SL). The disadvantage is that these fixed targets cannot take into consideration the case's characteristics.

#### 4. Electronic documents

Supreme Court	Electronic document management system	Electronic signature
Austria	X	
Austria (Administrative)	X	
Belgium	X	
Cyprus	No information	No information
Czech Republic	X	X
Estonia	X	X
Finland	X	
Germany	X	X
Hungary	X	X
Ireland	X	
Italy		No information
Latvia	X	X
Lithuania	X	X
Lithuania (Administrative)	X	X
Luxembourg		
Netherlands	X	
Poland	X	
Poland (Administrative)		
Portugal		
Portugal (Administrative)		X
Romania	X	
Slovakia		X
Slovenia	X	X
Spain		
Sweden		
Sweden (Administrative)		
<b>Total (26)</b>	<b>16</b>	<b>10</b>

### **a. Electronic document management system**

A large number of Supreme Courts have an electronic document management system, in which judges and staff can find information about cases and which contains all or some documents from the case files (CZ, EE, NL,<sup>159</sup> FI, DE,<sup>160</sup> IE,<sup>161</sup> PL,<sup>162</sup> HU, LT, LT(A),<sup>163</sup> AT, AT(A), SL,<sup>164</sup> LV, RO, BE). A pilot project in this regard is being implemented in the Social and Labour Chamber of the *Supreme Court of Spain*. The electronic document management system contains the electronic files from the lower court, electronic communication with the parties, electronically written judgments and electronic signature of the final judgment. Full use of the electronic document management system in the Supreme Court is foreseen to be implemented by the end of 2017. One practice that is already fully implemented is the electronic communication and notification system, Lexnet, which lawyers and the Supreme Court itself are obliged to use.

The *Supreme Court of Latvia* uses a program called the ‘Court Information System’. This IT system is used by all courts and contains the main procedural documents adopted by all court instances in a specific case. Only in cases related to challenging Land Registry decisions can all documents from the case file be found in the IT system. However, the Supreme Court indicated that judges still generally prefer the paper files.

It seems that at the *Supreme Court of Estonia* the use of electronic documents is widespread. Most of the documents are filed with the court in electronic form and most correspondence takes place by email or via e-File. Nevertheless, it specified that they still use the paper files and that judges and advisors usually still work with the paper files, either out of habit or due to the still somewhat limited functionalities of the system. The *Supreme Court of the Netherlands*, in contrast, stated that judges are increasingly making use of these electronic files. The Supreme Court further specified that it wanted to take the necessary steps to make full digital litigation possible in the near future.

Other courts also indicated that they still have a **parallel paper file** (e.g. FI, DE, PL, HU, AT(A), LV, RO). This implies that all electronically sent documents are printed out and added to the paper case file.

**Other Supreme Courts only use a paper file** (IT, LU, SK, PL(A), SE, SE(A)). Poland is currently working on the implementation of an IT system for proceedings in administrative courts. The launch is planned for May 2018.

### **b. Electronic signature**

**Some Supreme Courts send and/or receive electronic documents signed with a secure electronic signature** (CZ, EE, DE, HU, LT, LT(A), SK,<sup>165</sup> SL, LV, PT(A)<sup>166</sup>). The *Supreme Court of the Netherlands* indicated that it intends to make use of secure electronic signature in the near future. Currently, the Prosecutor-General’s Office is experimenting with the electronic signing of opinions in tax cases.

The *Supreme Court of Slovenia* pointed out that the use of electronic documents signed with a secure electronic signature increases the speed of proceedings and reduces the Court’s expenses for mail services. The *Supreme Court of the Czech Republic*, in contrast, indicated that, although most judgments

<sup>159</sup> The Supreme Court for which all essential documents are digitalised.

<sup>160</sup> With the exception of documents from the case files of the lower courts.

<sup>161</sup> If the documents were submitted electronically.

<sup>162</sup> In criminal proceedings, it is not possible to submit documents electronically to the Court, but to improve efficiency, documents crucial for the examination of the case are scanned and available to judges in electronic form. In civil proceedings, an amendment of the Code of Civil Procedure obliges the Supreme Court to make it possible to make the electronic submission of documents possible, secured by electronic signature, as well as to send summons and notifications. This amendment must be implemented before 8 September 2019.

<sup>163</sup> As far as a proceeding is initiated through the Court’s electronic service system.

<sup>164</sup> In most types of proceedings, a hardcopy file is used. However, some types of procedures (primarily at first instance courts) are entirely or partially electronic (civil enforcement on the basis of an authentic document; civil enforcement at first instance courts; land registry at first instance courts; business registry at the first instance courts; insolvency cases at first instance).

The above-mentioned types of cases represented 77% of all incoming non-criminal cases at first instance courts in 2015.

<sup>165</sup> The Supreme Court of Slovakia indicated that it is possible to use electronic documents signed with a secure electronic signature, but such documents are seldom used.

<sup>166</sup> The Supreme Administrative Court of Poland may receive documents signed with a secure electronic signature via email, but does not use this communication method itself.

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are signed with an electronic signature, court rulings that have to be signed in large number usually bear handwritten signatures, since it takes less time to collect the handwritten signatures of three judges than to have the document electronically signed by three judges.

### 5. Increased influx of cases

As the examples given in the theoretical framework already show, it is not always easy to transpose the proposed solutions to the work of the Supreme Court.

**Most Supreme Courts indicated that they do not have many options in the case of a significant increased influx of cases.** The survey results reveal a great variety of actions that Supreme Courts may take.

The **first category** of actions is related to a **flexible case assignment system**.

Some Supreme Courts indicated that they can change the way the cases are allocated to the different panels (CZ, FI, HU, AT(A), LV) or that the judges can change chambers, since they have the competence to adjudicate all matters (EE, FI). In addition, it is possible that the allocation of cases among judicial assistants is amended (FI, SK, AT(A), LV).

The **second category** is the **reallocation of judges**. In *Hungary*, this type of action is possible by virtue of the Act on the Legal Status and Remuneration of Judges. A judge may be assigned to another court to ensure the fair distribution of caseload between the courts or to promote the judge's professional advancement. A judge may be assigned to another court without their consent once in a three-year period, and for a maximum of one year, to ensure the fair distribution of the caseload. Assignment to a court within the territorial competence of the High Court is made by the president of the High Court, while assignment to any other court is carried out by the president of the National Office for the Judiciary. The president of the court with the heavier workload must take the initiative. This may be done in advance if a significant increase in the number of incoming cases is anticipated. The *Curia of Hungary* has made use of this option to reallocate judges on two occasions: firstly, in 2014, when a large number of election cases were expected. On that occasion, a few administrative judges from lower courts were assigned in advance to the *Curia*. Secondly, it made use of this option when there were legislative changes related to foreign exchange loan agreements. The expectation was that a large number of such cases would be introduced at the *Curia*. Therefore, some civil judges from lower instances were assigned to the *Curia*.

Although the survey did not specifically ask about such filter mechanisms, some Supreme Courts responded that a significant increase in cases generally does not occur, since they can rely on filter mechanisms. The *Supreme Court of Italy* indicated that, in addition to the use of simplified models of judgments for cases that do not require particular effort in legal reasoning, the **increased use of the admissibility filter** is a useful tool in the case of an increased influx of cases.

At the *Supreme Administrative Court of Lithuania*, if the incoming cases are very similar (in terms of both facts and law) due to an administrative regulatory act being held to infringe the Constitution or other legislation, it is possible to work with **pilot judgments**. The pilot case is heard as promptly as possible and other similar cases are suspended while this pilot case is heard.

## C. Recommendations and best practices

**Implement a(n) (electronic) system to control the length of proceedings through the use of timeframes and the continuous and real-time monitoring of these timeframes**

Supreme Courts have to set up **realistic and measurable timeframes for the different kinds of cases and the different procedural stages**. Setting realistic timeframes is not easy and should be done **in consultation with other stakeholders** (such as the bar association). They should be **regularly evaluated**, especially at the beginning, to determine if they are indeed realistic.

We note that the Supreme Courts all make real efforts to improve the length of proceedings.

A good practice example can be found in Finland. The *Supreme Administrative Court of Finland* has adopted a **differentiated approach** with regard to timeframes. The court set up timeframes for the various stages of proceedings and for the proceedings as a whole. These **timeframes were decided upon by a working group consisting of representatives of the different personnel groups**.

However, having timeframes is not enough. Indeed, for the courts to be able to respond adequately to changing circumstances and to have an influence on the achievement of targets, the length of proceedings should be **monitored electronically based on accurate and real-time performance date**. This permanent monitoring should also be supplemented by an **early warning system**, allowing proactive case management, so that the accumulation of cases exceeding the predefined target can be limited.

Such an early warning system can be found at the *Supreme Court of Slovenia* and the *Curia of Hungary*. The BIIRO program of the Curia of Hungary indicates in advance that a case is about to lapse by default, or that a deadline to put a court decision into writing or to review a coercive measure is about to expire. The program also indicates whether there are outstanding court papers or issues to be dealt with and whether the Court's employees have failed to issue the statistical evaluation forms and necessary notification. This BIIRO program consists of two interfaces: one for the case management officers and one for the judges. The case management officers enter and handle data related to case registration and case management (e.g. location of files and documents, case allocation, deadlines, registration of newly submitted petitions, etc.) and they are able to produce statistics on the basis of this electronic registry. The judges' interface includes a logbook of cases allocated to the judge in question and the agenda of hearings and sessions to be held by the judge in question. The latter also contains the date of the hearings, the identification of the decisions rendered, as well as data indicating the quantity and quality of the judge's adjudication work.

### **Publish the agreed timeframes as well as statistics about the length of proceedings per type of case (at least annually)**

**Statistical data about the length of proceedings and information about timeframes should be made available to the public at least once a year.** Publication serves several purposes: informing court users about the expected length of their case (and thus facilitating access to the courts and increasing transparency) and making the judiciary accountable for the functioning of the courts, of which processing the cases without undue delay is one aspect.

The annual report is an excellent opportunity to disseminate this information.

An interesting practice to better inform the public can be found in Hungary. The *Hungarian National Office for the Judiciary* has a **length of proceedings calculator** on their website. This online calculator indicates the expected length of proceedings at a given court in a specific type of case. The calculator is intended to help the parties decide the court before which they should bring their case for a quicker adjudication of their claim, as there may be more than one court competent to hear their case.

### **Judges should show proactive case management**

**Judges must manage their allocated cases proactively.** They should set firm and credible trial dates and use the options they have to expedite proceedings and to sanction parties that cause delay or that present vexatious behaviour.

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### Implement an electronic document management system and the use of electronic communication

**Electronic exchange of information is faster and more cost-efficient** compared to paper-based communication. Of course, these **objectives are partly undermined when there is no electronic document management system and the court has to print out all the documents.** Of course, as with many of the proposed practices, the implementation of an electronic document management system requires appropriate funding.

A **pilot project to implement an electronic document management system** is currently underway at the *Supreme Court of Spain*. One practice that is already fully implemented is the **electronic communication and notification system, Lexnet**, which lawyers and the Supreme Court itself are obliged to use.

The *Supreme Court of Latvia* uses a program called the ‘**Court Information System**’. This IT system is used by all courts and contains the **main procedural documents adopted by all court instances in a specific case.** This example also shows that an electronic document management system requires a mind shift and changes in working habits to be fully effective. The Supreme Court of Latvia indeed specified that judges still mostly prefer the paper files. Court leaders should thus be aware of the **change in culture that is needed for this practice to reach its full potential** (see also basic management principles in part I). Another example of this culture-shift can be found at the *Supreme Court of Estonia*. The use of electronic documents is widespread. Most of the documents are filed with the court in electronic form and most correspondence takes place by email or via e-File. Nevertheless, the Estonian Supreme Court specified that they still have hardcopy files and that judges and advisors usually work with them, either out of habit or due to the still somewhat limited functionalities of the system.

Further gravitation towards the use of electronic files is possible, as in the case of the *Supreme Court of the Netherlands*, where judges increasingly make use of these electronic files.

### Provide procedural sanctions against parties causing delay and exhibiting vexatious behaviour

The legislator must give courts the **potential to sanction parties that cause delay or present vexatious behaviour.** The survey results showed that there are many options: a fine, declaring belated submissions inadmissible, etc.

Although not specifically introduced to prevent the abuse of right to trial, the ability of the *Supreme Court of the Netherlands* to **declare inadmissible an appeal immediately at the beginning of the procedure if this appeal apparently cannot lead to cassation or if the applicant apparently does not have sufficient interest**, has proven very valuable. The Supreme Court of the Netherlands indicated that after the introduction of this provision, the backlog of criminal cases reduced from a few thousand to almost zero within a short period of time.

The issue of being able to impose procedural sanctions seems less pressing at Supreme Courts that work with a leave to appeal to the Supreme Court or with a strict admissibility factor (e.g. the Supreme Court of Estonia, the Supreme Court of Ireland, the Supreme Court of Italy), since the Court then has a greater influence on which cases are accepted or not.

**Provide a flexible case assignment system, as well as the reallocation of judges as an *ultimum remedium***

In addition to the obvious actions (such as appointing more judges and hiring more staff), a **flexible case assignment system** (i.e. how cases are allocated between panels and how judges are divided between the different panels) allows the Supreme Court to better cope with an increased influx of cases. However, research has shown that, although the informal exchange of cases between judges has been recognised as an effective mechanism of coordination by mutual adjustment, this is not allowed in judiciaries where the assignment process is more formalised and based on a legalistic approach.<sup>167</sup> The legislator should therefore leave room for an objective but flexible case assignment system that takes into account the weighted workload of the judges. This reallocation should also be based on objective criteria and requires strong motivation, especially since judicial continuity can provide a better service to the parties and increases the overall efficiency of courts.<sup>168</sup>

As an *ultimum remedium*, when a flexible case assignment system does not allow the court to cope with the incoming number of cases, the **reallocation of judges** may be an option. The example of the *Curia of Hungary* showed that this measure also works in the specific setting of a Supreme Court.

<sup>167</sup> Marco Fabri and Philip Langbroek, 'Is There a Right Judge for Each Case? A Comparative Study of Case Assignment in Six European Countries' (2007) 292, 310 *European Journal of Legal Studies* <[www.ejls.eu/2/31UK.pdf](http://www.ejls.eu/2/31UK.pdf)> accessed 5 December 2016

<sup>168</sup> European Network of Councils for the Judiciary (ENCJ), 'Minimum Judicial Standards IV: Allocation of Cases. ENCJ Report 2013-2014' (ENCJ 2014) 5 <[www.encj.eu/images/stories/pdf/workinggroups/encj\\_report\\_standards\\_iv\\_allocation\\_of\\_cases\\_2014.pdf](http://www.encj.eu/images/stories/pdf/workinggroups/encj_report_standards_iv_allocation_of_cases_2014.pdf)> accessed 5 December 2016

Marco Fabri and Philip Langbroek, 'Is There a Right Judge for Each Case? A Comparative Study of Case Assignment in Six European Countries' (2007) 292, 310 *European Journal of Legal Studies* <[www.ejls.eu/2/31UK.pdf](http://www.ejls.eu/2/31UK.pdf)> accessed 5 December 2016

# V

# Communication

## 1. INTRODUCTION

### A. What is communication?

The *Oxford English Dictionary* defines communication as ‘*the imparting or exchanging of information by speaking, writing, or using some other medium*’. It is derived from the Latin word *communicare*, which means ‘to share’ or ‘to make common’. By communicating, people want to make certain information common; to share their knowledge. The same applies to communication by the judiciary.

It is important to **decide on what to communicate about and to whom**. As Merethe Eckhardt, Director of Development at the Danish Court of Administration, emphasised, judgments are the courts’ core business, it is their ‘claim to fame’, so this is primarily what the courts should inform society about.<sup>169</sup> The judiciary might want to communicate to the media and the public about cases that raise the public’s interest to ensure that the public is informed correctly. In the context of providing summaries of decisions, Merethe Eckhardt emphasised that they are provided in cases that might **not be the most important from the legal point of view, but that are significant for society**. In other words, courts should **keep the expectations of their target audience in mind** when drafting a communication policy and deciding on what to communicate about, **while also striking a balance between the audience’s expectations and communicating the message accurately**.<sup>170</sup>

In addition to information on judgments, courts should also communicate about activities they organise and about general information regarding the justice system (e.g. information on the length of proceedings, and explaining general principles of the justice system, such as the presumption of innocence).

Before communicating, **every court should develop a vision on communication** to ensure they are clear **about what they want to communicate, to whom (keeping in mind your audience’s expectations)**, and **how** to do this so that your message will reach the desired audience to the best extent possible (e.g. via a short Facebook post or through a press release on the court’s website). We refer again to the basic principles of court management discussed in the introduction to this report, where we underlined that the **expectations of the court users and other stakeholders are becoming**

<sup>169</sup> Merethe Eckhardt, ‘Strengthening public relations at courts: new communication tools and trends’ (13 October 2016, Fourth Annual International Conference on Courts and Communication) <[www.youtube.com/watch?v=OG9xptD5RLM&feature=youtu.be](http://www.youtube.com/watch?v=OG9xptD5RLM&feature=youtu.be)> accessed 1 February 2017

<sup>170</sup> Merethe Eckhardt, ‘Strengthening public relations at courts: new communication tools and trends’ (13 October 2016, Fourth Annual International Conference on Courts and Communication) <[www.youtube.com/watch?v=OG9xptD5RLM&feature=youtu.be](http://www.youtube.com/watch?v=OG9xptD5RLM&feature=youtu.be)> accessed 1 February 2017



**increasingly important in court management.** To understand people's expectations, courts should receive **feedback** (e.g. through surveys or meetings) and **cooperate**. This also applies when developing a communication policy.

## B. Why should Supreme Courts communicate?

**Communication** by the judiciary is important, as it **contributes to the accessibility of justice**. Indeed, the foundation for access to justice is the information provided to citizens and businesses about general aspects of the justice system. Accessibility of justice is a worthy goal and not least because it improves the quality of the justice system.<sup>171</sup> Full, accurate and up-to-date information about proceedings is also fundamental to guaranteeing access to justice as stipulated in Article 6 ECHR.<sup>172</sup> Furthermore, interaction with the public also **helps people to understand and accept the decisions rendered** by the judiciary.<sup>173</sup> Communicating with the public and the media to inform society is therefore, without doubt, a worthy goal.

**In addition to communication being designed to inform the public, communication is also an image-making tool.** The public bases its perception of the judiciary on the information it receives. How the judiciary is perceived by the public is crucial to any democratic State, bound by the rule of law. Justice must not only be done, but must also be seen to be done. The public perception of the judiciary is thus very important, especially since **public perceptions also influence the public's trust** in the judiciary.<sup>174</sup>

The judiciary is, however, not the most influential judicial image-maker, as the media play an important image-making role.<sup>175</sup> The freedom of expression, a cornerstone of democratic societies, requires the judiciary *'to create the conditions necessary to enable the media to fulfil the crucial roles they play in keeping the public informed'*.<sup>176</sup>

Trust in the judiciary is strongly based on how proceedings are reported in the media. For a long time, it was strongly believed that it was not only unnecessary but also inappropriate for the judiciary to engage in the public debate, as it was considered that any comment risked undermining judicial independence and authority. It was thought that the judiciary should only communicate through its decisions,<sup>177</sup> and explaining these decisions to the media was not deemed necessary.

Research has already been undertaken regarding factors that impact the capacity of journalists to report on court and judicial activity. This research shows that there has been a decline in the number

<sup>171</sup> European Commission, *Communication from the Commission to the European Parliament, the Council, the European Central Bank, the European Economic and Social Committee and the Committee of the Regions - The 2016 EU Justice Scoreboard* (Publications Office of the European Union 2016) 17 <[http://ec.europa.eu/justice/effective-justice/files/justice\\_scoreboard\\_2016\\_en.pdf](http://ec.europa.eu/justice/effective-justice/files/justice_scoreboard_2016_en.pdf)> accessed 17 November 2016

<sup>172</sup> Consultative Council of European Judges (CCJE), Opinion no 14 (2011) to the attention of the Committee of Ministers of the Council of Europe on justice and information technologies (IT) <[https://wcd.coe.int/ViewDoc.jsp?p=&Ref=C-CJE\(2011\)2&Language=lanEnglish&Ver=original&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864&direct=true](https://wcd.coe.int/ViewDoc.jsp?p=&Ref=C-CJE(2011)2&Language=lanEnglish&Ver=original&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864&direct=true)> accessed 2 January 2017

<sup>173</sup> Louise Chrétien, Arthur de Peretti-Schlomoff and Yoann Viguié, 'Judicial Communication and Professional Ethics. Renewing the Relationship between the Judiciary and the Public' (Themis Competition 2015 – Semi-Final D – Team France 4, European Judicial Training Network (EJTN) 2015) 5 <[www.ejtn.eu/Documents/THEMIS%202015/Written\\_Paper\\_France4.pdf](http://www.ejtn.eu/Documents/THEMIS%202015/Written_Paper_France4.pdf)> accessed 12 October 2016

<sup>174</sup> Leslie J. Moran 'Managing the News Image of the Judiciary: The Role of Judicial Press Officers' (2014) *Oñati Socio-Legal Series*, 799, 804 <<http://opo.iisj.net/index.php/osls/article/view/320/473>> accessed 17 November 2016  
Emmanuel Jeuland and Anastasia Sotiropoulou 'The Role of Communication in the French Judicial System' (2012) *International Journal for Court Administration*, 1, 1 <<http://doi.org/10.18352/ijca.92>> accessed 12 October 2016

<sup>175</sup> Leslie J. Moran 'Managing the News Image of the Judiciary: The Role of Judicial Press Officers' (2014) *Oñati Socio-Legal Series*, 799, 799 <<http://opo.iisj.net/index.php/osls/article/view/320/473>> accessed 17 November 2016  
European Network of Councils for the Judiciary (ENCJ), 'Justice, Society and the Media. Report 2011-2012' (ENCJ, 2012) 2 <[www.encj.eu/images/stories/pdf/GA/Dublin/encj\\_report\\_justice\\_society\\_media\\_def.pdf](http://www.encj.eu/images/stories/pdf/GA/Dublin/encj_report_justice_society_media_def.pdf)> accessed 12 October 2016

<sup>176</sup> 'The Judiciary and the Media in the Netherlands', 2 <[www.rechtspraak.nl/SiteCollectionDocuments/The-Judiciary-and-the-Media-in-the-Netherlands.pdf](http://www.rechtspraak.nl/SiteCollectionDocuments/The-Judiciary-and-the-Media-in-the-Netherlands.pdf)> accessed 17 November 2016

<sup>177</sup> Louise Chrétien, Arthur de Peretti-Schlomoff and Yoann Viguié, 'Judicial Communication and Professional Ethics. Renewing the Relationship between the Judiciary and the Public' (Themis Competition 2015 – Semi-Final D – Team France 4, European Judicial Training Network (EJTN) 2015) 1 <[www.ejtn.eu/Documents/THEMIS%202015/Written\\_Paper\\_France4.pdf](http://www.ejtn.eu/Documents/THEMIS%202015/Written_Paper_France4.pdf)> accessed 12 October 2016



of journalists with specialist knowledge of the law in general and of the courts in particular. As L. MORAN pointed out, ‘*the shrinking labour force and loss of expertise raise questions about the capacity of journalists that remain to fully understand court and judicial activity, identify key issues and concepts and produce news reports that are sufficiently accurate*’.<sup>178</sup> Moreover, strong competition has led to a loss of interest in the subtle nuances of facts and legal principles and to more sensational reports. The Supreme Court of Latvia explicitly indicated that insufficient legal knowledge of journalists and a high percentage of personnel turnover in the media indeed form a barrier to communication.

Today, it is no longer considered inappropriate and unnecessary for judges to participate in the public discussion. On the contrary, it is believed that the judiciary should actively inform the public in order to guarantee access to justice and make judicial decisions understandable and acceptable. Moreover, the media sometimes misinforms the public, while at the same time society also has a right to be correctly informed about the functioning of the judiciary and the justice system.<sup>179</sup>

Besides improving the access to justice and raising the public’s trust in the judiciary, communication by the judiciary can also be aimed at improving the functioning of the justice system, for example through feedback and complaints procedures or through consultations on government bills.

When communicating with the public, the judiciary must ensure full and correct public disclosure through the objective and impartial representation of the relevant facts.<sup>180</sup> Special attention should also be paid to the **respect of certain fundamental rights** (such as the presumption of innocence), the impartiality of judges and the dignity and authority of the judiciary. Communication by the judiciary should thus obey certain rules to avoid harm to the above-mentioned principles.<sup>181</sup>

### C. How can Supreme Courts communicate?

There is a **great variety of approaches** to communication in Europe.<sup>182</sup> We have examined these different approaches and established best practices, keeping these goals and principles in mind: informing the public correctly to ensure access to justice and an understanding and acceptance of judicial decisions, while maintaining respect for the fundamental rights of the parties involved, the impartiality of judges and the dignity and authority of the judges.

We will not only examine communication by the judiciary, but also topics that relate to facilitating the press to communicate about the judiciary (e.g. audio and visual recording in courtrooms).

In particular, we will study the following topics:

- press divisions and spokespersons;
- communication methods (including use of social media) and internal coordination of communication strategies;
- information provided to the public;
- audio and video recording in courtrooms;
- cooperation with regard to communication issues;
- educational activities;

<sup>178</sup> Leslie J. Moran ‘Managing the News Image of the Judiciary: The Role of Judicial Press Officers’ (2014) *Oñati Socio-Legal Series*, 799, 803 <<http://opo.iisj.net/index.php/osls/article/view/320/473>> accessed 17 November 2016

<sup>179</sup> European Network of Councils for the Judiciary (ENCJ), ‘Justice, Society and the Media. Report 2011-2012’ (ENCJ, 2012) 2 <[www.encj.eu/images/stories/pdf/GA/Dublin/encj\\_report\\_justice\\_society\\_media\\_def.pdf](http://www.encj.eu/images/stories/pdf/GA/Dublin/encj_report_justice_society_media_def.pdf)> accessed 12 October 2016

<sup>180</sup> European Network of Councils for the Judiciary (ENCJ), ‘Justice, Society and the Media. Report 2011-2012’ (ENCJ, 2012) 15 <[www.encj.eu/images/stories/pdf/GA/Dublin/encj\\_report\\_justice\\_society\\_media\\_def.pdf](http://www.encj.eu/images/stories/pdf/GA/Dublin/encj_report_justice_society_media_def.pdf)> accessed 12 October 2016

<sup>181</sup> Louise Chrétien, Arthur de Peretti-Schlomoff and Yoann Viguière, ‘Judicial Communication and Professional Ethics. Renewing the Relationship between the Judiciary and the Public’ (Themis Competition 2015 – Semi-Final D – Team France 4, European Judicial Training Network (EJTN) 2015) 5-6 <[www.ejtn.eu/Documents/THEMIS%202015/Written\\_Paper\\_France4.pdf](http://www.ejtn.eu/Documents/THEMIS%202015/Written_Paper_France4.pdf)> accessed 12 October 2016

<sup>182</sup> Louise Chrétien, Arthur de Peretti-Schlomoff and Yoann Viguière, ‘Judicial Communication and Professional Ethics. Renewing the Relationship between the Judiciary and the Public’ (Themis Competition 2015 – Semi-Final D – Team France 4, European Judicial Training Network (EJTN) 2015) 5 <[www.ejtn.eu/Documents/THEMIS%202015/Written\\_Paper\\_France4.pdf](http://www.ejtn.eu/Documents/THEMIS%202015/Written_Paper_France4.pdf)> accessed 12 October 2016  
European Network of Councils for the Judiciary (ENCJ), ‘Justice, Society and the Media. Report 2011-2012’ (ENCJ, 2012) <[www.encj.eu/images/stories/pdf/GA/Dublin/encj\\_report\\_justice\\_society\\_media\\_def.pdf](http://www.encj.eu/images/stories/pdf/GA/Dublin/encj_report_justice_society_media_def.pdf)> accessed 12 October 2016



- expressing the judiciary's opinions to parliament and the executive;
- feedback and complaints on the functioning of the Supreme Court.

**Another important element of Supreme Court communication is the way decisions are formulated.**

The language and style used in the judgments influence the extent to which these decisions are understandable to the parties and the public in general.<sup>183</sup> However, this question falls outside the scope of this research. Nevertheless, we would like to emphasise that the Supreme Court of Spain, in cooperation with the Spanish Royal Academy, has recently issued a style guide for the Supreme Court. This style guide contains suggestions about different aspects of the writing of decisions, such as grammar, clear language and the common shape of decisions. A similar practice can be found in Lithuania, where the Council of Judiciary has approved 'Standards of Quality for Judicial Decisions'. This document sets forth rules concerning references to legal doctrine in judicial decisions, and also requirements regarding argumentation style and the language used in those decisions. A Judicial Writing Manual has also been compiled by the Curia of Hungary to serve as a guideline on decision-writing in intelligible, plain and clear language. The Manual was edited by Curia judges, academics in the humanities and a playreader.

## 2. PRESS DIVISIONS AND SPOKESPERSONS

### A. General observations

As we emphasised in the introduction, **access to justice requires presenting simple, understandable and accurate information to society.** One measure that may help the judiciary to attain this goal is to **explain certain decisions or general principles of law** (e.g. the presumption of innocence or the right to a fair trial) to the public. This can either be done by every judge as they deem fit or in a more streamlined way by a **designated spokesperson.** Many Supreme Courts also have a **separate press division** (i.e. an entity responsible for contact with the press and the provision of information to the public).

An interesting study on the relationship between the judiciary, society and the media has been conducted by the **European Network of Councils for the Judiciary.** Their '**Justice, Society and Media Report**' looked into the measures that can be taken to close the gap between the judiciary and society and to the ways in which cooperation and the relationship between the judiciary and the media can be enhanced. The report also analysed how to secure proper information exchange with, and correct reporting by, the media.<sup>184</sup>

One of the measures identified in the report is the appointment of a **spokesperson with the role of speaking for and on behalf of the judiciary.** The main tasks of the spokesperson are the provision of information to the public and explaining and informing the press and the public about legal decisions and procedures.

**The spokesperson can either be a judge (press judge) or a non-judge/civil servant (press officer)** and may be appointed at different levels (national or regional). In addition, the European Network of Councils for the Judiciary also distinguishes the position of a **communication advisor.** The communication advisor may also be a press officer, but has the particular role of advising, informing and training judges and other spokespersons who might speak publicly on a given topic.<sup>185</sup>

<sup>183</sup> Consultative Council of European Judges (CCJE), Opinion no 7 (2005) to the attention of the Committee of Ministers of the Council of Europe on justice and society <[https://wcd.coe.int/ViewDoc.jsp?p=&Ref=CCJE\(2005\)OP7&Sector=s-ecDGH&Language=lanEnglish&Ver=original&BackColorInternet=FEF2E0&BackColorIntranet=FEF2E0&BackColorLogged=c3c3c3&direct=true](https://wcd.coe.int/ViewDoc.jsp?p=&Ref=CCJE(2005)OP7&Sector=s-ecDGH&Language=lanEnglish&Ver=original&BackColorInternet=FEF2E0&BackColorIntranet=FEF2E0&BackColorLogged=c3c3c3&direct=true)> accessed 2 January 2017

<sup>184</sup> European Network of Councils for the Judiciary (ENCJ), 'Justice, Society and the Media. Report 2011-2012' (ENCJ, 2012) 2 <[www.encj.eu/images/stories/pdf/GA/Dublin/encj\\_report\\_justice\\_society\\_media\\_def.pdf](http://www.encj.eu/images/stories/pdf/GA/Dublin/encj_report_justice_society_media_def.pdf)> accessed 12 October 2016

<sup>185</sup> European Network of Councils for the Judiciary (ENCJ), 'Justice, Society and the Media. Report 2011-2012' (ENCJ, 2012) 3 <[www.encj.eu/images/stories/pdf/GA/Dublin/encj\\_report\\_justice\\_society\\_media\\_def.pdf](http://www.encj.eu/images/stories/pdf/GA/Dublin/encj_report_justice_society_media_def.pdf)> accessed 12 October 2016

## V

In its report, the European Network of Councils for the Judiciary formulated the following **recommendations** with regard to spokespersons on behalf of the judiciary:

1. *All countries should develop and use a system of judicial spokesperson[s] in the form of press judges and communication advisors, who have a deep knowledge about the judicial system, how to inform the public in an understandable language and who have social and media skills.*
2. *The press judges and communication advisors should operate at a national as well as at local (and in some countries) regional level. These press judges should be judges who are serving at the level of the court and in the jurisdiction which is relevant to the press enquiry to be dealt with.*
3. *The press judge should be appointed by the President of the relevant court or area in which the press judge operated – and the press judge should be answerable to the appointing judge.*
4. *There should be basic guidelines as to the functions and role of a press judge, including rules [such] as on whose initiative the press judge should act and any system for coordinating such action. The relationship between press judges, press officers and communication advisors can be defined in such guidelines. The guidelines should also take into account national press codes, national standards of judicial ethics.*
5. *There should be training available to aid the press judge in the work required. There should also be the full support of the press officer or communication advisor.*
6. *It is suggested that the press judge should have the following duties and responsibilities:*
  - a. *to inform and instruct the press in law and procedure;*
  - b. *to explain the public as to the nature and effect of judgments and rulings – this can also include involvement in legal education of the basics of constitutional and substantive law;*
  - c. *to further the interest of justice in promoting transparency and understanding of the public in the court system and the judiciary;*
  - d. *to work with press officers and communication advisors in discharging their functions and monitor contact with the press and media;*
  - e. *to follow and react upon media through websites and other social media;*
  - f. *to develop contacts with the media as well as appropriate professional bodies, specialist and academic institutions.*<sup>186</sup>

Although there is a fundamental need for the judiciary to communicate with society, the European Judicial Training Network has warned that **communication is a tool that should be used with caution** because it could also worsen the relationship between the judiciary and society.<sup>187</sup> They also emphasise that there are **great disparities regarding training programmes** for press judges and that there is a **lack of opportunities to exchange knowledge**.

<sup>186</sup> European Network of Councils for the Judiciary (ENCJ), 'Justice, Society and the Media. Report 2011-2012' (ENCJ, 2012) 5-6 <[www.encj.eu/images/stories/pdf/GA/Dublin/encj\\_report\\_justice\\_society\\_media\\_def.pdf](http://www.encj.eu/images/stories/pdf/GA/Dublin/encj_report_justice_society_media_def.pdf)> accessed 12 October 2016

<sup>187</sup> Louise Chrétien, Arthur de Peretti-Schlomoff and Yoann Viguier, 'Judicial Communication and Professional Ethics. Renewing the Relationship between the Judiciary and the Public' (Themis Competition 2015 – Semi-Final D – Team France 4, European Judicial Training Network (EJTN) 2015) 10 <[www.ejtn.eu/Documents/THEMIS%202015/Written\\_Paper\\_France4.pdf](http://www.ejtn.eu/Documents/THEMIS%202015/Written_Paper_France4.pdf)> accessed 12 October 2016

## B. Survey results

### 1. Creation of a press division and the position of spokesperson

Supreme Court	Judge spokesperson	Non-judge spokesperson	Press division
Austria	No information	No information	X
Austria (Administrative)	X		X
Belgium		X	X
Cyprus			
Czech Republic		X	X
Estonia	X	X	X
Finland		X	X
Germany	X		X
Hungary	X		X
Ireland			X
Italy			
Latvia	X		X
Lithuania	X	X	
Lithuania (Administrative)	X		
Luxembourg			
Netherlands	X		X
Poland	X		X
Poland (Administrative)		X	X
Portugal			X
Portugal (Administrative)			
Romania	X		X
Slovakia		X	X
Slovenia			X
Spain			X
Sweden			
Sweden (Administrative)			
<b>Total (26)</b>	<b>10</b>	<b>7</b>	<b>18</b>

A look at the survey results reveals a wide variety of approaches in Europe regarding communication strategies of the judiciary and the creation of press divisions and spokespersons on behalf of the judiciary.

**In some countries, the judiciary decides to comment orally on general questions of law or on a specific case.** At the *Supreme Court of Lithuania*, the *Supreme Administrative Court of Lithuania* and the *Supreme Court of Latvia*, for example, at times judges publicly comment on their own cases. **In most countries, however, judges are not allowed (by law or ethically) to comment on their own cases** (CZ, EE, NL, DE, IE, HU, LU, CY, ES, SL, IT, PT, PT(A), RO).

**Therefore, most countries have created the position of a spokesperson.** This spokesperson may be a judge (e.g. NL, DE, HU, PL, LT, LT(A), AT(A), LV, RO) or a non-judge (e.g. the CZ, LT, SK, BE<sup>188</sup>). The *Supreme Courts of Cyprus, Italy, Spain, Slovenia*<sup>189</sup> and *Luxembourg*<sup>190</sup> and the *Supreme Administrative Court of Lithuania*<sup>191</sup> do not have a spokesperson.

**In addition to these spokespersons, some countries have created a separate press division** (CZ, HU, NL, EE, PL, PL(A), SK, ES, SL, FI, AT(A), AT, LV, DE, IE, PT, RO, BE). In Italy, however,

<sup>188</sup> The spokesperson is the Prosecutor General.

<sup>189</sup> There is a proposal to create a group of judge spokespersons.

<sup>190</sup> In Luxembourg, there is, however, a communication service for the entire judiciary, which acts under the responsibility of the Prosecutor General.

<sup>191</sup> The Judicial Council decided on 1 July 2016 that the presidents of the courts would assess the possibility of appointing a press judge. This procedure is currently ongoing in the Supreme Administrative Court of Lithuania.



the tasks of a press division are assigned to the General Secretariat of the Supreme Court. This is also the case in Lithuania, where communication with the press is conducted by the Office of the President of the Supreme Court. The *Supreme Administrative Court of Austria* does have a separate media department, but this only consists of three judges and there is no communication advisor appointed.

## 2. Training

According to the research of the European Judicial Training Network on Judicial Communication and Professional Ethics, as well as the ‘Justice, Society and the Media Report’ by the European Network of Councils for the Judiciary, in most cases there is a lack of training of press judges.<sup>192</sup>

Despite the fact that the survey did not ask whether the press judges received specific training, the *Supreme Court of Estonia* and the *Supreme Administrative Court of Finland* specified that their press divisions provide media and communication training to other courts. In Estonia, this training is organised annually.

The National Office for the Judiciary in Hungary pays special attention to the training of press secretaries and spokespersons and organises a centralised training programme for them twice a year. These programmes are mainly practice-oriented workshops and in 2017 are focused on ‘clear writing and the use of plain language’. The training of press secretaries is mainly dedicated to improving writing skills, while the training of spokespersons is focused on the practice of speaking. For example, in the latest training programme, spokespersons had the opportunity to practise giving clear, brief statements in front of the camera, while the main topic for the press secretaries was the preliminary and follow up-communication of cases that attract greater attention from society.

## C. Recommendations and best practices

### Establish a press division and designate a judge spokesperson

If courts wish to increase transparency and the understanding of judgments and ensure that the public is correctly informed, while still maintaining the impartiality of the judges, they need to **establish a press division with a communication advisor and designate one or more specifically trained spokespersons**. The communication advisor should be a professional with a degree in communication, whose duties include initial contact with the press regarding matters such as answering questions about hearing dates, the use of cameras in courtrooms and handling internal communication and public information.

The *Supreme Court of the Czech Republic* emphasised that it considered the existence of a separate press division as an important strength of the Court’s communication strategy, while some of the countries still lacking a press department or spokesperson expressed the need to strengthen their communication strategy.

**It is important to not overload judges with extensive non-judicial tasks.** The Committee of Ministers of the Council of Europe have already indicated that, in order to prevent overload and reduce the workload in courts, Member States should gradually reduce the non-judicial tasks

<sup>192</sup> Louise Chrétien, Arthur de Peretti-Schlomoff and Yoann Viguier, Judicial Communication and Professional Ethics. Renewing the Relationship between the Judiciary and the Public’ (Themis Competition 2015 – Semi-Final D – Team France 4, European Judicial Training Network (EJTN) 2015) 16 <[www.ejtn.eu/Documents/THEMIS%202015/Written\\_Paper\\_France4.pdf](http://www.ejtn.eu/Documents/THEMIS%202015/Written_Paper_France4.pdf)> accessed 12 October 2016

European Network of Councils for the Judiciary (ENCJ), ‘Justice, Society and the Media. Report 2011-2012’ (ENCJ, 2012) 4 <[www.encj.eu/images/stories/pdf/GA/Dublin/encj\\_report\\_justice\\_society\\_media\\_def.pdf](http://www.encj.eu/images/stories/pdf/GA/Dublin/encj_report_justice_society_media_def.pdf)> accessed 12 October 2016

entrusted to judges by assigning such tasks to other persons or bodies.<sup>193</sup> **Therefore, the press division of the Supreme Court needs at least one communication advisor whose principal task is to advise, inform, assist and train the judges who speak publicly on a given topic.** The added advantage of having non-judges working in the press division of the Supreme Court is that they have specialised knowledge in the field of communication. The people working in the press division should also have a deep understanding of the work of the Supreme Court and the judicial system.

If the Supreme Court decides to comment on a certain case or judgment on television, radio or in an interview, this should be undertaken by a designated spokesperson who is not the judge in that particular case. This will safeguard the impartiality of the judges who are involved in the case.

The spokesperson may be a judge or a non-judge. The European Judicial Training Network, however, underlines that **one of the main goals of judicial communication is to bring the members of the judiciary closer to the media and the people they serve.** Therefore, it is important that **at least some of the communications are made directly by judges.**<sup>194</sup> For this reason, a press judge should be appointed as a spokesperson on behalf of the Supreme Court.

### **Implement the European Network of Councils for the Judiciary's recommendations with regard to spokespersons on behalf of the judiciary**

The **European Network of Councils for the Judiciary** has formulated concrete and practical **recommendations with regard to judicial spokespersons.**

Based on the survey results, we can conclude that, with regard to **media training** especially, existing practice within the Supreme Courts **can be further improved** to comply with the recommendations of the European Network of Councils for the Judiciary.

Two good examples of media training can be found in England and Wales, and the Netherlands.

In England and Wales, the press judges take an annual refresher course. The training is given by a media consultant and includes a day in a national television and radio studio. The judges are given scenarios on which they are interviewed and the resulting interview is played back and analysed.<sup>195</sup>

The Judicial Executive Board also approved a 'Media Handbook' for judges in February 2012. This document contains information about the role of the Judicial Press Office and guidelines on how to deal with various issues such as misreporting, audio and visual recording in courts, and if and how judges are allowed to give interviews.<sup>196</sup>

The Council for the Judiciary of the Netherlands coordinates special training courses for press judges, including on-camera training. On average, sixteen judges per year receive media training. A challenge in this regard is that many press judges change jobs within the judiciary every two or three years and may therefore cease to serve as press judges. However, the advantage of this high turnover is that an increasing number of judges are becoming familiar with the effects of their work on the media.<sup>197</sup>

<sup>193</sup> Council of Europe, Recommendation (86)12 (1986) of the Committee of Ministers to Members States concerning measures to prevent and reduce the excessive workloads in the courts <[www.justice.gov.sk/Dokumenty/OSP/RECOMMENDATION%20No.%20R%20\(86\)%2012.pdf](http://www.justice.gov.sk/Dokumenty/OSP/RECOMMENDATION%20No.%20R%20(86)%2012.pdf)> accessed 17 November 2016

<sup>194</sup> Louise Chrétien, Arthur de Peretti-Schlomoff and Yoann Viguière, 'Judicial Communication and Professional Ethics. Renewing the Relationship between the Judiciary and the Public' (Themis Competition 2015 – Semi-Final D – Team France 4, European Judicial Training Network (EJTN) 2015) 17-18 <[www.ejtn.eu/Documents/THEMIS%202015/Written\\_Paper\\_France4.pdf](http://www.ejtn.eu/Documents/THEMIS%202015/Written_Paper_France4.pdf)> accessed 12 October 2016

<sup>195</sup> European Network of Councils for the Judiciary (ENCJ), 'Justice, Society and the Media. Report 2011-2012' (ENCJ, 2012) 4 <[www.encj.eu/images/stories/pdf/GA/Dublin/encj\\_report\\_justice\\_society\\_media\\_def.pdf](http://www.encj.eu/images/stories/pdf/GA/Dublin/encj_report_justice_society_media_def.pdf)> accessed 12 October 2016

<sup>196</sup> Judicial Executive Board, 'Media Guidance for the Judiciary' (Judicial Executive Board 2012) <[www.whatdotheyknow.com/request/125047/response/307849/attach/8/mediaguide2012%201.pdf](http://www.whatdotheyknow.com/request/125047/response/307849/attach/8/mediaguide2012%201.pdf)> accessed 18 November 2016

<sup>197</sup> 'The Judiciary and the Media in the Netherlands' 3 <[www.rechtspraak.nl/SiteCollectionDocuments/The-Judiciary-and-the-Media-in-the-Netherlands.pdf](http://www.rechtspraak.nl/SiteCollectionDocuments/The-Judiciary-and-the-Media-in-the-Netherlands.pdf)> accessed 17 November 2016

## V 3. COMMUNICATION METHODS (INCLUDING USE OF SOCIAL MEDIA) AND INTERNAL COORDINATION OF COMMUNICATION STRATEGIES

### A. General observations

There are **diverse ways for the judiciary to communicate with society** given modern technologies. Courts may use the more traditional ways of communicating by issuing press releases or by providing information on their website. Another option is to use social media, which is still a relatively new phenomenon. We will therefore go into a little more detail regarding this subject. With regard to the judiciary, social media gives rise to questions with regard to its use by the judiciary itself, by the public in courtrooms, and by judges in their personal life.

#### 1. The more 'traditional' approach: press releases and websites

The Consultative Council of European Judges states that *'the development of democracy in European states means that the citizens should receive appropriate information on the organization of public authorities (...). Furthermore, it is just as important for citizens to know how judicial institutions function'*.<sup>198</sup> Moreover, the European Commission highlights that the foundation for access to justice is the information provided to citizens and businesses about general aspects of the justice system.<sup>199</sup>

The survey results show that **press releases are a widely used method of communication**. The Court of Justice of the European Union uses press releases as the main way to communicate concerning their judgments. William Valasidis, the Head of Communications of the Court of Justice of the European Union, has emphasised the importance of a press release being approved by the judges. While the press release might not replace actual judgments, it is still an official document. Gaining the judges' approval, however, can be a struggle, since they have to be convinced of the simplified language that is used in a press release.<sup>200</sup>

Another way to disseminate information are the Courts' **websites**.<sup>201</sup> The *Supreme Administrative Court of Lithuania* and the *Curia of Hungary* expressly indicated that they consider their up-to-date websites as an important strength in their communication strategy.

### 2. Social media

#### 1. Social media use by the judiciary

According to the European Network of Councils for the Judiciary, **social media offers the judiciary an opportunity to interact with the public in new ways**, which promotes transparency, interactivity and collaboration. Complex and difficult legal arguments and decisions cannot be captured in a

<sup>198</sup> Consultative Council of European Judges (CCJE), Opinion no 7 (2005) to the attention of the Committee of Ministers of the Council of Europe on justice and society <[https://wcd.coe.int/ViewDoc.jsp?p=&Ref=CCJE\(2005\)OP7&Sector=secDGHL&Language=lanEnglish&Ver=original&BackColorInternet=FEF2E0&BackColorIntranet=FEF2E0&BackColorLogged=c3c3c3&direct=true](https://wcd.coe.int/ViewDoc.jsp?p=&Ref=CCJE(2005)OP7&Sector=secDGHL&Language=lanEnglish&Ver=original&BackColorInternet=FEF2E0&BackColorIntranet=FEF2E0&BackColorLogged=c3c3c3&direct=true)> accessed 2 January 2017

<sup>199</sup> European Commission, *Communication from the Commission to the European Parliament, the Council, the European Central Bank, the European Economic and Social Committee and the Committee of the Regions - The 2016 EU Justice Scoreboard* (Publications Office of the European Union 2016) 17 <[http://ec.europa.eu/justice/effective-justice/files/justice\\_scoreboard\\_2016\\_en.pdf](http://ec.europa.eu/justice/effective-justice/files/justice_scoreboard_2016_en.pdf)> accessed 17 November 2016

<sup>200</sup> William Valasidis, 'Strengthening public relations at courts: new communication tools and trends' (13 October 2016, Fourth Annual International Conference on Courts and Communication) <[www.youtube.com/watch?v=YHBRT73qQu4&feature=youtu.be](http://www.youtube.com/watch?v=YHBRT73qQu4&feature=youtu.be)> accessed 1 February 2017

<sup>201</sup> Consultative Council of European Judges (CCJE), Opinion no 7 (2005) to the attention of the Committee of Ministers of the Council of Europe on justice and society <[https://wcd.coe.int/ViewDoc.jsp?p=&Ref=CCJE\(2005\)OP7&Sector=secDGHL&Language=lanEnglish&Ver=original&BackColorInternet=FEF2E0&BackColorIntranet=FEF2E0&BackColorLogged=c3c3c3&direct=true](https://wcd.coe.int/ViewDoc.jsp?p=&Ref=CCJE(2005)OP7&Sector=secDGHL&Language=lanEnglish&Ver=original&BackColorInternet=FEF2E0&BackColorIntranet=FEF2E0&BackColorLogged=c3c3c3&direct=true)> accessed 2 January 2017

tweet or Facebook post, which are usually quite short.<sup>202</sup> As mentioned in the introduction, the court therefore has to find a balance between communicating their message accurately and communicating in a way that their message will actually reach the target audience. Through a link in these social media posts, for example, people can be directed to the website of the court where the issues are discussed more extensively.

After long discussions about social media presence, the Court of Justice of the European Union started to use Twitter to reinforce its external communication policy. They not only tweet about judgments, but also about the progress of a case (e.g. when an important case is brought before the Court).<sup>203</sup>

## 2. Social media use in courtrooms

The growth of social media also raises questions about the use of it by visitors (such as the press) to the courtroom. Indeed, social media is not only a new means to publish judgments and information, it also enables journalists and citizens to tweet or post directly from the court. Social media thus impacts on the activities of judges and courts in an electronically connected community, where the user of the system can, and will, respond directly to how justice is being administered.<sup>204</sup> By doing so, they could disrupt proceedings. Although this is an interesting topic, it falls outside the scope of this research project. The survey did not ask about the use of social media during hearings of the Supreme Court, since it focused on communication by the judiciary rather than its response to certain types of communication by the public.

## 3. Social media use by judges

Use of social media by individual judges and other court staff in their private lives concerning private matters cannot be forbidden, given the freedom of speech.<sup>205</sup> Judges should, however, take the importance of their role into account and respect the general ethical rules imposed on their office by the legislator and the disciplinary authorities.

## B. Survey results

### 1. The more 'traditional' approach: press releases and websites

The survey asked whether public statements or press releases were issued by the Supreme Court and in which circumstances, as well as who was responsible for the drafting. Furthermore, the survey also asked what other communication methods the Supreme Court used.

The *Supreme Court of the Netherlands* pointed out that, although it is a great challenge to explain the often complex ruling of the Court in a way that the public understands, its press releases can be considered one of its strengths with regard to communication strategy.

<sup>202</sup> Pamela D. Schulz and Andrew J. Cannon, 'Trial by Tweet? Findings on Facebook? Social Media Innovation or Degradation? The Future and Challenge of Change for Courts' (2013) *International Journal for Court Administration*, 1, 4 <<http://doi.org/10.18352/ijca.5>> accessed 12 October 2016

<sup>203</sup> William Valasidis, 'Strengthening public relations at courts: new communication tools and trends' (13 October 2016, Fourth Annual International Conference on Courts and Communication) <[www.youtube.com/watch?v=YHBRT73qQu4&feature=youtu.be](http://www.youtube.com/watch?v=YHBRT73qQu4&feature=youtu.be)> accessed 1 February 2017

<sup>204</sup> Judith Gibson, 'Social Media and the Electronic 'New World' of Judges' (2016) *International Journal for Court Administration*, 1, 2 <<http://doi.org/10.18352/ijca.199>> accessed 12 October 2016

<sup>205</sup> European Network of Councils for the Judiciary (ENCJ), 'Justice, Society and the Media. Report 2011-2012' (ENCJ, 2012) 9 <[www.encj.eu/images/stories/pdf/GA/Dublin/encj\\_report\\_justice\\_society\\_media\\_def.pdf](http://www.encj.eu/images/stories/pdf/GA/Dublin/encj_report_justice_society_media_def.pdf)> accessed 12 October 2016



## a. Press releases

### a.1 Preparation of press releases

Supreme Court	Press releases
Austria	X
Austria (Administrative)	X
Belgium	X
Cyprus	X
Czech Republic	X
Estonia	X
Finland	X
Germany	X
Hungary	X
Ireland	X
Italy	X
Latvia	X
Lithuania	X
Lithuania (Administrative)	X
Luxembourg	
Netherlands	X
Poland	X
Poland (Administrative)	X
Portugal	X
Portugal (Administrative)	X
Romania	X
Slovakia	X
Slovenia	X
Spain	X
Sweden	X
Sweden (Administrative)	X
<b>Total (26)</b>	<b>25</b>

The survey results show that, with the exception of the Luxembourg Supreme Court, all Supreme Courts issue press releases.

These press releases cover a **broad variety of subjects** (e.g. information about the judgments, but also about events organised by the Supreme Court, international visits, selection procedures). Often they also aim to actively explain court decisions to the public and the media in order to improve understanding and prevent misunderstanding. This, however, is not always the case: the *Supreme Court of Italy* indicated that its press releases generally do not relate to a case, but only to facts related to the activity of the Court or to certain events.



Supreme Court	Press division responsible for draft press release	Coordination between press division and judges
Austria		
Austria (Administrative)	X	X
Belgium	X	X
Cyprus	Not applicable	Not applicable
Czech Republic	X	X
Estonia	X	X
Finland	X	X
Germany		
Hungary	X	X
Ireland		
Italy	Not applicable	Not applicable
Latvia	X	X
Lithuania	Not applicable	Not applicable
Lithuania (Administrative)	Not applicable	Not applicable
Luxembourg	Not applicable	Not applicable
Netherlands	X	X
Poland	X	
Poland (Administrative)	X	X
Portugal	X	X
Portugal (Administrative)	Not applicable	Not applicable
Romania	X	X
Slovakia	X	X
Slovenia	X	X
Spain		
Sweden	Not applicable	Not applicable
Sweden (Administrative)	Not applicable	Not applicable
<b>Total (26)</b>	<b>14</b>	<b>13</b>

Where a press division is established, the preparation of these press releases is usually its main task (CZ, EE, NL, FI, PL, PL(A), HU, SK, AT(A), SL, LV, RO, BE). This is, however, not always the case. At the *Federal Administrative Court of Germany* the judge-rapporteur prepares the text of the press release. This press release is modified by the chamber at the end of the deliberation and before public pronouncement of the ruling. At the *Supreme Courts of Ireland, Spain and Austria*, the judges themselves prepare the information to be released when considering a press release related to a specific case.

In the vast majority of countries, the press division prepares the press release in coordination with the judges who issued the judgment in question or with the president of the department or the Supreme Court (CZ, EE, NL, FI, PL(A), HU, SK, AT(A), SL, LV, PT, RO, BE).

### **a.2 Press release related to a specific case**

#### **Selection of cases for which a press release is issued**

Given the vast number of cases treated by most Supreme Courts, most Supreme Courts decide to only publish press releases for the most important judgments, that is, cases that raise important questions of law and cases that have attracted media attention or public interest. All Supreme Courts that responded to the survey reported that they make a selection of cases, with the exception of the Supreme Court of the United Kingdom.

Unlike the other courts, the *Supreme Court of the United Kingdom* drafts a press release for every decision rendered. It issues about 70 to 80 judgments each year and all cases are considered



‘exceptional’, raising important questions of law. The Supreme Court’s press team, consisting of two people, is involved in the delivery of every judgment and its primary task is the production of the press summary that accompanies every judgment. Therefore, no selection has to be made.<sup>206</sup>

### **Persons responsible for the selection**

**Making a selection involves judgment.** At the *Supreme Administrative Court of Finland*, the *Federal Administrative Court of Germany* and the *Supreme Courts of Estonia, Ireland, Spain, Slovenia and Austria*, the persons responsible for the selection are, as a rule, the **judges who rendered the decision**.

In other countries, **the press division and/or the press judges** are responsible for the selection of cases **in coordination with the judges** of the respective chamber or with the president of the Court or the department (CZ, EE, NL, LU, PL(A), HU, SK, AT(A), LV, PT). In Lithuania, there is no press division, but the press officer makes the selection in coordination with the judges of the respective chamber, or with the president of the Court or the department. At the *Supreme Court of Poland*, the press division seems to be solely responsible for the selection.

When the press release is related to a specific case, the press secretary of the communication division of the *Supreme Court of Latvia* coordinates with the judge-rapporteur or with the chair of the departments. There is also good cooperation with the administrative department, where the judges or their assistants inform the press secretary about the cases in which interesting and important legal questions will be resolved in the upcoming week. They also write a brief information note about this legal question. The Supreme Court of Lithuania indicated that they attempted to introduce a similar system of cooperation by regularly asking the judge and assistants to inform the press officer about the most important cases. However, the main problem they face is that the judges and judicial assistants are not inclined to provide this information and it is very difficult to find ways to motivate them to do this.

### **Selection criteria**

Although the precise wording of the selection criteria varies, **most are based on the importance of the judgment**; they are either cases that raise important questions of law or cases that attract media attention or public interest.

For example, the main criteria used by the *Supreme Court of the Czech Republic* are the social importance of the decision and the importance of a reversal in case law.

It is interesting to note that the Court Information Division of the *Supreme Administrative Court of Poland* not only publishes press releases in cases of major importance to the operation of the administrative courts or in cases of high interest to the media and the public. It also issues press releases on judicial decisions of the Constitutional Tribunal or the European Court of Justice if they have been issued on the initiative of the Supreme Administrative Court, or if they are significant for adjudication in cases falling within the competence of the administrative courts.

#### **b. Website**

The survey also asked which methods (other than press releases and social media) the Supreme Courts used to communicate with the media and society.

**The survey results show that Supreme Courts often use their websites to disseminate information.**

**All Supreme Courts that participated in the survey have a website.** The information provided through the websites varies. It may concern general information about the Court, information about events that the Court organises, judgments issued by the Court, among other kinds of information.<sup>207</sup>

In Slovenia, the public can post questions on the Supreme Court’s website. On the website of the *Supreme Court of Lithuania*, people can comment on the press releases.

The *Supreme Court of Spain* has a transparency web portal where every citizen may consult several data. These data include the structure of the Supreme Court, the professional profiles of all the judges

<sup>206</sup> Leslie J. Moran ‘Managing the News Image of the Judiciary: The Role of Judicial Press Officers’ (2014) *Oñati Socio-Legal Series*, 799, 809-810 <<http://opo.iisj.net/index.php/osls/article/view/320/473>> accessed 17 November 2016

<sup>207</sup> On the publication of the length of proceedings, please see part IV, 3.

of the Court and of the consultants of the technical cabinet, economic and financial figures such as the official vehicles at the judges' disposal, the judges' salaries, how to visit the Courts' Hall of Justice, open door activities, the most recent case law of the Court etc.

Some Supreme Courts also publish guidelines on their websites.

The *Supreme Court of the Czech Republic*, for example, publishes practical guides on its website on how to use the case law database, and provides forms that can be used to request information or complain about the length of proceedings or the behaviour of Court personnel. The *Supreme Court of Romania* has a guide for parties in civil and penal matters.

The *Curia of Hungary* has made short, five-minute videos on the handling of case files, personal attendance at court hearings and other topics relevant to parties involved in lawsuits, journalists or anyone interested in the activities of the supreme judicial forum. These videos are available on the Curia's website and contain easy-to-understand information in plain language suitable for laypersons. The communication advisors and press judges of the *Supreme Court of the Netherlands* have drafted press guidelines, which are available on the website of the Supreme Court and offer practical information on the media and the judiciary.<sup>208</sup> This information includes the circumstances in which audio and/or visual recording is allowed, which persons may be recorded and whether journalists may send text messages during a hearing. The press guidelines thus clarify what the press should expect of the staff of the courts and regulates a number of practical matters.

## 2. Social media

### a. Social media use by the judiciary

**Some Supreme Courts have started to use social media.** A minority of Supreme Courts have a Twitter account (CZ, NL, LT(A)), a LinkedIn account (CZ, SK), a YouTube channel (EE) and/or a Facebook account (EE, NL, PL, LT(A)).

In addition, Lithuania has centralised YouTube and Facebook accounts through which all Lithuanian courts can communicate. These accounts are administered by the National Court Administration of Lithuania. The courts submit information to the latter and it then decides what to post. There is ongoing discussion in Lithuania on what is better: a centralised social media presence for all courts or separate accounts for the different courts. Centralised communication (i.e. communication for the court system as a whole) usually leads to one Court or a separate entity being responsible for communication. In this situation, courts usually speak in one voice and style. Decentralisation means that every court communicates on its own. This may lead to different styles, models and methods of communication and even contradictions in the news, values, etc. communicated. This could in turn reduce the effectiveness and quality of communication. Nevertheless, an overly centralised system may be unable to grasp the specifics of certain courts. This is why Lithuania has opted for a mixed system. Basically, communication is centralised in the National Court Administration of Lithuania, but the courts undertake some communications themselves, if necessary, with the help or advice of the National Court Administration of Lithuania.

Most Supreme Courts have no social media presence. The *Supreme Court of Ireland* explained that it is not active on social media because the advantages do not outweigh the risks of negative, inaccurate, incomplete or insulting information, disrespect or excessive criticism.

The *Supreme Administrative Court of Poland* noted that it had contemplated using social media, but decided against it, as, in the Court's opinion, while social media is an integral part of everyday life, it should be used wisely, with an adequate role already being fulfilled by the Court's website.

Although the *Supreme Court of Portugal* does not use social media, its press division does monitor the different social media in order to identify opinion trends related to the Court's activity.

One of the key features of social media is interactivity.<sup>209</sup> However, the survey results show that

<sup>208</sup> 'Press Guidelines 2013' <[www.rechtspraak.nl/SiteCollectionDocuments/Press-Guidelines.pdf](http://www.rechtspraak.nl/SiteCollectionDocuments/Press-Guidelines.pdf)> accessed 18 November 2016

<sup>209</sup> Pamela D. Schulz and Andrew J. Cannon, 'Trial by Tweet? Findings on Facebook? Social Media Innovation or Degradation? The Future and Challenge of Change for Courts' (2013) *International Journal for Court Administration*, 1, 2 and 4 <<http://doi.org/10.18352/ijca.5>> accessed 12 October 2016

European Network of Councils for the Judiciary (ENCJ), 'Justice, Society and the Media. Report 2011-2012' (ENCJ, 2012) 9 <[www.encj.eu/images/stories/pdf/GA/Dublin/encj\\_report\\_justice\\_society\\_media\\_def.pdf](http://www.encj.eu/images/stories/pdf/GA/Dublin/encj_report_justice_society_media_def.pdf)> accessed 12 October 2016



although some Supreme Courts use social media, the majority of them do not respond to comments made by other users. One could therefore question the added value of the use of social media. Further research should be done to examine whether or not these social media channels reach beyond the audience of the court's website. Only with this information can a reasoned conclusion with regard to the use of social media by courts be made.

### **b. Social media use by judges**

As emphasised by the *Supreme Courts of Italy and Poland*, all judges need to take into account the **general ethical rules** applicable to them when using social media, whether it be for court-related matters or for private matters.

In addition, **specific regulations** are in force in Estonia, Slovakia, Lithuania and Latvia to regulate the use of social media by individual judges who aim to comment on court-related matters.

The *Supreme Court of Slovakia* has an internal directive on informing the public on judicial decisions, which is applicable when a judge expresses their view on rulings of the Court via a private profile. This directive requires that the judge informs the management of the Court on their intention to make rulings public.

The *Lithuanian* courts have published a handbook, 'Manager of Judicial Communications', which is intended for judges and court employees. This handbook makes recommendations on how judges and other court staff should communicate through private channels.

The *Estonian Judges' Code of Ethics* explicitly regulates this topic. It states that in relations with the public and the press, the judge shall avoid expressing their personal views on cases under scrutiny and shall not expose their family life to the press.

### **3. Other communication methods used by the Supreme Courts**

The survey also asked the Supreme Courts which **other communication methods** they used.

Some Supreme Courts give **interviews** to the press (e.g. CZ, FI, PL, LT, HU, PT). In the Czech Republic, for example, the president or vice-president of the Supreme Court appears in the media fairly often. They comment, even generally, on the legislation, on the situation in the judiciary, etc. In Lithuania, the public can speak directly to the president of the Supreme Administrative Court on the phone or via a Skype meeting.

Another communication method is the **annual report** (e.g. NL, IT, PL, HU, LT, LT(A) and **press conferences** (e.g. DE, HU, LT, SL, LV).

In 2016, the *Supreme Court of Slovakia* started publishing the *DE IURE* journal, which aims to communicate internally as well as externally about the Court's activities.

## **C. Recommendations and best practices**

**Issue press releases related to important cases, activities, events, etc.**

The practice of providing **press releases** to the media must be encouraged. Dialogue with the public and correctly informing the public are of crucial importance to improving the knowledge of citizens about the law and increasing their confidence in the judiciary. The judiciary should therefore **actively reach out to the media and the public**.

**Make the press division responsible for the preparation of press releases.  
If the press release relates to a case, the press division should select  
and prepare the press release in close cooperation with the judges who  
rendered the decision.**

The press division is responsible for the preparation of press releases about the judgments rendered by the Supreme Court, about events organised by the Supreme Court, international visits, selection procedures, etc.

Most Supreme Courts issue many judgments each year. For example, the *Belgian Supreme Court* issued 3081 judgments in 2015.<sup>210</sup> A selection of judgments for which press releases will be issued is therefore necessary. Since the judges who rendered the judgment are in the best position to decide whether a judgment is of particular importance to society or not, they should be involved in the selection of judgments for which a press release will be issued.

When the press release is related to a particular case, the press division should draft the press release in close cooperation with the judges involved to safeguard the correctness of the information. The judges should receive a draft of the press release and give their consent before it is published.

**Host a website which contains general information about the court as well as more practical information and press releases**

Every Supreme Court needs a **website**. This website should also be **part of a national portal website** that refers interested parties to the separate websites of the individual courts. In this way, every court administers its own website and can decide what to publish and in which form, while interested parties can still find all the information by going to the portal website that then refers them to the website of the court they are looking for.

This website should not only contain **general information on the role and tasks of the Supreme Court, but also press releases and practical information about visiting the Court, house rules, upcoming events, and so on**. In order to reach even more people through its website, the Supreme Court should make the most essential information (such as the role and tasks of the Supreme Court, the main procedural rules, as well as practical information about visiting the Court) also available in English.

For reasons of transparency, the allocation rules and the agenda of the Supreme Court must be made publicly available on the website of the Court. Also for reasons of transparency and in order to enable people to assess whether they find a procedure before the Supreme Court effective, information regarding the length of the proceedings (see also chapter [X]) and information regarding the procedure costs must be available.

**To make justice more accessible, the creation of practical guidelines is especially encouraged.** Parties are often represented by an attorney in procedures before the Supreme Court. Not only these parties but also others could benefit from these guidelines. They could provide information on how to behave when visiting the Court, on how to access and use the case law database, or on rules relevant to the press, for example.

The *Supreme Court of Slovakia*, for example, indicated that its website could be further improved by providing answers to frequently asked questions, which could be considered as a sort of guideline.

Some Supreme Courts already have very elaborate websites.

The website of the *Supreme Administrative Court of Poland*, for example, includes the judgments and resolutions of the Supreme Court, preliminary references submitted by Polish administrative courts (linked to preliminary rulings of the Court of Justice of the EU), a schedule of conferences, seminars, meetings and other events in which the president, vice-presidents and judges of the Court participate, Court statistics, the annual report on the activities of administrative courts, information on the costs of court proceedings and interviews given by the judges of the Court.

The *Supreme Court of the Netherlands* also has a very active website, which is a part of the judiciary's general website. The Supreme Court website includes general information about the work of the Court,

<sup>210</sup> Hof van Cassatie, 'Hof van Cassatie van België. Jaarverslag 2015' (Hof van Cassatie 2015) 162 <[http://justitie.belgium.be/sites/default/files/downloads/jaarverslag\\_van\\_het\\_hof\\_van\\_cassatie\\_van\\_belgie\\_2015.pdf](http://justitie.belgium.be/sites/default/files/downloads/jaarverslag_van_het_hof_van_cassatie_van_belgie_2015.pdf)> accessed 17 November 2016

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answers to ‘Frequently Asked Questions’, and summaries of the most important cases. Moreover, the Supreme Court also provides some practical information for visitors, as well as guidelines for the press. The website even has an English section that describes the role and tasks of the Supreme Court. This section also contains English summaries of important cases adjudicated by the Supreme Court. The *Curia of Hungary* recently renewed its website, including very elaborate English-language content with up-to-date press releases, summaries of important decisions, reports on the Curia’s uniformity activities and information on the leaders, structure and functioning of the Court. Moreover, extracts from the Curia’s yearbooks and summaries of articles published in a special online law journal, *Forum Sententiarum Curiae*, have also been made available in English for a broader international audience.

### **If social media are used, develop a strategy and policy**

**Further research should be done regarding the potential audience that might be reached through the use of social media** by courts, in order to determine whether the use of social media indeed contributes to better communication by the judiciary with society.

Social media may be used by the Supreme Court itself. **If the Supreme Court decides to use social media, it is important to develop a strategy and policy**, including target groups and goals for the use of each form of social media. This strategy should also clarify who might be responsible for the administration of these social media accounts, if and how the Court will respond to negative comments, whether the Court will respond to questions asked on social media and other potential issues.

The European Network of Councils for the Judiciary has emphasised that all posts must be meaningful and respectful, providing comments that inform, educate and engage citizens. Simply reposting press releases on social media is not recommended.<sup>211</sup>

### **Do not use private channels of communication for Court-related activities**

**Judges or other legal staff should not use private channels of communication** (e.g. Facebook or Twitter) **on topics related to the Court’s activities**, to prevent them being perceived as partial. They are, however, allowed to use social media regarding private matters, taking into account the general ethical codes.

## **4. INFORMATION PROVIDED TO THE PUBLIC**

### **A. General observations**

The survey asked the Supreme Courts specific questions about what kind of information they provided to the public. These questions related to:

- publication of the allocation rules;<sup>212</sup>
- publication of the agenda of the Supreme Court;
- communication of the results of disciplinary hearings of judges to the public;
- cases in which the Court chooses not to answer questions from the media.

<sup>211</sup> European Network of Councils for the Judiciary (ENCJ), ‘Justice, Society and the Media. Report 2011-2012’ (ENCJ, 2012) 11 <[www.encj.eu/images/stories/pdf/GA/Dublin/encj\\_report\\_justice\\_society\\_media\\_def.pdf](http://www.encj.eu/images/stories/pdf/GA/Dublin/encj_report_justice_society_media_def.pdf)> accessed 12 October 2016

<sup>212</sup> Please also see part IV, 2.



## B. Survey results

Supreme Court	Publication of allocation rules	Publication of agenda	Communication disciplinary decisions
Austria	X	X	X
Austria (Administrative)	X	X	
Belgium	X	X	X
Cyprus			
Czech Republic	X	X	X
Estonia	X	X	X
Finland	Not applicable	X	No information
Germany	X	X	X
Hungary	X		
Ireland		X	No information
Italy	X	X	X
Latvia	X	X	X
Lithuania	X	X	X
Lithuania (Administrative)	X	X	X
Luxembourg			
Netherlands			X
Poland	X	X	X
Poland (Administrative)	X	X	
Portugal	X	X	X
Portugal (Administrative)	X		X
Romania	X	No information	X
Slovakia	X	X	No information
Slovenia	X	X	X
Spain	X	X	X
Sweden			X
Sweden (Administrative)			X
<b>Total (26)</b>	<b>19</b>	<b>18</b>	<b>18</b>

### 1. Publication of the allocation rules

The majority of the Supreme Courts make the allocation rules available to the public (CZ, EE, DE, IT, PL, PL(A), HU, LT, LT(A), SK, ES, AT(A), SL, AT, LV, PT, PT(A), RO, BE), in most cases via the Supreme Court's website. However, the *Supreme Courts of the Netherlands, Ireland, Luxembourg, Sweden* and *Cyprus* and the *Supreme Administrative Court of Sweden* do not publish their allocation rules.

### 2. Publication of the agenda of the Supreme Court

Most Supreme Courts publish their agenda online (CZ, EE, FI, DE, IE, IT, PL, PL(A), LT, LT(A), SK, ES, AT(A), SL, AT, LV, PT, BE). Only a minority of Supreme Courts do not make their agenda automatically available to the public (NL, LU, HU, SE, SE(A), CY, PT(A)).

Although the *Supreme Court of the Netherlands* and the *Curia of Hungary* do not publish their agendas, they do inform the media if they believe that a certain case is of interest to media. The *Curia of Hungary* displays the list of hearings at the courtrooms and the press secretariat maintains regular contact with national news agencies. On the last working day of each week, it notifies them of court hearings scheduled for the following week in which politicians or public figures are involved, or where it is assumed that a case is otherwise likely to raise public interest. The *Supreme Court of the Netherlands* publishes a list of cases pending that are of any interest to the media.



### **3. Communication of the results of disciplinary hearings of judges to the public**

The survey results reveal that in most countries disciplinary decisions are made publicly available, usually in the case law database (CZ, EE, NL, DE, IT, PL, LT, LT(A), ES, SE, SE(A), AT(A), SL, AT, LV, PT, PT(A), RO<sup>213</sup>, BE).

In *Luxembourg*, *Hungary* and *Cyprus* the results of disciplinary hearings of judges are not communicated to the public.

The *Supreme Court of Estonia* further explained that the decisions of the disciplinary committee are removed from the website of the Supreme Court once the disciplinary sanction has expired (one year after the entry into force of the decision, unless the judge has committed a new disciplinary offence).

### **4. Cases in which the court chooses not to answer questions by the media**

The survey results show that **most Supreme Courts attempt to answer as many questions from the media as possible**. Often there are limitations concerning personal or confidential data, or criminal cases concerning juveniles, etc. The *Supreme Administrative Court of Poland* expressly indicated that it attempts to find a balance between privacy of judicial enquiries, freedom of expression and the right to be informed. As a general rule, it therefore answers all questions. When this is not possible because of the requirements for privacy, the Court informs the media accordingly.

The *Federal Administrative Court of Germany* clarified that the decision to not provide certain information is not made at a judicial level, but by the Court's administration. Such an administrative decision can be challenged, like any other, before the competent local administrative court.

## **C. Recommendations and best practices**

### **Make the case allocation rules publicly available**

Everyone has the right to a pre-established and reviewable predetermination of which judge will hear their case.<sup>214</sup> This implies that case allocation processes are transparent.

Nevertheless, the survey results show that the case allocation rules are not automatically available to the public in every country (e.g. on the website of the Supreme Court or because they are stipulated in national legislation).

### **Make the agenda of the hearings publicly available**

The media play an important role in informing society about the judiciary. To enable the media and the public to be present at all hearings they believe to be relevant to society, they need to know the agenda of the Court.

### **Communicate the results of disciplinary hearings to the public**

Public confidence in judges not only requires that they can carry out their tasks independently, but also that they will be held responsible in the case of ethical misconduct. This public confidence is essential to upholding the rule of law. Once the investigation is concluded and formal charges have

<sup>213</sup> Only the second appeal, which is judged by the Supreme Court.

<sup>214</sup> For more information regarding this topic, please see part IV, 2.



been filed, the disciplinary proceedings should be public to safeguard the confidence of citizens in their judges.<sup>215</sup>

This public character also serves a second purpose: it is a procedural safeguard that allows public monitoring of the disciplinary proceedings, which also helps to maintain judicial independence.<sup>216</sup>

Robert H. Tembeckjian describes this twofold advantage as follows: *'Citizens have a right to know when a judge's integrity has been seriously questioned, and opening the process to public scrutiny would help to ensure that the process is and appears to be honest, which is a special concern whenever a profession polices itself'*.<sup>217</sup>

We therefore recommend that, in addition to public proceedings, the disciplinary decisions against members of the judiciary are made publicly available. Of course, just as with all other judicial decisions, these disciplinary decisions can be anonymised before they are published in order to strike a balance between public confidence and the judge's reputational interest. However, in this regard, the *Supreme Administrative Court of Lithuania* indicated that the disciplinary decisions of the Court of Honour of Judges are not anonymised because it is understood that society has the right to know about judges (who are considered more or less public figures) and their misconduct.

## 5. AUDIO AND VIDEO RECORDING IN COURTROOMS

### A. General observations

**According to Article 6 ECHR, judicial proceedings must be conducted in public.** This principle of public proceedings implies that **citizens and the media are generally allowed in the courtroom.** While allowing audio or video recordings of the hearing may have advantages in terms of raising public awareness of how judicial proceedings are conducted, there is also a risk that these kinds of **recordings may disturb the proceedings and alter the behaviour of those involved in the trial.** Furthermore, the right to privacy and the presumption of innocence should also be considered. Media reports may sometimes cause irremediable harm to the reputation of those involved in the trial. The CCJE also warns about the quest of the media for sensational stories, as well as commercial competition between the media that carries the risk of excess and error.<sup>218</sup>

<sup>215</sup> Naïs Acquaviva, Florence Castagnet and Morgane Evangelou, 'A Comparative Analysis of Disciplinary Systems for European Judges and Prosecutors' (Themis Competition 2012, European Judicial Training Network (EJTN) 2012) 12-14 <[www.ejtn.eu/Documents/Themis%202012/THEMIS%202012%20ERFURT%20DOCUMENT/Written%20paper%20France%203.pdf](http://www.ejtn.eu/Documents/Themis%202012/THEMIS%202012%20ERFURT%20DOCUMENT/Written%20paper%20France%203.pdf)> accessed 31 January 2017

Eric J. Maitrepierre, 'Ethics, Deontology, Discipline of Judges and Prosecutors in France' (Resource Material Series No.80, UNAFEI 2010) 255, 261 and 266 <[www.unafei.or.jp/english/pdf/RS\\_No80/No80\\_29VE\\_Maitrepierre.pdf](http://www.unafei.or.jp/english/pdf/RS_No80/No80_29VE_Maitrepierre.pdf)> accessed 31 January 2017

Robert H. Tembeckjian, 'Judicial Disciplinary Hearings should be Open' (2007) 28(3) *The Justice System Journal* 419, 420 <[www.ncsc.org/~media/Files/PDF/Publications/Justice%20System%20Journal/Judicial%20Discipline%20Hearings.ashx](http://www.ncsc.org/~media/Files/PDF/Publications/Justice%20System%20Journal/Judicial%20Discipline%20Hearings.ashx)> accessed 31 January 2017

<sup>216</sup> Naïs Acquaviva, Florence Castagnet and Morgane Evangelou, 'A Comparative Analysis of Disciplinary Systems for European Judges and Prosecutors' (Themis Competition 2012, European Judicial Training Network (EJTN) 2012) 12-14 <[www.ejtn.eu/Documents/Themis%202012/THEMIS%202012%20ERFURT%20DOCUMENT/Written%20paper%20France%203.pdf](http://www.ejtn.eu/Documents/Themis%202012/THEMIS%202012%20ERFURT%20DOCUMENT/Written%20paper%20France%203.pdf)> accessed 31 January 2017

Eric J. Maitrepierre, 'Ethics, Deontology, Discipline of Judges and Prosecutors in France' (Resource Material Series No.80, UNAFEI 2010) 255, 261 and 266 <[www.unafei.or.jp/english/pdf/RS\\_No80/No80\\_29VE\\_Maitrepierre.pdf](http://www.unafei.or.jp/english/pdf/RS_No80/No80_29VE_Maitrepierre.pdf)> accessed 31 January 2017

Robert H. Tembeckjian, 'Judicial Disciplinary Hearings should be Open' (2007) 28(3) *The Justice System Journal* 419, 419-420 <[www.ncsc.org/~media/Files/PDF/Publications/Justice%20System%20Journal/Judicial%20Discipline%20Hearings.ashx](http://www.ncsc.org/~media/Files/PDF/Publications/Justice%20System%20Journal/Judicial%20Discipline%20Hearings.ashx)> accessed 31 January 2017

<sup>217</sup> Robert H. Tembeckjian, 'Judicial Disciplinary Hearings should be Open' (2007) 28(3) *The Justice System Journal* 419, 419 <[www.ncsc.org/~media/Files/PDF/Publications/Justice%20System%20Journal/Judicial%20Discipline%20Hearings.ashx](http://www.ncsc.org/~media/Files/PDF/Publications/Justice%20System%20Journal/Judicial%20Discipline%20Hearings.ashx)> accessed 31 January 2017

<sup>218</sup> Consultative Council of European Judges (CCJE), Opinion no 7 (2005) to the attention of the Committee of Ministers of the Council of Europe on justice and society <[https://wcd.coe.int/ViewDoc.jsp?p=&Ref=CCJE\(2005\)OP7&Sector=s-ecDGH&Language=lanEnglish&Ver=original&BackColorInternet=FEF2E0&BackColorIntranet=FEF2E0&BackColorLogged=c3c3c3&direct=true](https://wcd.coe.int/ViewDoc.jsp?p=&Ref=CCJE(2005)OP7&Sector=s-ecDGH&Language=lanEnglish&Ver=original&BackColorInternet=FEF2E0&BackColorIntranet=FEF2E0&BackColorLogged=c3c3c3&direct=true)> accessed 2 January 2017

'Press Guidelines 2013' <[www.rechtspraak.nl/SiteCollectionDocuments/Press-Guidelines.pdf](http://www.rechtspraak.nl/SiteCollectionDocuments/Press-Guidelines.pdf)> accessed 18 November 2016



Courts therefore need to **seek ‘a balance between conflicting values of protection of human dignity, privacy, reputation and the presumption of innocence on the one hand, and freedom of information on the other’**.<sup>219</sup>

The CCJE further recommends that where television recording of judicial hearings occurs, fixed cameras should be used and it should be possible for the presiding judge to decide on filming conditions and to interrupt broadcasting at any time. Furthermore, the opinion of the persons involved in the proceedings should be taken into account, particularly for certain types of trials concerning private affairs.

## B. Survey results

With regard to audio and video recording in the courtroom by the media, legislation and culture vary considerably throughout European countries.

**In almost all countries, media representatives are generally allowed to be present in the courtroom** (CZ, EE, NL, FI, DE, IE, IT, LU,<sup>220</sup> PL, PL(A), HU, LT, LT(A), SK, ES, SE, SE(A), CY, AT(A), AT, LV, PT, PT(A), RO). However, this is not the case at the *Supreme Court of Slovenia*, where media representatives are generally not allowed, except in very specific cases related to appeals in criminal law cases. At the *Supreme Court of Spain*, the President of the Chamber decides on the right of the media to inform the public, and on the privacy of the litigants, taking into consideration the public interest of the case. The level of access is increasing. As stated in the Protocol of Communication of Justice 2015, ‘access of the media and TV to the courtrooms must be based on open access and restrictions must be motivated’.

While media representatives are allowed access to hearings in the majority of Supreme Courts, this does not mean that audio and video recording and photography are also allowed in all cases.

**In some countries, it is prohibited for media representatives to make audio and video recordings of the hearing** (IE, LU, LT, LT(A), CY, AT(A), AT). At the *Supreme Court of Lithuania*, however, the media may make recordings before the start of the hearing.

**In other countries, the general rule is that audio and video recordings is prohibited, but the judges examining the case or the president of the court can grant an exception to this rule** (EE, IT, PL, PL(A), SK, ES, SL, LV, RO). The *Supreme Administrative Court of Poland* pointed out some shortcomings of the current rules. Recording is not allowed, unless the presiding judges grant you this right upon request. One of the pitfalls of this system, according to the Supreme Administrative Court, is that there are no unified and general rules on granting/refusing the request to record the hearing. In addition, it is not clear who is entitled to lodge such a request (e.g. people other than journalists). The person requesting the recording must bring their own equipment and, finally, there are no means of appeal if the request is refused.

**In other countries, audio and video recording is allowed, but only within certain limits** (CZ, NL, DE, HU). For example, in the *Supreme Courts of Lithuania* and *the Netherlands*, only certain parts of the hearing may be recorded. At the *Federal Administrative Court of Germany* recording is only allowed before and after closing of the hearing. In *Hungary*, for example, the parties to the proceedings, the witnesses and experts, may only be recorded if they expressly consent.

In *Sweden*, sound recording is allowed, but taking pictures is strictly forbidden.

The *Supreme Administrative Court of Finland* responded that there are no regulations regarding audio and video recording in courtrooms. The same applies for the *Supreme Administrative Court of Portugal*, where it is for every judge to determine if recording is allowed or not.

<sup>219</sup> Consultative Council of European Judges (CCJE), Opinion no 7 (2005) to the attention of the Committee of Ministers of the Council of Europe on justice and society <[https://wcd.coe.int/ViewDoc.jsp?p=&Ref=CCJE\(2005\)OP7&Sector=s-ecDGHL&Language=lanEnglish&Ver=original&BackColorInternet=FEF2E0&BackColorIntranet=FEF2E0&BackColorLogged=c3c3c3&direct=true](https://wcd.coe.int/ViewDoc.jsp?p=&Ref=CCJE(2005)OP7&Sector=s-ecDGHL&Language=lanEnglish&Ver=original&BackColorInternet=FEF2E0&BackColorIntranet=FEF2E0&BackColorLogged=c3c3c3&direct=true)> accessed 2 January 2017

<sup>220</sup> Only representatives of the written press are allowed to be present in the courtroom.



## C. Recommendations and best practices

**Implement the recommendations of the European Network of Councils for the Judiciary with regard to audio and video recording and establish, within the limits of existing legislation, clear guidelines regarding audio and video recording that take into account the different rights at stake.**

**If recording is permitted, but the Court can make exceptions, it is good practice to hear the media before making a decision**

As the European Network of Councils for the Judiciary has already established, there is still **no common view on audio and video recording in courts**. It is therefore difficult to identify a best practice. On the one hand, most hearings are public and everyone enjoys the freedom of speech. On the other hand, audio and video recording may disturb the proceedings and violate the parties' rights.<sup>221</sup>

**Above all, it is important to have clear, precise and comprehensive guidelines about audio and video recording.** This is the joint responsibility of the legislator and the Supreme Court itself.

In *Poland*, for example, recording is not allowed in the *Supreme Administrative Court*, unless the presiding judge gives permission. The *Supreme Administrative Court of Poland* regrets that no unified and general rules for granting or refusing the right to record the hearing exist.

Therefore, every Supreme Court has to **establish, within the limits of existing legislation, clear guidelines regarding audio and video recording that take into account the different rights at stake** (freedom of information, protection of human dignity, privacy, reputation and the presumption of innocence). At the *Supreme Court of Spain*, this balance is safeguarded by the President of the Chamber, who decides if recording is allowed, taking into account the right of the media to inform, the privacy of the litigants and the public interest of the case.

**If recording is permitted, but the court can make exceptions, it is good practice to listen to the media before the court makes a decision.**

In **high profile cases**, there may be a lot of interest in recording the proceedings. In such cases, a meeting should be held before the hearing to make some **practical arrangements** (e.g. number of cameras allowed in the courtroom).

**The press guidelines in the Netherlands are a good example.**<sup>222</sup> These guidelines contain **clear rules with regard to audio and visual recording in courts**. According to these guidelines, **journalists need permission** to make audio or video recordings in court. If they want to do so, they must contact the press division beforehand. **Before the hearing, agreements are made with regard to the number of cameras allowed** and the position from which filming is allowed. There is a pool arrangement in high profile cases that attract a lot of media attention. In this arrangement, one or two camera teams (usually from a national and a local network) receive permission to film and the other broadcasting stations can buy the footage. The press guideline further **regulates who may be filmed and during which parts of the hearing**.

**The Curia of Hungary also makes practical arrangements with the press on court hearings that are the focus of public attention.** In such circumstances, registration by the media representatives is requested. The head of the press divisions consults with the head of the judicial panel hearing the case, who decides on the number of persons allowed in light of seating capacity of the courtroom. When this maximum number is reached, registration is closed and the press division informs the news agencies via the Curia's website.

<sup>221</sup> European Network of Councils for the Judiciary (ENCJ), 'Justice, Society and the Media. Report 2011-2012' (ENCJ, 2012) 10 <[www.encj.eu/images/stories/pdf/GA/Dublin/encj\\_report\\_justice\\_society\\_media\\_def.pdf](http://www.encj.eu/images/stories/pdf/GA/Dublin/encj_report_justice_society_media_def.pdf)> accessed 12 October 2016

<sup>222</sup> 'Press Guidelines 2013' <[www.rechtspraak.nl/SiteCollectionDocuments/Press-Guidelines.pdf](http://www.rechtspraak.nl/SiteCollectionDocuments/Press-Guidelines.pdf)> accessed 18 November 2016

## V 6. COOPERATION WITH REGARD TO COMMUNICATION ISSUES

### A. General observations

A research paper prepared for the European Judicial Training Network emphasises the great disparities regarding training programmes for press judges and the lack of opportunity to exchange knowledge.<sup>223</sup>

As already emphasised in the introduction, communication is a powerful tool, but it should be used with caution because it may not only improve but also damage the relationship between society and the judiciary.<sup>224</sup> Given the importance and possible risks, **specific media training** is strongly advisable. In addition to training, **cooperation and a forum to exchange knowledge and experience** between press judges (and other spokespersons) may also be useful.

### B. Survey results

#### 1. Cooperation with other courts

Some Supreme Courts (DE, IT, LU, PL(A), SE, SE(A), AT, PT, RO) indicated that they do not cooperate or exchange knowledge and experience with other courts in the field of communication.

Other Supreme Courts do cooperate. Since the information given by the respondents is so diverse, it is difficult to group the different forms of cooperation. We will therefore present some examples of cooperation undertaken by the Supreme Courts below.

In *Lithuania*, the National Courts Administration coordinates the Courts Communication Group, which consists of all spokespersons of the courts. The Courts Communication Group meets four times a year and is responsible for developing communication strategy.

In the *Czech Republic*, the spokespersons from the Supreme Court, the Supreme Administrative Court and the Constitutional Court meet on a regular basis, but they mainly consult about cases that were decided by more than one of these courts. Their cooperation involves decisions on how to inform the public and who will provide what information. The Supreme Court emphasised that it considers this cooperation with other courts as an important strength of its communication strategy.

In *Estonia*, a common communication strategy applies to all the courts. This communication strategy describes common communication principles of the Estonian courts in respect of parties to a proceeding, the public and the media. The communication managers of the courts meet on a regular basis to discuss this strategy and other relevant daily topics.

The *Supreme Administrative Court of Finland* occasionally discusses daily communication routines related to such issues as statistical information, media questionnaires, general communication plans and general principles, and the structure and content of online communications with other courts. Furthermore, the Head of Communications may provide media and communication training to the other courts.

The Supreme Court's press division is sometimes also responsible for supporting the lower courts in communication issues (e.g. ES, SL, LV). In *Latvia*, employees from the lower courts, whose main responsibility is not communications officer but assistants to the judge, do not have the education or experience in communication and ask the press division from the Latvian Supreme Court for advice. The press division also shares its professional experiences in meetings organised for communications officers of the justice system.

<sup>223</sup> Louise Chrétien, Arthur de Peretti-Schlomoff and Yoann Viguier, 'Judicial Communication and Professional Ethics. Renewing the Relationship between the Judiciary and the Public' (Themis Competition 2015 – Semi-Final D – Team France 4, European Judicial Training Network (EJTN) 2015) 10 <[www.ejtn.eu/Documents/THEMIS%202015/Written\\_Paper\\_France4.pdf](http://www.ejtn.eu/Documents/THEMIS%202015/Written_Paper_France4.pdf)> accessed 12 October 2016

<sup>224</sup> Louise Chrétien, Arthur de Peretti-Schlomoff and Yoann Viguier, 'Judicial Communication and Professional Ethics. Renewing the Relationship between the Judiciary and the Public' (Themis Competition 2015 – Semi-Final D – Team France 4, European Judicial Training Network (EJTN) 2015) 10 <[www.ejtn.eu/Documents/THEMIS%202015/Written\\_Paper\\_France4.pdf](http://www.ejtn.eu/Documents/THEMIS%202015/Written_Paper_France4.pdf)> accessed 12 October 2016

## 2. Cooperation with other institutions of the system of justice

Several Supreme Courts indicated that they do not cooperate on matters of communication with other institutions in the system of justice (DE, IT, LU, PL(A), AT(A), SL, AT, RO).

The information given by the respondents who do communicate in this way is so diverse that we will again present some examples of cooperation undertaken by the Supreme Courts below.

In *Lithuania*, the spokespersons from the courts, police and prosecutor's office meet once a year for joint training. The National Courts Administration publishes a magazine on Lithuanian courts. From time to time employees of the Supreme Court and Supreme Administrative Court publish articles in this magazine.

The *Supreme Court of the Czech Republic* cooperates with the Supreme Prosecutor's Office in cases of extraordinary appeal, and with the Ministry of Justice in the case of legislative processes.

The *Supreme Court of Estonia* cooperates with other institutions on communication issues. For example, the Supreme Court cooperates with the Ministry of Justice, the Prosecutor's Office and the Bar Association to organise 'The week of justice'. Similar cooperation exists at the *Curia of Hungary* and the *Supreme Administrative Court of Lithuania*. They also cooperate with other institutions (e.g. the General Prosecutor's Office and the National Office for the Judiciary) to organise events, congresses, training or conferences on topics of common interest (e.g. on the publication of judicial decisions).

The *Supreme Court of the Netherlands* cooperates with other institutions on an occasional basis when it concerns a matter of shared interest (e.g. sensitive matters).

The Ministry of Justice of *Finland* coordinates and supports an unofficial communication group of communication professionals in the administrative branch of the Ministry of Justice. The communication group discusses topical communication issues related to public administration.

The *Supreme Court of Sweden* and the *Supreme Administrative Court of Sweden* do not have their own press division. They can, however, request the press and communication division from the National Courts Administration to assist in drafting a press release or to help a judge to prepare for an interview, for example.

## C. Recommendations and best practices

### Establish a forum to exchange experiences between press judges and communication advisors

In addition to training, press judges and communication advisors must be given the **opportunity to exchange experiences**. For this purpose, meetings with the press divisions and press judges of other Supreme Courts in Europe or of other national courts could be organised.

In *the Netherlands*, all press judges meet twice a year to discuss their experiences dealing with the media during the previous six months. The press judges **share their experiences** during these meetings and **refine common guidelines for dealing with the media** (e.g. the press guideline that was drafted in 2013).<sup>225</sup> The Committee of Press Judges has no decision-making authority. Therefore, if the assembled press judges agree on a certain guideline, they present it to the presidents of the courts with the request to adopt this guideline. A press guideline, for example, was adopted by the presidents' meeting and is also applicable to the Supreme Court. Similar to the meetings of the press judges, the communication advisors meet four times a year to discuss the most important trends in their work. In addition to their contacts with the press, they also discuss topics relating to internal communication and public information.

In *Lithuania*, the spokespersons of the courts meet several times a year and develop a common communication strategy. In addition, they also meet with the spokespersons from the police and the Prosecutor's Office.

<sup>225</sup> European Network of Councils for the Judiciary (ENCJ), 'Justice, Society and the Media. Report 2011-2012' (ENCJ, 2012) 4 <[www.encj.eu/images/stories/pdf/GA/Dublin/encj\\_report\\_justice\\_society\\_media\\_def.pdf](http://www.encj.eu/images/stories/pdf/GA/Dublin/encj_report_justice_society_media_def.pdf)> accessed 12 October 2016  
'Press Guidelines 2013' <[www.rechtspraak.nl/SiteCollectionDocuments/Press-Guidelines.pdf](http://www.rechtspraak.nl/SiteCollectionDocuments/Press-Guidelines.pdf)> accessed 18 November 2016



The *National Office for the Judiciary in Hungary*, in cooperation with other courts, organises a conference for the spokespersons and heads of press secretariats twice a year. On this occasion, common problems, difficulties, best practices and experiences are shared.

In *Latvia*, cooperation has been stimulated by the Latvian Council for the Judiciary (Supreme Court, Constitutional Court, Ministry of Justice, Prosecutor General's Office, the Latvian Council of Sworn Advocates, the Latvian Council of Sworn Notaries and the Latvian Council of Sworn Bailiffs). The **Latvian Council for the Judiciary** has approved **guidelines** regarding basic principles of unified communication. The implementation of the guidelines is still in progress, but they already have substantively **enhanced informal cooperation** between the different institutions. **Regular meetings are being held with a view to share experiences and best practices** in the area of communication activities **as well as to discuss any problems**.

### Provide advice to lower courts that have no specialised press division

The survey results show that cooperation is also particularly helpful and **supportive of the lower courts**, which may not have a specialised press division and lack the resources to establish one. They can ask for support at the Supreme Court's press division and learn from the shared experiences.

The **communication department of the Supreme Court of Spain** cooperates and supports the activity of the different communication departments of the lower courts. All these activities are supervised by the General Council of the Judiciary through their communication department.

The **press division of the Supreme Court of Slovenia** provides a similar support function. In addition to coordinating the preparation of answers to questions which relate to different courts, it supports the other courts in their individual communication efforts by providing advice, etc.

## 7. EDUCATIONAL ACTIVITIES

### A. General observations

In previous chapters we highlighted numerous times that there is a need for the judiciary to disseminate information concerning the justice system and by doing so improve access to justice. To better integrate justice into society, a direct relationship between the courts and the public at large should be created. *'An understanding of how the judicial system works is undoubtedly of educational value and should help to boost public confidence in the functioning of the courts'*.<sup>226</sup> The European Commission considers that the information provided to citizens and businesses about general aspects of the justice system is the basic foundation for access to justice.<sup>227</sup>

**Educational activities organised by Supreme Courts are an excellent way to increase the understanding and knowledge of citizens and business regarding their work.** In addition, Supreme Courts can also organise or participate in educational activities tailored to legal practitioners such as lawyers and judges to explain, for example, their case law in more detail or to discuss some practices they have established regarding the relationship with the media or court management.

The **Consultative Council of European Judges** emphasises that courts should not only agree to participate in educational activities organised by others (e.g. Ministry of Justice), but that it is also

<sup>226</sup> Consultative Council of European Judges (CCJE), Opinion no 7 (2005) to the attention of the Committee of Ministers of the Council of Europe on justice and society <[https://wcd.coe.int/ViewDoc.jsp?p=&Ref=CCJE\(2005\)OP7&Sector=s-ecDGHL&Language=lanEnglish&Ver=original&BackColorInternet=FEF2E0&BackColorIntranet=FEF2E0&BackColorLogged=c3c3c3&direct=true](https://wcd.coe.int/ViewDoc.jsp?p=&Ref=CCJE(2005)OP7&Sector=s-ecDGHL&Language=lanEnglish&Ver=original&BackColorInternet=FEF2E0&BackColorIntranet=FEF2E0&BackColorLogged=c3c3c3&direct=true)> accessed 2 January 2017

<sup>227</sup> European Commission, *Communication from the Commission to the European Parliament, the Council, the European Central Bank, the European Economic and Social Committee and the Committee of the Regions - The 2016 EU Justice Scoreboard* (Publications Office of the European Union 2016) 17 <[http://ec.europa.eu/justice/effective-justice/files/justice\\_scoreboard\\_2016\\_en.pdf](http://ec.europa.eu/justice/effective-justice/files/justice_scoreboard_2016_en.pdf)> accessed 17 November 2016

necessary that courts take their own initiative and become promoters of educational programmes, such as visits for schoolchildren.<sup>228</sup> They also recommend **active teaching of judicial procedures** through role playing, attending hearings, etc.<sup>229</sup>

## B. Survey results

### 1. Educational activities tailored to legal practitioners (including lower court judges)

Supreme Court	Conferences and seminars	Training	Meetings
Austria	X		
Austria (Administrative)			
Belgium	X	X	X
Cyprus		X	
Czech Republic	X	X	X
Estonia	X	X	X
Finland	X	X	X
Germany	X	X	
Hungary	X	X	X
Ireland	X		
Italy	X		
Latvia	X	X	
Lithuania	X	X	X
Lithuania (Administrative)	X	X	X
Luxembourg			
Netherlands	X		X
Poland	X	X	
Poland (Administrative)	X	X	
Portugal	X	X	
Portugal (Administrative)	X		
Romania	X		X
Slovakia			
Slovenia		X	
Spain	X		
Sweden	X		
Sweden (Administrative)	X		
<b>Total (26)</b>	<b>21</b>	<b>14</b>	<b>9</b>

Several types of educational activities that are tailored to legal practitioners (including lower court judges) can be identified.

One type of educational activity includes **conferences and seminars**. The majority of Supreme Courts organise such conferences or seminars or participate in them (CZ, EE, NL, FI, DE, IE, IT, PL, PL(A), HU, LT, LT(A), ES, SE, SE(A), AT, LV, PT, PT(A), BE).

These educational activities can also take the form of **training given by judges of the Supreme Court** to lower court judges (CZ, EE, FI, DE, PL, PL(A), HU, LT, LT(A), CY, SL, LV, PT, BE). The Supreme Court judges of the *Czech Republic*, for example, give lecturers at the Judicial Academy.

<sup>228</sup> Consultative Council of European Judges (CCJE), Opinion no 7 (2005) to the attention of the Committee of Ministers of the Council of Europe on justice and society [https://wcd.coe.int/ViewDoc.jsp?p=&Ref=CCJE\(2005\)OP7&Sector=s-ecDGH&Language=lanEnglish&Ver=original&BackColorInternet=FEF2E0&BackColorIntranet=FEF2E0&BackColorLogged=c3c3c3&direct=true](https://wcd.coe.int/ViewDoc.jsp?p=&Ref=CCJE(2005)OP7&Sector=s-ecDGH&Language=lanEnglish&Ver=original&BackColorInternet=FEF2E0&BackColorIntranet=FEF2E0&BackColorLogged=c3c3c3&direct=true) accessed 2 January 2017

<sup>229</sup> Consultative Council of European Judges (CCJE), Opinion no 7 (2005) to the attention of the Committee of Ministers of the Council of Europe on justice and society <[https://wcd.coe.int/ViewDoc.jsp?p=&Ref=CCJE\(2005\)OP7&Sector=s-ecDGH&Language=lanEnglish&Ver=original&BackColorInternet=FEF2E0&BackColorIntranet=FEF2E0&BackColorLogged=c3c3c3&direct=true](https://wcd.coe.int/ViewDoc.jsp?p=&Ref=CCJE(2005)OP7&Sector=s-ecDGH&Language=lanEnglish&Ver=original&BackColorInternet=FEF2E0&BackColorIntranet=FEF2E0&BackColorLogged=c3c3c3&direct=true)> accessed 2 January 2017

## V

A more informal way to exchange knowledge is through **meetings and round-table discussions** between Supreme Court judges and lower court judges (CZ, EE, NL, FI, HU, LT, LT(A), BE). Such meetings may deal with the organisation of work or with questions of interpretation of law.

The *Supreme Court of Romania* organises regular seminars and video conferences with the courts of appeal.

In *the Netherlands*, some of the Supreme Court judges have been appointed ‘**contact judges**’ and must ensure there is a good relationship between the Supreme Court and a specific Court of Appeals. There is also a programme in place that allows for lower court judges to undertake an internship at the Supreme Court.

## 2. Educational activities tailored to society and the media

As we have already established, the judicial system and the language of law is often not clear to journalists. This increases the risk that the public is not correctly informed. Efforts to remedy this may consist in **meetings or public conferences**, which can be attended by the press and/or other citizens, during which the work of the Supreme Court is discussed (EE, NL, FI, IE, HU, LT, ES, LV).

A useful practice can be found at the *Supreme Court of Estonia*, which arranges **press briefings** to explain procedural logic and terms to reporters and to present the results of studies and research. The *Supreme Court of Latvia* also organises a **media day** for journalists who write about legal issues.

Once a year, the *Supreme Court of Lithuania* organises an event to present the work of the Supreme Court to press representatives and society. Among other things, the most important judgments of the past year are discussed.

Many Supreme Courts organise **guided visits or open days** (CZ, EE, NL, FI, DE, IT, PL, PL(A), HU, LT, LT(A), SE, SE(A), AT(A), SL, AT, LV, PT, PT(A), RO).

Other educational activities may include the **organisation of a mock trial** (CZ, HU) or a ‘**shadow day**’, where pupils who are interested in the work of the Court can follow the work of a judge or a judge’s assistant (LV). ‘A day with a judge’ is also organised in Lithuanian courts. Students (usually law or communication) can spend a day with a judge from the Supreme or another court. The *National Courts Administration of Lithuania* organised a moot court for journalists on the occasion of the ‘Day of Restoration of Press Freedom’. In addition, it also organises a meeting of the most influential opinion-makers several times a year.

## C. Recommendations and best practices

**Organise round-table discussions with other legal practitioners whose opinion or expertise may be relevant to the topic in question**

In the survey, most Supreme Courts indicated that they organised conferences and seminars tailored to legal practitioners, or that their judges participated in such conferences and seminars. This practice of exchanging knowledge can be further improved by organising regular round-table discussions on the Court’s work (e.g. best practices regarding the relationship with the media, measures to reduce backlogs, etc.). These educational activities could be organised by the research and documentation unit (see also part II) or by a special ‘project team’.

Along with Supreme Court judges, judges from the lower courts, university professors and legal practitioners with expertise on a given topic might also participate. These discussions may be given a larger audience by filming them or by disseminating minutes of these meetings.

The *Supreme Court of Estonia* regularly gives feedback to lower courts through **round-table discussions**. The Supreme Court’s Judicial Training department organises these round-table discussions, where Supreme Court judges and judges of lower courts discuss relevant issues as well as topics they have submitted themselves. These round-table discussions take place every year for civil

law matters and every two years in criminal and administrative law. Such round-table discussions are also organised by the *Supreme Court of Lithuania*.

The administrative department of the *Supreme Court of Latvia* organises **video conferences** with administrative courts on topical issues of administrative law.

### Organise educational activities tailored to society

Supreme Courts should consider a **proactive approach and organise, on their own initiative, public conferences, open days and other activities that make society more familiar with the justice system and the Supreme Court's work**, in addition to participating in general framework programmes arranged by other State institutions. As the well-known proverb goes: '*Tell me and I forget, teach me and I may remember, involve me and I learn*'. To really involve people, active teaching activities such as a mock trial could be organised. These activities could be prepared by the press division.

In addition to more educational activities such as open days, it might be interesting to organise press conferences not specifically tailored to a specific case that has caught public attention at the time, but to give a more general presentation of judgments issued by the Court in the foregoing period. While highlighting some cases, this is also an opportunity to present some statistics, inform society about expected future changes and to learn about the needs of the press and society in relation to the Supreme Court.

The *Curia of Hungary* invites journalists to a **press breakfast** twice a year. On this occasion, the leaders of the Curia brief journalists about major events and about the most important judgments delivered by the Curia over the previous six months. An outline of expected future developments is also given during this meeting. Another interesting practice that can be found at the *Curia of Hungary* is the use of **video discussions**. To ensure that the Curia's work is widely known to the public, the President of the Curia initiated a series of video discussions. For each session, two concluded cases, which may be of interest to the public or which have already come to the attention of the public, are selected and discussed by judges and by other legal practitioners and university professors specialised in the given fields of law. The Curia uses these video discussions to inform the public and also forwards them to the seven Hungarian law faculties that cooperate with the Curia.

### Arrange press briefings to explain judicial procedures and terms

The practice adopted by the *Supreme Court of Estonia* and the *Supreme Court of Latvia* to **arrange press briefings or media days** that aim to explain judicial procedures and terms to reporters seems particularly useful in attempting to ensure that reporters understand them correctly.

## 8. EXPRESSING THE JUDICIARY'S OPINIONS TO PARLIAMENT AND THE EXECUTIVE

### A. General observations

In a modern democracy, State power is divided into three branches: the legislature, the executive and the judiciary. While in parliamentary systems the separation of powers doctrine has lost significance when it comes to the relationship between parliament and the executive, its core meaning lies in the protection of judicial independence.



Nevertheless, the three branches of government inevitably meet. Courts are faced with the question of whether and how to respond, in particular: 1) if Parliament consults the court on proposed laws affecting the functioning of the courts; 2) if Parliament invites members of the court to hear their opinion on other proposed laws; 3) if Members of Parliament or the Government express criticism of the court, a particular decision, or an individual judge.

**Constructive relationships** between the executive, the legislature and the judiciary are essential to the effective maintenance of the constitution and the rule of law.<sup>230</sup> This working relationship should at all times **honour the separation of powers**.

The question of what this constructive relationship should look like thus arises. Some countries have examined this relationship extensively. In the United Kingdom, the House of Lords prepared a 104-page report that examined the evolving constitutional relationships between the judiciary, the executive and Parliament.<sup>231</sup> In 2014, the Council of Chief Justices of Australia and New Zealand adopted some practical guidelines for communications and relationships between the judicial branch of government and the legislative and executive branches.<sup>232</sup>

The guidelines of the Chief Justices state that it is appropriate for the courts to expect, and to respond to, consultation by the executive branch of government in relation to proposed laws which may affect courts. Six categories of laws that may affect courts are distinguished in the guidelines: proposed laws affecting the jurisdiction and powers of the courts, proposed laws relating to judicial office holders, proposed laws affecting the judicial function, proposed laws affecting the administration of the courts and proposed laws affecting the distinctive character of the courts.

The guidelines emphasise that such responses should be given by the relevant head of jurisdiction after consultation with the members of the court concerned, or, if the proposed law affects more than one court, it may be desirable that this response is made by the Chief Justice after consultation with the heads of courts similarly affected. The guidelines also offer some guidance on the content of such a response. While the judiciary may thus respond to these consultations, it must be careful to not offer an interpretation or opinion as to the validity of the proposed law. These are matters which may come before the court. For the same reason, courts should point out ambiguities or uncertainties in the text of a proposed law with caution, since this may involve questions of interpretation, which may come before the court.

**In offering comment on any proposed law, a court should, however, not engage in public policy debates**, save to the extent necessary to protect the legitimate institutional interests of the courts. In making comment on the proposed law, the court should be aware that such comment may become public.

In addition to proposed laws that may affect courts, other actions by the executive and legislature may affect courts. For example, generally speaking, the guidelines consider it undesirable for judicial officers to appear before parliamentary committees expressing their view on changes to substantive law which may subsequently come before the courts for interpretation and application. *A fortiori*, it is considered undesirable that judicial officers engage in public controversy about proposed laws. In cases involving public controversy or executive action affecting the functioning of the courts, the first

<sup>230</sup> Council of Chief Justices of Australia and New Zealand, 'Guidelines for Communications and Relationships between the Judicial Branch of Government and the Legislative and Executive Branches' (adopted on 23 April 2014, Council of Chief Justices of Australia and New Zealand 2014) <[www.jca.asn.au/wp-content/uploads/2013/10/Guidelines-Judicial-Legislative-Executive-Government.pdf](http://www.jca.asn.au/wp-content/uploads/2013/10/Guidelines-Judicial-Legislative-Executive-Government.pdf)> accessed 16 November 2016

Select Committee on the Constitution, *Relations between the Executive, the Judiciary and Parliament. Report with Evidence* (House of Lords 26 July 2007) 7 <[www.publications.parliament.uk/pa/ld200607/ldselect/ldconst/151/151.pdf](http://www.publications.parliament.uk/pa/ld200607/ldselect/ldconst/151/151.pdf)> accessed 16 November 2016

<sup>231</sup> Select Committee on the Constitution, *Relations between the executive, the judiciary and Parliament. Report with Evidence* (House of Lords 26 July 2007)

<[www.publications.parliament.uk/pa/ld200607/ldselect/ldconst/151/151.pdf](http://www.publications.parliament.uk/pa/ld200607/ldselect/ldconst/151/151.pdf)> accessed 16 November 2016

<sup>232</sup> Council of Chief Justices of Australia and New Zealand, 'Guidelines for Communications and Relationships between the Judicial Branch of Government and the Legislative and Executive Branches' (adopted on 23 April 2014, Council of Chief Justices of Australia and New Zealand 2014) <[www.jca.asn.au/wp-content/uploads/2013/10/Guidelines-Judicial-Legislative-Executive-Government.pdf](http://www.jca.asn.au/wp-content/uploads/2013/10/Guidelines-Judicial-Legislative-Executive-Government.pdf)> accessed 16 November 2016

question about involvement in public debate is whether or not there are persuasive and reputable protagonists outside the courts who are likely to bring arguments representing the court's legitimate interests into the public debate.

Another action by the executive and legislature that may affect the judiciary is criticism of the courts by the executive. This criticism can occur in the following ways: criticism of particular judicial decisions, criticism of an individual judge related to a particular judicial decision, criticism of an individual judge related to that judge's performance not limited to a particular decision, and criticism of the court as an institution in relation to its efficiency generally or in connection with the use of public resources. In the case of criticism, the head of jurisdiction may decide that no response is appropriate or that information can be supplied, particularly in relation to the function of the court, which would correct factual matters upon which such criticism is based. However, generally it is undesirable for a head of jurisdiction to become involved in public exchanges with the members of the executive or legislature. Where a public response is necessary, the preferable course is a formal statement by the head of jurisdiction on behalf of the court. Although it is interesting to see how the European Supreme Courts deal with criticism by the executive or the legislature, this falls outside the scope of the present research. This research project only focuses on the relationship between the judiciary, the legislature and the executive concerning proposed laws that may affect courts and problems the judiciary encounters when interpreting and applying substantive law.

Like the guidelines of the Chief Justices of Australia and New Zealand, the report of the House of Lords also recognised the need for constructive relationships between the three government branches, while still maintaining the separation of powers. One of the key elements of the separation of powers is the assurance that the judiciary remains independent of the influence of the legislature and the executive. For example, a minister should, in general, not publicly comment on an individual judge, and it is also generally accepted that, due to this separation of powers, judges should avoid becoming inappropriately involved in public debates and matters of political controversy.<sup>233</sup>

Nevertheless, if, for example, a particular policy is likely to have an adverse effect on the administration of justice, the judiciary should be able to speak out, if necessary, even publicly. However, it is important that individual judges are not perceived as political. Therefore, a 'head' of the judiciary, such as the President of the Supreme Court, or a collegial body or committee, should express the opinion of the judiciary to parliament and the executive.<sup>234</sup>

## B. Survey results

### 1. Expressing its views relating to laws affecting the judiciary

All Supreme Courts, except the Supreme Courts of Ireland and Portugal, stated that they are consulted when it comes to proposed laws affecting the judiciary, as they receive a draft of the proposed legislation (CZ, EE, NL, FI, DE, IT, PL, PL(A), HU, LT, LT(A), SK, ES, SE, SE(A), CY, AT(A), SL, AT, LV, RO).

This usually occurs **in an informal way**. In some countries, however, a more formal approach is taken (e.g. LT, PL, PL(A), ES, SE, SE(A)). In *Spain*, the General Council of the Judiciary has to be heard on every draft of new legislation concerning judicial procedure. The Supreme Court is usually heard by the General Council of the Judiciary before producing its final report on the new legislation. In *Poland*, each draft of an Act of parliament or draft of a regulation issued for the purpose of implementation of

<sup>233</sup> Select Committee on the Constitution, *Relations between the executive, the judiciary and Parliament. Report with Evidence* (House of Lords 26 July 2007) 21-22

<[www.publications.parliament.uk/pa/ld200607/ldselect/ldconst/151/151.pdf](http://www.publications.parliament.uk/pa/ld200607/ldselect/ldconst/151/151.pdf)> accessed 16 November 2016

<sup>234</sup> Council of Chief Justices of Australia and New Zealand, 'Guidelines for Communications and Relationships between the Judicial Branch of Government and the Legislative and Executive Branches' (adopted on 23 April 2014 Council of Chief Justices of Australia and New Zealand 2014) <[www.jca.asn.au/wp-content/uploads/2013/10/Guidelines-Judicial-Legislative-Executive-Government.pdf](http://www.jca.asn.au/wp-content/uploads/2013/10/Guidelines-Judicial-Legislative-Executive-Government.pdf)> accessed 16 November 2016

Select Committee on the Constitution, *Relations between the executive, the judiciary and Parliament. Report with Evidence* (House of Lords 26 July 2007) 21-22

<[www.publications.parliament.uk/pa/ld200607/ldselect/ldconst/151/151.pdf](http://www.publications.parliament.uk/pa/ld200607/ldselect/ldconst/151/151.pdf)> accessed 16 November 2016



such an Act relating to matters considered by the common courts is reviewed by the Polish Supreme Court. Written opinions are prepared by the members of the Research and Analysis Office of the Supreme Court.

The *Supreme Court of the Netherlands* emphasised that when consulted, it will only give its opinion on the more technical aspects of the draft legislation and that it refrains from giving politically substantive comments in order to respect the separation of powers.

The *Supreme Court of Lithuania* specified that it expresses its view on legislative processes related to the status and organisation of the judiciary, procedural laws and other main statutes applicable in cases adjudicated by the courts of general jurisdiction by providing written opinions on draft legislation.

**It is also possible that the judges of the Supreme Court are involved in working groups or committees** (e.g. LU, HU, LT, SL, LV). The judges from the *Curia of Hungary* are, for example, regularly invited to participate in working groups set up by the National Office for the Judiciary or by the Ministry of Justice for preparing or redrafting certain areas of law. The Supreme Court's judges participated, for example, in the working groups preparing the new Code of Civil Procedure, the Code of Criminal Procedure and the Code of Administrative Court Procedure.

## **2. Expressing its views relating to problems encountered during the adjudication of cases**

In relation to **problems the Supreme Court faces during the adjudication of cases, many Supreme Courts pointed out that they are more reluctant** to communicate this to the executive or the legislature (other than through their rulings) given the separation of powers (EE, NL, FI, DE, IE, IT, LT(A), RO). The *Supreme Court of Portugal* specified that such communication is the responsibility of the High Judiciary Council, which is the disciplinary and management body of the Portuguese judges. The *Supreme Court of the Czech Republic* indicated that communication about problems it faces during the adjudication of cases is usually on an informal basis. Such informal communication is also possible in *Luxembourg, Slovakia, Cyprus, Austria (Supreme Administrative Court), Lithuania and Slovenia*.

In *Hungary*, working groups that analyse case law have been established. These working groups often identify interpretation and application-related problems that cannot be solved by judicial interpretation, but only by legislation, and also regularly formulate legislative proposals to remedy the situation. The summary opinions drafted by these working groups are available to the public on the Curia's website. The Curia has, however, no power to directly submit a proposal to the executive or the legislative branch. Such proposals can be made via the President of the National Office for the Judiciary, who may propose the amendment of legislation under powers specified in the Act on the Organisation and Administration of the Courts. Although the Curia does not have direct law-making powers, it can indicate a problem perceived in the application of a new law directly and immediately to the Ministry that has submitted the proposed law to the parliament. There are cases in which legislation has been amended based upon the conclusions contained in a uniformity decision passed by the Curia.

The *Supreme Administrative Court of Portugal* indicated that it is up to the Supreme Council of the Administrative and Fiscal Courts to issue an opinion on initiatives related to the administrative and tax jurisdiction and to propose legislative measures to the Minister of Justice with a view to improve and increase efficiency as regards the administrative and tax jurisdiction.

In addition to pointing out these shortcomings in their judgments, the Supreme Courts can also make comments and suggestions in their annual report or during the presentation thereof (PL, PL(A), LT, ES).

## **C. Recommendations and best practices**

The above-mentioned approaches indicate that establishing a constructive working relationship between the judiciary, the executive and the legislature requires a delicate balance that safeguards the separation of powers.



### **Consult the Supreme Court regarding proposed legislation that affects the Supreme Court**

With regard to legislation that affects the judiciary, the latter must be able to communicate with the executive and the legislature. **The Supreme Court should therefore be consulted by the executive or the legislature when it concerns legislation that affects the Supreme Court.** This consultation can be done by sending a draft of the legislation to the Supreme Court, by organising meetings with the stakeholders, etc.

### **When consulted, the Supreme Court must refrain from public policy debates or giving political opinions**

To respect the powers of the legislature and the executive, the Supreme Court must be careful **not to give an opinion as to the validity of the proposed law.**

### **In order to make the legislature and the executive aware of problems resulting from certain legislation, Supreme Courts may indicate these problems in their rulings and annual reports**

**If Supreme Courts face a problem during the adjudication of cases, they may indicate this in their ruling.** Furthermore, they might also point out these problems in the annual report in a general way and not related to a specific case. The organisation of a working group with the aim to analyse the case law and the publication of the report of this meeting on the Court's website, also seems to be an acceptable way of communicating problems to the executive and legislature.

## **9. FEEDBACK AND COMPLAINTS ON THE FUNCTIONING OF THE SUPREME COURT**

### **A. General observations**

To understand whether and how a court is contributing to an effective judicial system and whether its efforts to change (e.g. its communication strategy) lead to a more effective justice system, the court must receive external **feedback** from its users and society in general. In other words, when setting a goal, it should be possible to verify whether or not this goal is reached. Feedback is also necessary to **determine the expectations of society** regarding the justice system.

Therefore, the survey asked the Supreme Courts in what ways they receive and use feedback on their work from external consumers. The survey also asked whether the Supreme Court admitted complaints and applications that are not directly linked to the cases it is examining (e.g. complaints about the work of a Supreme Court or lower court judge, suggestions regarding the organisation of court work, etc.).

#### **1. Feedback**

One formal and well-known way of receiving feedback is carrying out **surveys or public opinion polls.** The CEPEJ's working group on the quality of justice has already conducted thorough research regarding this subject and developed a 'Handbook for conducting satisfaction surveys aimed at court users in Council of



Europe's Member States' and a 'Checklist for promoting the quality of justice and the courts'. **The CEPEJ considers such satisfaction surveys as a key element of policies aimed to introduce a culture of quality.** Taking into account the expectations of court users as a starting point, a public-satisfaction approach reflects a concept of justice focused more on the users of a service than on the internal performance of the judicial system.<sup>235</sup> **Although quality models vary, they all emphasise the importance of a client-oriented approach.** A high level of quality is connected with satisfied 'users' and a management perspective that sufficiently takes the needs and wishes of clients/court users into account.<sup>236</sup>

Hence, to know whether court users are satisfied and their expectations met, the courts need information. This information can be gathered through satisfaction surveys. Logically, satisfaction surveys measure the extent to which a service lives up to users' expectations. This type of survey can thus only be conducted among court users (i.e. legal professionals and citizens who have had dealings with the courts).<sup>237</sup> Other types of surveys include opinion surveys and quality surveys. Public opinion surveys can be conducted across society as a whole, as they only ask people to give their opinion or preference on a particular subject (e.g. 'How much do you trust the justice system?').<sup>238</sup> One example of such a public opinion survey is the Belgian 'Justitiebarometer', which studies the public's trust in the justice system through a telephone survey conducted among 1,500 citizens.<sup>239</sup> Quality surveys study the extent to which a service lives up to the promises made (e.g. 'How quickly did you receive the summons?').<sup>240</sup>

Another way to evaluate the functioning of the court is by gathering internal feedback; for example, how do court employees assess the working conditions and performance of the court, the management of the court, etc.

## 2. Complaints

Another way of receiving feedback on the functioning of the court is through **complaints**. These complaints also provide insight into how the courts are performing in the eyes of some users. Our survey results show that several Supreme Courts already have some kind of procedure other than disciplinary proceedings to respond to these complaints. Some of these approaches are more formal and streamlined than others. **The most important thing, however, is that it is clear to the persons wanting to submit a complaint that they know to whom they should address it, what they can complain about, how they should do this and how their claim will be handled (clear procedural channels).**

With regard to complaints, traditionally a distinction is made between **first-line processing of complaints** (i.e. accessible internal complaints level, the handling of complaints through internal

<sup>235</sup> European Commission for the Efficiency of Justice (CEPEJ), 'Handbook for Conducting Satisfaction Surveys aimed at Court Users in Council of Europe Member States' (CEPEJ 2016) 3 <[https://wcd.coe.int/ViewDoc.jsp?p=&Ref=CEPEJ\(2016\)15&Language=lanEnglish&Ver=original&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864&direct=true](https://wcd.coe.int/ViewDoc.jsp?p=&Ref=CEPEJ(2016)15&Language=lanEnglish&Ver=original&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864&direct=true)> accessed 11 January 2017

<sup>236</sup> European Commission for the Efficiency of Justice (CEPEJ), 'Checklist for Promoting the Quality of Justice and the Courts' (CEPEJ 2008) 3 <[https://wcd.coe.int/ViewDoc.jsp?p=&Ref=CEPEJ\(2008\)2&Language=lanEnglish&Ver=original&Site=DGHL-CEPEJ&BackColorInternet=eff2fa&BackColorIntranet=eff2fa&BackColorLogged=c1cbe6&direct=true](https://wcd.coe.int/ViewDoc.jsp?p=&Ref=CEPEJ(2008)2&Language=lanEnglish&Ver=original&Site=DGHL-CEPEJ&BackColorInternet=eff2fa&BackColorIntranet=eff2fa&BackColorLogged=c1cbe6&direct=true)> accessed 11 January 2017

<sup>237</sup> European Commission for the Efficiency of Justice (CEPEJ), 'Handbook for Conducting Satisfaction Surveys aimed at Court Users in Council of Europe Member States' (CEPEJ 2016) 3-4 and 7 <[https://wcd.coe.int/ViewDoc.jsp?p=&Ref=CEPEJ\(2016\)15&Language=lanEnglish&Ver=original&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864&direct=true](https://wcd.coe.int/ViewDoc.jsp?p=&Ref=CEPEJ(2016)15&Language=lanEnglish&Ver=original&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864&direct=true)> accessed 11 January 2017

<sup>238</sup> European Commission for the Efficiency of Justice (CEPEJ), 'Handbook for Conducting Satisfaction Surveys aimed at Court Users in Council of Europe Member States' (CEPEJ 2016) 3 and 7 <[https://wcd.coe.int/ViewDoc.jsp?p=&Ref=CEPEJ\(2016\)15&Language=lanEnglish&Ver=original&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864&direct=true](https://wcd.coe.int/ViewDoc.jsp?p=&Ref=CEPEJ(2016)15&Language=lanEnglish&Ver=original&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864&direct=true)> accessed 11 January 2017

<sup>239</sup> High Council for the Judiciary, 'Nieuwe justitiebarometer' <[www.csj.be/nl/nieuws/nieuwe-justitiebarometer](http://www.csj.be/nl/nieuws/nieuwe-justitiebarometer)> accessed 11 January 2017

<sup>240</sup> European Commission for the Efficiency of Justice (CEPEJ), 'Handbook for Conducting Satisfaction Surveys aimed at Court Users in Council of Europe Member States' (CEPEJ 2016) 4 <[https://wcd.coe.int/ViewDoc.jsp?p=&Ref=CEPEJ\(2016\)15&Language=lanEnglish&Ver=original&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864&direct=true](https://wcd.coe.int/ViewDoc.jsp?p=&Ref=CEPEJ(2016)15&Language=lanEnglish&Ver=original&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864&direct=true)> accessed 11 January 2017

procedures) and **second-line processing of complaints** (i.e. the handling of complaints by an external professional appeal body such as the ombudsman).

According to a study commissioned by the CEPEJ, evidence suggests that in most European countries many complainants would take no further action if a simple response was provided by the court concerned. The lack of a response is what fuels public criticism and loss of confidence in the justice system. The failure to obtain a response is what makes people consider that the service is not functioning properly. Therefore, every court should have a **department capable of answering standard questions** (such as the stage the case file has reached or how long the proceedings might last), acting like a sort of reception or information desk. **This level does not yet concern complaints, but mere questions.** It is, nevertheless, important because, in the light of the questions asked, it may be useful to plan particular communication arrangements so as to anticipate certain questions (e.g. information leaflets).<sup>241</sup> In the example of the Belgian complaints procedure that we will discuss below, this level will be referred to as the **zero-line**.

The CEPEJ study acknowledged that complaints may also concern more complex issues related to the general mode of operation of the court. In this case, a complaints department that constitutes the **first-line of complaints processing** should handle these complaints. The complaints manager **functions inside the institution**, with the task of receiving all complaints and ensuring that they can be acted on: if it is inadmissible or non-specific, the complaints manager deals with the complaint immediately, or, if action must be taken on it, the complaints manager should turn to the head of the court to seek information, or pass on the case file so that the latter may contact the judge concerned and attempt to find a solution. Judges and prosecutors can take on the role of complaints manager, but they should be relieved from other duties so that they are not overburdened.<sup>242</sup> The CEPEJ study mentions several **advantages to processing complaints internally**, such as the fact that members of the public who consider they have been wronged have a **single point of contact** to which to address their complaint and from which they can expect a reply, and **processing is usually quicker**.<sup>243</sup>

**If the court is not able to satisfy the complainant, a second level of complaints processing is located outside the justice system.**<sup>244</sup> The second level authority can act as an appeal body for persons who consider that their complaints have not been properly dealt with or who are dissatisfied with the response provided. This institution could, for example, be the Council for the Judiciary or an ombudsman. The **advantage** is that a **national body** can take a **comprehensive view** of the complaints lodged, the responses given, the timeframes in which they are given, the changes made to the functioning of the justice system and so on.<sup>245</sup>

**Given their different advantages, a combination of the different levels thus seems preferable.**

Such a three-level model was also proposed in Belgium. The Belgian High Council of Justice, under the authority of Belgian Science Policy, requested a research project on ‘Complaints management for the judicial order’. One of the goals of this research project was to develop a complaints procedure for the courts and public prosecutors’ offices, accompanied by the procedure of the High Council.<sup>246</sup> The research group proposed a model for complaints management divided into three lines: the zero-line (prevention and information), the first-line (the handling of complaints by the judiciary) and the second-line (the handling of complaints by the High Council of Justice). Zero-line and first-

<sup>241</sup> Laurent Berthier and Hélène Pauliat, ‘Administration and Management of Judicial Systems in Europe’ (CEPEJ Studies no 10, CEPEJ) 32 <[https://www.coe.int/t/dghl/cooperation/cepej/series/Etudes10Admin\\_en.pdf](https://www.coe.int/t/dghl/cooperation/cepej/series/Etudes10Admin_en.pdf)> accessed 11 January 2017

<sup>242</sup> Laurent Berthier and Hélène Pauliat, ‘Administration and Management of Judicial Systems in Europe’ (CEPEJ Studies no 10, CEPEJ) 32-33 <[https://www.coe.int/t/dghl/cooperation/cepej/series/Etudes10Admin\\_en.pdf](https://www.coe.int/t/dghl/cooperation/cepej/series/Etudes10Admin_en.pdf)> accessed 11 January 2017

<sup>243</sup> Laurent Berthier and Hélène Pauliat, ‘Administration and Management of Judicial Systems in Europe’ (CEPEJ Studies no 10, CEPEJ) 33 <[https://www.coe.int/t/dghl/cooperation/cepej/series/Etudes10Admin\\_en.pdf](https://www.coe.int/t/dghl/cooperation/cepej/series/Etudes10Admin_en.pdf)> accessed 11 January 2017

<sup>244</sup> Laurent Berthier and Hélène Pauliat, ‘Administration and Management of Judicial Systems in Europe’ (CEPEJ Studies no 10, CEPEJ) 33-34 <[https://www.coe.int/t/dghl/cooperation/cepej/series/Etudes10Admin\\_en.pdf](https://www.coe.int/t/dghl/cooperation/cepej/series/Etudes10Admin_en.pdf)> accessed 11 January 2017

<sup>245</sup> Laurent Berthier and Hélène Pauliat, ‘Administration and Management of Judicial Systems in Europe’ (CEPEJ Studies no 10, CEPEJ) 34 <[https://www.coe.int/t/dghl/cooperation/cepej/series/Etudes10Admin\\_en.pdf](https://www.coe.int/t/dghl/cooperation/cepej/series/Etudes10Admin_en.pdf)> accessed 11 January 2017

<sup>246</sup> Research Group Social Analysis of Security (Ghent University), ‘Complaints Management for the Judicial Order’ (Belgian Science Policy 2005) <[www.belspo.be/belspo/organisation/publ/pub\\_ostc/agora/ragg093r\\_en.pdf](http://www.belspo.be/belspo/organisation/publ/pub_ostc/agora/ragg093r_en.pdf)> accessed 11 January 2017



line complaint handling are provided by the court in question, while the second-line of complaints management is the High Council of Justice. This implies that citizens can no longer complain directly to the High Council regarding the functioning of the judiciary if their complaint is directly linked to a specific case, although more general complaints (on policy) can still be addressed to the High Council. Furthermore, people can ask the High Council for a second opinion on complaints that have been handled by the first-line. This second opinion can be requested when complainants are not satisfied by the way the first-line treated their complaint.<sup>247</sup>

## B. Survey results

### 1. Feedback from external consumers on the workings of the Supreme Court

Although the theoretical framework underlined the importance of receiving feedback from external consumers, **many Supreme Courts do not have formal channels and procedures through which feedback can be received.**

**Only a minority of the Supreme Courts indicated they used surveys to receive and implement feedback on the workings of the Court** (EE, LT, SL, LV). It is, of course, possible that other institutions carry out surveys. For example, the ‘Justitiebarometer’, the public opinion survey in Belgium, is carried out by the High Council for the Judiciary.

The *Supreme Court of Lithuania* provides a customer satisfaction form on its website and at the Court itself. The *Supreme Court of Romania* receives feedback in a similar way. It provides an opinion questionnaire on its website.

The *Curia of Hungary* carried out client satisfaction surveys every year from 15 January to 15 February, on the basis of which it seeks to improve its client-support services.

**Feedback can also be received in a more informal way** (FI, DE, HU, LT, LT(A), SK, PT). The *Supreme Administrative Court of Finland*, for example, receives feedback through phone calls and letters. At the *Supreme Court* and *Supreme Administrative Court of Lithuania*, it is possible to organise a meeting with the president of the court or to contact them by phone or Skype (the latter is possible at the *Supreme Administrative Court of Lithuania*). These courts also organise discussions with institutions and civil society representatives on different topics or on the Court’s activities in general.

At the *Curia of Hungary*, the *Federal Administrative Court of Germany* and the *Supreme Administrative Court of Austria*, the press division generally receives the feedback. The *Supreme Court of Italy* has a separate office for relations with the public to which feedback regarding the workings of the Court can be directed. The press division of the *Supreme Court Portugal* has the specific task to gather and analyse information related to general opinion on the Supreme Court’s performance and the justice system in general. The press division therefore analyses the headlines and news of interest to the Supreme Court.

The *Supreme Court of Lithuania* indicated that, in addition to external feedback, they also conduct an annual survey of court employees, where they can express their opinions on various aspects of the Court’s work (culture, communication, working conditions, involvement in decision-making, etc.).

### 2. Complaints

Some Supreme Courts already have some kind of procedure other than disciplinary proceedings to respond to complaints.

**The majority of Supreme Courts examine complaints (other than disciplinary proceedings)** (CZ, EE, NL, DE, PL, PL(A), HU, LT, LT(A), SK, SE, SE(A), CY, SL, LV). The *Supreme Court of Italy* itself does not examine complaints, but the High Council for the Judiciary can examine the complaints. A similar situation applies to the *Supreme Court of Spain*, where the General Council for the Judiciary is competent to examine complaints.

**The survey results indicate that some approaches are more formal and streamlined than others.**

The *Supreme Court of the Netherlands* provides an example of a more streamlined approach. It has a

<sup>247</sup> Research Group Social Analysis of Security (Ghent University), ‘Complaints Management for the Judicial Order’ (Belgian Science Policy 2005) 2-3 <[www.belspo.be/belspo/organisation/publ/pub\\_ostc/agora/raggg093r\\_en.pdf](http://www.belspo.be/belspo/organisation/publ/pub_ostc/agora/raggg093r_en.pdf)> accessed 11 January 2017

special ‘complaints directive’ and the annual report gives a summary of these matters. Such a formal approach also exists in *Hungary*, where the procedure is stipulated in the Curia’s Organisational and Operational Rules and in the Instructions of the National Office for the Judiciary on Public-Interest Announcements and Complaints. Complaints are registered via an electronic program operated by the president’s office.

The president of the *Supreme Court of Lithuania* receives all complaints and forwards them to the Private Law Group or the Criminal Law Group of the Research Department of the Court, depending on the issue raised in the complaint. The complaint must be answered within 20 working days. All complaints are registered and monitored through the electronic document management system called KONTORA.

The *Supreme Court of Spain* has a Citizen’s Assistance Office, which can be considered as the zero-line in complaint handling. The Citizen’s Assistance Office answers on average 50 questions per day from court users regarding their case. The aim is to provide an answer within 24 hours.

In *Poland*, specific rules are enacted for lodging a complaint about the activity of a public institution. According to the provisions of the Polish Constitution and the Code of Administrative Procedure, every person has the right to make a complaint or submit a proposal concerning the activity of a public institution. These rules also apply to the *Supreme Court of Poland*. Every complaint or proposal is examined according to these procedural rules and the applicant is always given a response. Any useful remarks are taken into account in the activity of the Court. The *Supreme Administrative Court of Poland* also responded that it applies the Law on Common Courts Organisation and a regulation of the Minister of Justice on complaints and proposals concerning the activities of common courts. In principle, the president of the Supreme Administrative Court is responsible for the examination of complaints and proposals, but this task is delegated to the Court Information Division (i.e. the research unit of the court). Complaints and proposals can be filed via email or a letter, via ePUAP (Electronic Platform of the Public Administration Service) or orally at the office of the Court Information Division. The list of the petitions filed as well as annual information on petitions is published on the website of the Supreme Administrative Court.

### C. Recommendations and best practices

#### Conduct specific surveys regarding the working of the Supreme Court in addition to national surveys on public opinion regarding justice systems

**This recommendation is targeted at both Supreme Courts and the States.** The theoretical framework made it clear that there is a desire to make justice a quality-oriented public service. To ensure that the expectations of court users and other citizens are known and whether measures taken by the courts to improve their functioning actually work, surveys must be conducted. **The State or the national Council for the Judiciary are responsible for surveys of the public on the judiciary in general. The Supreme Court may benefit from additional surveys on the activity of the Supreme Court itself.** The surveys can be prepared by the public relations department or press division in cooperation with the president of the Court and a working group composed of some other members of staff and judges.

For more information on how to develop user satisfaction surveys, we refer readers to the CEPEJ’s handbook.<sup>248</sup>

The *Supreme Court of Estonia* pointed out that surveys are the primary way it receives feedback. For example, in 2013, a survey was conducted among the parties to one proceeding. This survey

<sup>248</sup> European Commission for the Efficiency of Justice (CEPEJ), ‘Handbook for Conducting Satisfaction Surveys aimed at Court Users in Council of Europe Member States’ (CEPEJ 2016) <[https://wcd.coe.int/ViewDoc.jsp?p=&Ref=CEPEJ\(2016\)15&Language=lanEnglish&Ver=original&BackColorInternet=DBDCF2&BackColorIntranet=FD864&BackColorLogged=FD-C864&direct=true](https://wcd.coe.int/ViewDoc.jsp?p=&Ref=CEPEJ(2016)15&Language=lanEnglish&Ver=original&BackColorInternet=DBDCF2&BackColorIntranet=FD864&BackColorLogged=FD-C864&direct=true)> accessed 11 January 2017



examined the level of satisfaction with the functioning of the court system. The topics included access to information and the information flow, the ability of the parties to understand the proceedings, satisfaction with the proceedings, an assessment of the reliability of the court system, and satisfaction of the members of the Bar Association and the members of the Prosecutor's Office with the work of the courts. In addition, the court system is included in more general surveys addressing the public's trust in different State institutions. These surveys are conducted at least once a year.

The *Supreme Court of Lithuania* provides a customer satisfaction form that external users can submit. The *Supreme Administrative Court of Lithuania* constantly receives feedback by carrying out surveys online and at the Court's registry. General surveys are conducted all year round and specific respondent groups (e.g. State institutions, attorneys) are also targeted by specific surveys each year.

### Implement a three-tiered complaints system

The **three-tiered complaints system** should consist of an easily accessible, customer-friendly, approachable department capable of answering standard questions, which constitutes the zero-line in complaint handling; a complaints manager responsible for first-line complaint handling; and a national authority responsible for second-line complaint handling. As in the previous recommendation, this is also targeted at the Supreme Courts and the States. It is the State's responsibility to designate the national authority.

The CEPEJ study regarding complaints management emphasised that irrespective of the level of complaint handling, it is essential that these **systems and processes are well known by the public** and that **information about them is clear and accessible**. The accent should be placed on transparency in all processes and institutions.<sup>249</sup> **Such clear rules can be found in the Netherlands, Hungary and Poland, where the rules for filing a complaint are stipulated in court regulations or in national legislation.**

**Firstly, a public relations department, the press division or a separate information desk may be responsible for 'zero-line complaints handling'**, answering standard questions such as where a certain courtroom is located, the average length of proceedings, etc. It is advisable that they also prepare information leaflets that answer some frequently asked questions. An information desk at the registry could answer more case-related standard questions, such as the stage the case file has reached. The creation of the zero-line is thus more a preventive measure.

In *Hungary*, for example, clients may seek information about the progress of their case during the client consultation hours of the Case Management Bureau.

**Secondly, Supreme Courts must appoint a complaints manager inside the institution**, who is responsible for receiving actual complaints and ensuring that they are acted on. The manager should function as a single point of contact for people who want to lodge a complaint. After receiving a complaint, the complaints manager should deal with the complaint immediately if it is inadmissible or non-specific, or, if action must be taken on it, they should turn to the head of court to seek information, or pass on the case file so that the latter may contact the judge concerned and attempt to find a solution. Rather than assigning this task to a judge, we would advise appointing the head of the public relations department or the press division as the complaints manager to avoid overburdening the judges with non-judicial tasks.<sup>250</sup>

**Finally, States should take appropriate measures to establish a second-line complaints handling authority** competent for the entire judiciary.

<sup>249</sup> Laurent Berthier and Hélène Pauliat, 'Administration and Management of Judicial Systems in Europe' (CEPEJ Studies no 10, CEPEJ) 34 <[https://www.coe.int/t/dghl/cooperation/cepej/series/Etudes10Admin\\_en.pdf](https://www.coe.int/t/dghl/cooperation/cepej/series/Etudes10Admin_en.pdf)> accessed 11 January 2017

<sup>250</sup> Council of Europe, Recommendation (86)12 (1986) of the Committee of Ministers to Members States concerning measures to prevent and reduce the excessive workloads in the courts <[www.justice.gov.sk/Dokumenty/OSP/RECOMMENDATION%20No.%20R%20\(86\)%2012.pdf](http://www.justice.gov.sk/Dokumenty/OSP/RECOMMENDATION%20No.%20R%20(86)%2012.pdf)> accessed 17 November 2016

# VI

## The Role of Councils for the Judiciary

### 1. INTRODUCTION

#### **What are the Councils for the Judiciary and what is their role?**

The Councils for the Judiciary are in various ways responsible for the support of the judiciary in the independent delivery of justice. Characteristic for majority of these organisations is their autonomy and their independence of the executive and legislative branch of government. Although no two Councils are alike they are all in charge of monitoring and promotion of the judiciary. They all play a role in the administration of justice.<sup>251</sup>

One of the conditions for the effective rule of law principle, a cornerstone of every modern democratic state, perhaps even the most important one, is independent<sup>252</sup> and impartial judiciary. Independence and impartiality need to be ensured in order for the judiciary to fulfil its role in relation to the parties of courts' proceedings, society and other branches of government. To achieve these two qualities, appointment, responsibility and dismissal of judges on the one hand, and determination of the scope of their rights and obligations on the other, need to be provided for in a manner, which is separated from the influence of (daily) politics. It is presumed that this also leads to a higher level of professional competence and quality of the judiciary in general. One of the existing paths<sup>253</sup> to achieve this goal is the creation of a special body - Council for the Judiciary -, which exists in a number of European Union (EU) Member States (hereinafter Member States). While their names in Member States vary,<sup>254</sup> the term Council will be used hereinafter in order to avoid confusion. It is usually a *sui generis*

<sup>251</sup> Guide to the European Network of Councils for the Judiciary, version June 2016, p. 10-11.

<sup>252</sup> Independence of the judicial authority is solemnly declared and protected in the Constitutions of European Member States.

In France for instance, the President of the Republic is the guarantor of the independence of the judicial authority and is assisted by the High Council of the Judiciary. See Art. 64 of French Constitution of 4th October 1958. Another example is Italy, where the Judiciary is a branch that is autonomous and independent of all other branches of government. See Art. 104 of the Italian Constitution.

<sup>253</sup> In Europe, there are broadly five models of court administration in use. They are the Ministry of Justice model, the Judicial Council model, the courts service model, hybrid models and the socialist model. For more information about each of them see Bobek Michal, Kosař David. *Global Solutions, Local Damages: A Critical Study in Judicial Councils in Central and Eastern Europe*, European Legal Studies, College of Europe, Brugge, July 2013, p. 7-9, and Kosař David. *Perils of judicial self-government in transnational societies: holding the least accountable branch to account*, Comparative constitutional law and policy, New York: Cambridge University Press, 2016, 2016, p. 131-133.

<sup>254</sup> The High Council of Justice in Belgium, the National Judicial Council in Croatia and Hungary, the Council for administration of Courts in Estonia, the Danish Court Administration in Denmark, the High Council of the Judiciary in France and Italy, the National Council of the Judiciary in Poland, the Supreme Judicial Council in Bulgaria and Portugal, the Supreme Judicial Council of Civil and Criminal Justice in Greece, the Superior Council of Magistracy in Romania, the Judicial Council in Lithuania, Scotland, Slovakia and Slovenia, the Council for the Judiciary in Latvia, the General Council of the Judicial Power in Spain, Judges Council in Northern Ireland, England and Wales and the Commission for the Administration of Justice in Malta.

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body with constitutional foundation<sup>255</sup> that places it beyond the reach of the ordinary legislator with the intent to enable it to execute the assigned tasks in complete independence.<sup>256</sup>

The Councils differ significantly in their composition (of judges or also other members who are appointed or elected by various institutions) and their competences, roles and influence. This is due to the peculiarities of legal and political sphere, traditions of a given national system, and other deeply rooted structural and cultural factors, which makes every Council unique.<sup>257</sup> Its role can be very different and can range from being an auxiliary one, to being a supervisory or even an intermediary one connecting the different branches of government, namely the judicial, legislative and executive branch (which can be reflected also in its composition).<sup>258</sup> The Councils strive to achieve responsibility, quality and efficiency of the judiciary, while at the same time safeguarding the independence of judges and judiciary in its entirety, which can only be achieved if the Council itself enjoys independent status.<sup>259</sup> In this respect they significantly influence the functioning of the courts of all levels, including also the Supreme courts of the Member States. Due to the fact that Councils differ greatly among the Member States, the purpose of this contribution is to outline the differences among them while simultaneously attempting to provide arguments in order to select better or best practices in relation to the functioning of (Supreme) courts.

<sup>255</sup> The Council is not a constitutionally regulated body in Denmark, England and Wales, Latvia, the Netherlands, Northern Ireland, Scotland and UK. In some Member States there are also two Councils, the other being for Administrative courts. This is the case in Greece (Supreme Judicial Council of the Administrative Justice that is constitutionally regulated) and Italy (the Council of Administrative Justice that is not constitutionally regulated). These latter two Councils are not taken into account in this contribution.

<sup>256</sup> See Report of the ENCJ Working group "Mission and vision – developing a strategy for the Council", 2006, p. 14.

<sup>257</sup> Voermans Wim, Albers Pim. *Councils for the Judiciary in EU Countries*, Report, Leiden/The Hague, February 2003, p. 70.

<sup>258</sup> Slovenian Council, for instance, is a sui generis body, that can't be included in any of the three branches. It performs a participatory role in the process of appointment of judges and therefore connects the judicial and legislative branch of government. See Šturm Lovro, Arhar France in drugi. *Komentar Ustave Republike Slovenije*, Kranj: Fakulteta za državne in evropske študije, 2010, p. 923, and Končina Peternel Mateja. *Kakšne pristojnosti (naj) ima Sodni svet*, Pravna praksa, št. 7-8, letn. 2015, p. 6.

<sup>259</sup> Some Member States are taking important steps towards strengthening the independence of the judiciary by establishing the Council as an authoritative independent institution. An example is the legislative proposal for Act on the Judicial Council in Slovenia, available at: [http://www.mp.gov.si/fileadmin/mp.gov.si/pageuploads/mp.gov.si/novice/2016/besedilo\\_zakona.PDF](http://www.mp.gov.si/fileadmin/mp.gov.si/pageuploads/mp.gov.si/novice/2016/besedilo_zakona.PDF) (last visited 28th March 2017).

## Overview of Councils for the Judiciary in EU Member States

Council for the Judiciary	Existing or not	Official name	Name in English
Austria	No		
Belgium	Yes	Conseil Supérieur de la Justice (CSJ)- Hoge Raad voor de Justitie (HRJ)	High Council of Justice
Bulgaria	Yes	Висш съдебен съвет (BCC) (VSS)	Supreme Judicial Council (SJC)
Croatia	Yes	Državno sudbeno vijeće (DSV)	State Judicial Council
Cyprus	No		
Czech Republic	No		
Denmark	Yes	Domstolsstyrelsen	The Danish Court Administration
Estonia	Yes	Kohtute haldamise nõukojaga	Council for Administration of Courts
Finland	No		
France	Yes	Conseil Supérieur de la Magistrature (CSM)	High Council for the Judiciary
Germany	No		
Greece	Yes	ΑΝΩΤΑΤΟ ΔΙΚΑΣΤΙΚΟ ΣΥΜΒΟΥΛΙΟ Ανώτατο Δικαστικό Συμβούλιο Διοικητικής Δικαιοσύνης (Anotato Dikastiko Symvoulío Dioikitikis Dikaiosisinis)	Supreme Judicial Council of Civil and Criminal Justice  Supreme Judicial Council of the Administrative Justice
Hungary	Yes	Országos Bírói Tanács (OBT)	National Judicial Council
Ireland	No		
Italy	Yes	Consiglio Superiore della Magistratura (C.S.M.)  Consiglio di presidenza della giustizia amministrativa (CPGA)	High Council for the Judiciary  Council of administrative justice
Latvia	Yes	Tieslietu padome (TP)	Council for the Judiciary
Lithuania	Yes	Teisėjų Taryba (TT)	The Judicial Council
Luxembourg	No		
Malta	Yes	Kummissjoni għall-Amministrazzjoni tal-Gustizzja	Commission for the Administration of Justice
Netherlands	Yes	Raad voor de rechtspraak (Rvdr)	Dutch Council for the Judiciary
Poland	Yes	Krajowa Rada Sądownictwa (KRS)	The National Council of the Judiciary
Portugal	Yes	Conselho Superior da Magistratura (CSM)	High Council for (the) Judiciary
Romania	Yes	Consiliul Superior al Magistraturii (SCM)	Superior Council of Magistracy
Slovakia	Yes	Súdna rada Slovenskej republiky	Judicial Council of the Slovak Republic
Slovenia	Yes	Sodni svet Republike Slovenije	The Judicial Council of the Republic of Slovenia
Spain	Yes	Consejo General del Poder Judicial (CGPJ)	General Council for the Judiciary
Sweden	No		
UK	Yes	Judges Council of England and Wales  Judges Council for Northern Ireland  Judicial Council for Scotland	Judges Council of England and Wales  Judges Council for Northern Ireland  Judicial Council for Scotland
<b>Total</b>	<b>20/28</b>		

Source: *Guide to the European Network of Councils for the Judiciary, version June 2016, p. 39.f.*

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The research builds on the desk research of theoretical framework and survey results provided by the Supreme Courts of the EU. Where possible, the information provided by the respondents was cross-checked with national legislation and academic literature. In total, questionnaires from 20 Member States were received. According to the respondents, out of these 20 Member States, only in 12<sup>260</sup> EU Member States a special Council for the Judiciary exists.<sup>261</sup> This is methodologically important as more information about them was received and used for the preparation of this contribution. Basic information regarding the Councils was also obtained via Constitutional provisions of other EU Member States and the European Network of Councils for the Judiciary (ENCJ).<sup>262</sup> Even though it was not possible to obtain detailed relevant information from all EU Member States, it is argued that a representative sample was compiled that allows for relevant conclusions.

## 2. COMPOSITION OF COUNCILS FOR THE JUDICIARY

### A. Overview

When determining the position of the Council towards other State branches of government and the competences the Councils (could) have, the composition of the Council is of fundamental importance. The compositions vary greatly between Member States, which lead us to believe that the roles of the Council are therefore different in every Member State.

For instance, differences exist in the total number of members<sup>263</sup> composing Councils. The number can be as low as 4 in the Netherlands<sup>264</sup> or as high as 44 in Belgium<sup>265</sup> with varying amounts in between in some other EU Member States. There are 10 members of the Council in Malta, 11 in Croatia,<sup>266</sup> Denmark, Northern Ireland, Slovenia<sup>267</sup> and Estonia,<sup>268</sup> 15 in Greece, Latvia and Hungary, 16 in Scotland, 17 in Portugal,<sup>269</sup> 18 in Slovakia,<sup>270</sup> 19 in Romania,<sup>271</sup> 21 in Spain, 22 in France,<sup>272</sup> 23 in Lithuania, 25 in Bulgaria and Poland,<sup>273</sup> 27 in Italy<sup>274</sup> and 29 in England and Wales.

<sup>260</sup> Estonia, Hungary, Italy, Latvia, Lithuania, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia and Spain.

<sup>261</sup> The Council of the Judiciary does not exist in Austria, Cyprus, Czech Republic, Finland, Germany, Ireland, Luxembourg and Sweden.

<sup>262</sup> Other Member States with an existing Council are Belgium, Bulgaria, Croatia, Denmark, France, Greece, Malta and the UK. In the UK are three Councils, one for Northern Ireland, one for Scotland and one for England and Wales. More at [www.encj.eu](http://www.encj.eu) (April 2017).

<sup>263</sup> This observation should be put in a broader context. The number of members is influenced by a variety of factors, such as the size of a Member State and what are its pursued goals in the composition of the Council (e.g. professionalism; the principle of checks and balances between different branches of government; public participation for greater transparency and control; representation of citizens from different parts of the Member State; etc.). More important than the total number is the ratio between different groups of members (e.g. judge versus non-judge members) and the required majority for adoption of decisions.

<sup>264</sup> According to Art. 84 of the Judicial Organisation Act, the Council should consist of between 3 and 5 members. It is up to the Council to choose the actual number. Currently there are 4 members. See ENCJ Factsheet on the Netherlands.

<sup>265</sup> See the response to a questionnaire on Judicial independence for Belgium in 2015, p. 10, available at: [https://www.encj.eu/images/stories/pdf/Scoreboard/be\\_judicial\\_independence\\_questionnaire\\_2015.pdf](https://www.encj.eu/images/stories/pdf/Scoreboard/be_judicial_independence_questionnaire_2015.pdf) (last visited on 28th March 2017).

<sup>266</sup> See Art. 124 of the Constitution of the Republic of Croatia, Official Gazette no. 56/90 with amendments (Croatian Constitution).

<sup>267</sup> See Art. 131 of Constitution of Republic of Slovenia, Official Gazette of the Republic of Slovenia no. 33/91-I with amendments (Slovenian Constitution).

<sup>268</sup> See Art. 40 of Estonian Courts Act from 19th June 2002.

<sup>269</sup> See Art. 218 of Constitution of the Portuguese Republic from 2nd April 1976 with amendments (Portuguese Constitution).

<sup>270</sup> See Art. 141a of the Constitution of the Slovakia from 3rd September 1992 with amendments (Constitution of Slovakia).

<sup>271</sup> See Art. 133 of the Constitution of Romania, Official Gazette of Romania, Part I, no. 233 of 21st November 1991 with amendments (Romanian Constitution).

<sup>272</sup> See the French response to a questionnaire on Judicial independence in 2015, p. 10, available at: [https://www.encj.eu/images/stories/pdf/Scoreboard/fr\\_judicial\\_independence\\_questionnaire\\_2015.pdf](https://www.encj.eu/images/stories/pdf/Scoreboard/fr_judicial_independence_questionnaire_2015.pdf) (last visited 28th March 2017).

<sup>273</sup> See Art. 187 of the Constitution of the Republic of Poland of 2nd April 1997 with amendments (Polish Constitution).

<sup>274</sup> See the Italian response to a questionnaire on Judicial independence in 2015, p. 10, available at: [https://www.encj.eu/images/stories/pdf/Scoreboard/it\\_csm\\_judicial\\_independence\\_questionnaire\\_2015.pdf](https://www.encj.eu/images/stories/pdf/Scoreboard/it_csm_judicial_independence_questionnaire_2015.pdf) (last visited on 28th March 2017). Italy is somewhat special as there are in fact two Councils. The other one is the Council of Administrative Justice that is composed of 15 members (President of the Council of State as an ex officio member, four professors of law or lawyers with 20 years of experience, appointed by the Parliament, and ten magistrates elected by their peers).

The Councils can be composed only of judges (as is the case in Hungary,<sup>275</sup> Lithuania, Northern Ireland and Scotland) or of judges and other members. Other members in Slovenia<sup>276</sup> and Italy<sup>277</sup> consist of law professors, attorneys or other lawyers elected by the Parliament. Other non-judge members can also be prosecutors in Bulgaria, France, Italy and Romania. A unique approach exists in Latvia, where all non-judge members are members by virtue of their function.<sup>278</sup>

### Composition of Councils for the Judiciary in the EU Member States

Council for the Judiciary – composition	Judges	Others	Majority	Chair
Belgium	22	22	Tie	Rotation <sup>1</sup>
Bulgaria	8	17	Other members	Minister of Justice
Croatia	7	4	Judges	Elected
Denmark	6 <sup>2</sup>	5	Judges	Elected
Estonia	6	5	Judges	President of Supreme Court
France	7	15	Other members	President of the Cour de Cassation
Greece	N/A	N/A	Judges	The President of the Supreme Court
Hungary	15	0	Judges	Rotation <sup>3</sup>
Italy	13	14	Other members	President of the Republic
Latvia	9	6	Judges	President of Supreme Court
Lithuania	23	0	Judges	Elected by Council
Malta	5	5	Tie	President of the Republic
Netherlands	2	2	Tie	One of the two judges
Poland	17	8	Judges	Elect
Portugal	8	9	Other members	President of Supreme Court
Romania	10	9	Judges	Elect
Slovakia	9	9	Tie	Elect
Slovenia	6	5	Judges	Elect
Spain	13	8	Judges	President of Supreme Court
UK (EN+WL)	28	1	Judges	Lord Chief Justice
UK (NI)	11	0	Judges	N/A
UK (SC)	16	0	Judges	The Lord President

<sup>1</sup> The Presidency is exercised in turn by each member of the Bureau for one year. See ENCJ Factsheet on Belgium.

<sup>2</sup> More precisely, 5 judges and 1 deputy judge

<sup>3</sup> The members rotate every six months in the following manner: the first to fill the position is the judge with the longest judicial service, followed by the other members in descending order of the length of their judicial service.

*Source: Survey replies, ENCJ Factsheets on members and Table on p. 10 of Member States' responses to questionnaire on Judicial independence in 2015.*

<sup>275</sup> The President of the Curia is an ex officio member, while other 14 judge members are elected in a secret ballot by a majority vote at the meeting of delegated judges. Despite the fact that the National Judicial Council in Hungary is composed only of judges, there are several non-judges who are also entitled to attend the meetings of the Council. It means that meetings – including a closed meeting – of the Council can be attended by the President of the National Office for the Judiciary, the Minister of Justice, the Prosecutor General, the President of the Hungarian Bar Association, the President of the Hungarian Chamber of Notaries Public and any ad-hoc experts and the representatives of any civil society organisations and other interest groups invited. The aforementioned persons are given consultation rights at the meetings.

<sup>276</sup> Composition of judges, attorneys, law professors or other lawyers should reduce or exclude the influence of politics and other powerful groups of society on the Council. It should also essentially limit the judicial branch of government from its strict self-governance. See Art. 131 of Slovenian Constitution and Avbelj Matej, Bardutzky Samo and others. *Komentar Ustave Republike Slovenije: dopolnitev – A*, Kranj: Fakulteta za državne in evropske študije, 2011, p. 1296.

<sup>277</sup> An interesting fact about Italy is that the President of Italy presides over the Council and is, along with the President of the Supreme Court of Cassation and the Prosecutor General of the Supreme Court of Cassation, member of the Council by the virtue of his office. See Art. 87 of Italian Constitution. The President presides over the proceedings of the Council also in Romania. See Art. 133 of Romanian Constitution.

<sup>278</sup> For detailed information see subchapter 3.3.

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It is argued that the composition of the Council, where all the members are judges presents a challenge in that the outside perspectives might be overlooked in the functioning of the Council. Arguments in the direction of lack of democratic legitimacy, self-protection and self-government of judges are often mentioned as a vice in this respect.<sup>279</sup> On the other hand, mixed composition provides a better balance between the State branches of government (as other non-judge members are elected or appointed by a non-judicial body), therefore making it more constitutionally appropriate (with respect to checks and balances of State branches of government). This applies in the cases where other non-judge members are elected or appointed by the legislative or the executive branch of government. In some Member States though, other non-judge members are not elected or appointed by these two branches of government. For instance, this might apply for prosecution members that could be elected by the prosecutors.<sup>280</sup> Nevertheless, in both cases the result of mixed composition is that a part of the members of the Council are not judges, therefore, limiting the judges' power in the Council. Perspective of other members, usually elected or appointed on an outstanding merit<sup>281</sup> (among legal experts) may be an added value in the functioning of the Council, either by providing a different perspective or perhaps even ensuring better independence of members of the Councils overall - especially in those Member States where the President of the Council is the President of the Supreme Court and other judge members may view them as an authoritative person.<sup>282</sup> This influence seems present to a lesser extent on other non-judge members, such as professors, notaries, advocates, etc.

The composition of the Council can also be entirely different than described above. In Estonia, other members of the Council include also members of the Parliament, a sworn advocate appointed by the Board of the Bar Association, the Chief Public Prosecutor (or a public prosecutor appointed by them) and the Chancellor of Justice (or a representative appointed by them), while the Minister of Justice is a participant with the right to speak. Members of the parliament are also members of the Council in Latvia, Poland<sup>283</sup> and Croatia,<sup>284</sup> while the President of Poland is entitled to appoint one individual to this function and one member seat is reserved for the Minister of Justice.<sup>285</sup> Participation of politicians (MPs for example) can be viewed as positive due to the argument of democratic legitimacy of the Council. On the other hand, this participation might be a risk to the independency of the Council.<sup>286</sup> Whenever political influence would be present in the process of voting this would (perhaps) be in contrast to the use of strictly internal professional criteria.<sup>287</sup> The political influence also does not seem to be required when the Council provides opinions or proposals and other State branches of

<sup>279</sup> Nevertheless, it has to be highlighted that without self-governance there is in principle no judicial independence. Self-governance in this sense can also be viewed as a virtue, however, that does not mean that only judges may be members of the Council.

<sup>280</sup> In Bulgaria for instance, where the prosecutors elect four members of the Council among its ranks.

<sup>281</sup> Members ought to be selected on the basis of their competence, experience, understanding of judicial life, capacity for discussion and culture of independence. See point 21 of Opinion no. 10 of CCJE on the Council for the Judiciary at the service of society, available at: [https://wcd.coe.int/ViewDoc.jsp?p=&Ref=CCJE\(2007\)OP10&Language=lanEnglish&Ver=original&Site=COE&BackColorInternet=FEF2E0&BackColorIntranet=FEF2E0&BackColorLogged=c3c3c3&direct=true](https://wcd.coe.int/ViewDoc.jsp?p=&Ref=CCJE(2007)OP10&Language=lanEnglish&Ver=original&Site=COE&BackColorInternet=FEF2E0&BackColorIntranet=FEF2E0&BackColorLogged=c3c3c3&direct=true) (last visited 28th March 2017).

<sup>282</sup> So called 'internal' independence (among other colleagues within the judiciary) can be compromised in this respect. For classification of different types of influences on independence see Adams Maurice. *Pride and prejudice in the judiciary – judicial independence and the Belgian High Council of Justice*, Tydskrif vir die Suid-Afrikaanse Reg, Volume 2010, Issue 2, Jan 2010, p. 245-246.

<sup>283</sup> Four members from deputies of lower house 'Sejm' and 2 amongst the members of the upper house Senate.

<sup>284</sup> Two out of eleven members of the Council are members of the Parliament, one of whom is from ranks of the opposition.

<sup>285</sup> The presence of the Minister of Justice as a member of the Council unavoidably entails the risk of the executive branch of government affecting debates and decisions made by the judicial order and may effectively constrain their frankness. See ENCJ Project team, Councils for the Judiciary Report 2010-2011, p. 13.

<sup>286</sup> Consultative Council of European judges (CCJE) warns that prospective members of the Council should not be active politicians, MPs, the executive or the administration. See point 23 of Opinion no. 10 of CCJE on the Council for the Judiciary at the service of society, available at: [https://wcd.coe.int/ViewDoc.jsp?p=&Ref=CCJE\(2007\)OP10&Language=lanEnglish&Ver=original&Site=COE&BackColorInternet=FEF2E0&BackColorIntranet=FEF2E0&BackColorLogged=c3c3c3&direct=true](https://wcd.coe.int/ViewDoc.jsp?p=&Ref=CCJE(2007)OP10&Language=lanEnglish&Ver=original&Site=COE&BackColorInternet=FEF2E0&BackColorIntranet=FEF2E0&BackColorLogged=c3c3c3&direct=true) (last visited 28th March 2017).

<sup>287</sup> Functioning of the Council shall allow no concession at all to the interplay of parliamentary majorities and pressure from the executive branch of government and be free from any subordination to political party consideration in order to safeguard the values and fundamental principles of justice. Ibidem, see point 19.

government (that are politically influenced) actually adopt the more significant decisions (such as election or appointment of judges for instance). If that is the case, strictly internal professional criteria are used in one institution (the Council) and the political influence is present in another institution (Parliament for instance) participating in the process of adopting decisions, therefore ensuring a system of checks and balances in this way. When determining such an influence on the functioning of the Council, ratio between judge and non-judge members is important as well as the majority required for adoption of a decision (usually set by a statute or rules of procedure). Important differences can be observed in this respect among Member States.

For instance, in the Member States, where the composition of the Council includes judges and other members, judges represent the majority of its members. This is the case in Denmark, Estonia and Slovenia (6 out of 11), Croatia (7 out of 11),<sup>288</sup> Latvia (9 out of 15),<sup>289</sup> Romania (10 out of 19),<sup>290</sup> Spain (13 out of 21), Poland (17 out of 25) and England and Wales (28 out of 29). Number of judges and other members of the Council is the same in Belgium (22 out of 44),<sup>291</sup> Malta (5 out of 10), the Netherlands (2 out of 4) and Slovakia (9 out of 18), while the judges do not have a majority in the composition of the Council in Bulgaria (8 out of 25),<sup>292</sup> France (7 out of 22),<sup>293</sup> Portugal (8 out of 17)<sup>294</sup> and Italy (13 out of 27).<sup>295</sup> In order to strengthen the independence of the judiciary it is recommended that the Council is composed of a majority of judges when the composition is mixed.<sup>296</sup> The composition of judges in the Council generally consists of judge members elected from courts that differ either according to region or hierarchy. This is the case in Hungary, Italy, Latvia, Lithuania,<sup>297</sup> Poland,<sup>298</sup> Portugal,<sup>299</sup> Slovenia<sup>300</sup> and Spain.<sup>301</sup> This is of utmost importance and a

<sup>288</sup> Remaining members are two university professors of law and two members of Parliament, one of whom is a member of the opposition.

<sup>289</sup> Six judges are elected by the conference and one judge by the plenum of the Supreme Court. Chief Justice of the Supreme Court and President of the Constitutional Court are members ex officio. Non-judge ex officio members are the Minister of Justice, Chairperson of the Judicial Committee of the Parliament, General Prosecutor, Chairman of the Council of Sworn Advocates, Chairman of the Council of Sworn Notaries and Chairman of the Council of Sworn Bailiffs.

<sup>290</sup> Nine judges and the President of the High Court of Cassation and Justice. Other members are the Minister of Justice, the General Public Prosecutor, five prosecutors and two representatives of the civil society (appointed by the Senate) who are specialists in law and enjoy a good professional and moral reputation. See Art. 133 of Romanian Constitution.

<sup>291</sup> The High Council of Justice is composed of a Dutch- and French- speaking board. Each college comprises an equal number of members and is constituted with equal representation, on the one hand of judges and officers of the public prosecutor's office elected directly by their peers and, on the other hand, of other members appointed by the Senate by a two-thirds majority of the votes cast. See Art. 151 of Belgian Constitution. In total there are 22 judges and 22 non-judges (8 lawyers, 6 university or board of higher education professors and 8 members of civil society).

<sup>292</sup> See ENCJ Factsheet on Bulgaria.

<sup>293</sup> The section with jurisdiction over judges comprises, in addition to the Chief President of the Cour de Cassation, five judges.

<sup>294</sup> Along with the President of the Supreme Court of Justice, who is chair by virtue of their function, and seven judges, nine other members are elected by the National Assembly or appointed by the President of Portugal. See Art. 218 of Portuguese Constitution.

<sup>295</sup> There are 13 judges and 5 prosecutors (both count as magistrates). This is important considering that the Italian Constitution does not specify the number of elected members, but establishes that two-thirds of them should be elected by all the ordinary magistrates amongst themselves and one third should be elected by the Parliament from amongst university professors of law and lawyers with fifteen years of practice or more. The latter can also be appointed as Cassation councillors for their outstanding merit following a proposal by the Council. See Arts. 104 and 106 of Constitution of Italy, Official Gazette no. 298 of 27th December 1947 with amendments (Italian Constitution).

<sup>296</sup> See also first and fourth paragraph of Resolution on Self-Governance for the Judiciary: Balancing Independence and Accountability of the General Assembly of the European Network of Councils for the Judiciary, met in Budapest in May 2008.

<sup>297</sup> Three members must be from each of the Supreme Court, the Court of Appeals, the Supreme Administrative Court, one from each regional court, one from all regional administrative courts and one from all district courts located in the territory of each regional court. Members from the Supreme Court are selected by the judges of the Supreme Court, members of the Court of Appeals are elected by the judges of the Court of Appeals, etc. In addition, there are some ex officio members (Presidents of the Supreme Court, Court of Appeals and Supreme Administrative Court).

<sup>298</sup> Fifteen judges must be chosen from amongst the judges of the Supreme Court, common courts, administrative courts and military courts. See Art. 187 of the Polish Constitution.

<sup>299</sup> See Art. 218 of Portuguese Constitution.

<sup>300</sup> A member spot is reserved for elected representative judge of each of the following hierarchical tiers of courts: Supreme court, Higher courts, District courts and Local courts. Two additional judges are elected by all the judges from aforementioned courts. See Art. 22 of Courts Act, Official Gazette of Republic of Slovenia, no. 94/07 with subsequent changes and modifications.

<sup>301</sup> Twelve of the twenty members elected by the Parliament must be judges from courts of different levels. See Sec. 122 of Spanish Constitution.

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strength considering that representatives of all courts can participate in sessions of the Council and present the issues that arise in the functioning of their court (which can be completely different between the courts themselves).

## Recommendations and best practices

**Mixed composition of the Council might present several important advantages. It could include judges representing all the courts and non-judge members elected or appointed on their outstanding merit.**

**Judge members could represent a majority of Council's members, but they might not necessarily have a qualified majority.**

**Non-judge members in the Council may increase democratic legitimacy and transparency of the judiciary.**

## B. Supreme Court judges as members of the Council of the Judiciary

The preceding paragraphs clearly outline the fact that the Councils' judge members are representing the courts of different tiers. It seems especially important that judges of the highest courts in Member States are members of the Council. The connection between the Council, as guarantor for the independence of the judiciary, and the highest court (generally Supreme Court) is a necessity in order to achieve central involvement of Supreme Court representatives in all matters related to the administration of the judiciary, appointment, promotion, transfer and dismissal of judges, disciplinary proceedings against judges, resolving various disputes and so forth.<sup>302</sup> They can also convey to the Council the challenges arising in the functioning of the Supreme Court or courts in general, therefore influencing the Councils' functioning.<sup>303</sup> As a result, mandatory participation of members of the supreme judicial body or bodies in Council can be observed in several Member States. By virtue of their position, President of the Supreme Court (also called Chief Justice in some Member States) is a member of the Council in Bulgaria, England and Wales, Estonia,<sup>304</sup> Greece, Hungary,<sup>305</sup> Italy,<sup>306</sup> Latvia, Lithuania, Malta, Northern Ireland, Poland, Portugal,<sup>307</sup> Romania, Scotland and Spain, and President of the Supreme Administrative Court is a member of the Council in Lithuania and Poland. The President of the Supreme Administrative Court presides over a special Supreme Judicial Council for Administrative Justice in Greece.<sup>308</sup> The President of the Supreme Court chairs the Council in England and Wales, Estonia,<sup>309</sup> France,<sup>310</sup>

<sup>302</sup> See point 51 of Opinion no. 19 of CCJE on the Role of Court Presidents adopted in November 2016, available at: [https://wcd.coe.int/ViewDoc.jsp?p=&Ref=CCJE\(2016\)2&Language=lanEnglish&Ver=original&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864&direct=true](https://wcd.coe.int/ViewDoc.jsp?p=&Ref=CCJE(2016)2&Language=lanEnglish&Ver=original&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864&direct=true) (last visited 28th March 2017).

<sup>303</sup> This was stressed by the Italian respondent. The Latvian respondent clearly outlined that practical experience, competences and involvement in numerous working groups are reasons why Supreme Court judges as members provide strong input in the decision-making process of the Council. Due to the Supreme Court having detailed background information on the functioning of the judiciary in Latvia and other countries, it can contribute to the analytical work and international cooperation of the Council.

<sup>304</sup> See Art. 40 of Estonian Courts Act.

<sup>305</sup> In Hungary it is called the President of Curia.

<sup>306</sup> President of the Supreme Court of Cassation.

<sup>307</sup> See Art. 218 of Portuguese Constitution.

<sup>308</sup> See ENCJ Factsheet on Greece. In Greece there are two Councils, the other being Supreme Judicial Council of Civil and Criminal Justice.

<sup>309</sup> See Art. 40 of Estonian Courts Act. The Council sessions are convened by the Chief Justice of the Supreme Court or by the Minister of Justice. The person who convenes a session also determines its agenda.

<sup>310</sup> See Art. 65 of French Constitution.

Greece, Latvia, Portugal, Scotland and Spain.<sup>311</sup> Interestingly, in Lithuania the President of the Supreme Court used to be the chair of the Council by virtue of his or her office, but the Constitutional Court declared such a provision as unconstitutional.<sup>312</sup> A different provision exists in Croatia, where the presidents of the courts may not be elected to the Council.<sup>313</sup> Similarly, Poland banned court presidents from membership of the Council in 2007 and the Slovak Republic adopted the same incompatibility rule in 2011.<sup>314</sup> Such a provision formally prevents the accumulation of power in the hands of a handful of persons.<sup>315</sup> A valid reason for it lies in the fact that judges, who should be independent from political control, may nevertheless become dependent on other forces, such as court presidents (or senior judges) in a judicial hierarchy, with just as much potential to distort individual decision-making as more conventional political influence.<sup>316</sup> If the same person is a court president and also a member of the Council (who plays an important role in the career of a judge), the independence of other individual judges, who are members of the Council, is more likely to be put in question.

As to the other justices of Supreme Court being members of the Council in respective member States, several different paths are possible. Other Member States can be bound to select a certain number of members of the Council among Supreme Court judges or they retain some flexibility and have a certain extent of freedom in choosing judges as members of the Council. The former applies to Estonia,<sup>317</sup> Italy,<sup>318</sup> Latvia,<sup>319</sup> Lithuania, Poland,<sup>320</sup> Romania<sup>321</sup> and Slovenia.<sup>322</sup> The latter applies to Slovakia<sup>323</sup> and Spain. Although there is no legal provision that representatives from the Supreme Court must be members of the Council in the two latter Member States, there are normally several members in practice. If this were any different, it would cause a complicated situation for the Supreme Court.<sup>324</sup>

<sup>311</sup> See Sec. 122 para. 3 of Spanish Constitution.

<sup>312</sup> The Constitutional Court of Lithuania declared on the 9th of May 2006 (See Judgment on the Case No. 13/04-21/04-43/04) that Lithuanian Constitution forbids legal regulation that a certain judge could become the head of the Council ex officio. The Court found such a rule incompatible with the principle of self-governance of the judiciary as one of the state powers entrenched in the Constitution, as well as with the constitutional principle of a state under the rule of law. The constitutional imperatives (decentralisation of the self-governing judicial power, independence of the judge, the equal status of all judges who administer justice, non-subordination of the judge to any other judge or president of any other court while administering justice, etc. imply a democratic procedure for the formation of the Council. The procedure for the election must be organised and executed so that there would be no preconditions created to doubt the democracy of this election, inter alia, the fact whether during an election of the Council some judges were not treated unequally to others (see points 32 and 33 of the judgment). Interestingly, current president of the Lithuanian Council is nevertheless the President of the Supreme Court, not by ex officio, but through election within the Council.

<sup>313</sup> See Art. 124 of Croatian Constitution.

<sup>314</sup> See D. Kosař, 2016, p. 401.

<sup>315</sup> See also M. Bobek and D. Kosař, 2013, p. 12. They warn that the Council model in Europe shields the judiciary from external influence, but that it pays little attention to the possible improper pressures on individual judges exercised by senior judges and court presidents.

<sup>316</sup> Ginsburg Tom, Garoupa Nuno. *Guarding the guardians: Judicial Councils and Judicial Independence*, American Journal of Comparative Law, Vol. 57, 2009, p. 110.

<sup>317</sup> Two out of eleven members of the Council are Supreme Court justices, one of the two being the Chief Justice of Supreme Court.

<sup>318</sup> Reportedly four judges of the Supreme Court are members of the Council, one of them being the Chairperson of the Supreme Court by virtue of his or her office. By evaluation of the Italian respondent, the Supreme Court of Cassation is properly represented within the Council.

<sup>319</sup> Along with the President of the Supreme Court, at least one Supreme Court judge is elected among the plenum of the Supreme Court.

<sup>320</sup> Together with the President of the Supreme Court, two other Supreme Court justices are members of the Council. By the evaluation of the Polish respondent, the representation of the Supreme Court in the Council seems to be appropriate.

<sup>321</sup> Two representatives of the Supreme Court are members of the Council.

<sup>322</sup> One of the member judges is elected exclusively by the Supreme Court justices from among themselves.

<sup>323</sup> Respondent of the Slovakia stressed that obligatory membership of Supreme Court representatives should be enacted, therefore proposing an improvement of the existing system.

<sup>324</sup> In Lithuania for instance, the Constitutional Court held that judges from the highest courts (Supreme, Supreme Administrative and Court of Appeals) must make more than half of the members of the Council. Such a requirement clearly demonstrates that the representation of judges of the highest court in the Council is a necessity.

## Recommendations and best practices

**The Supreme Court could have their representatives in the Council elected among Supreme Court judges themselves.**

### C. Selection process of the members of the Council of the Judiciary

One of the more important constitutional questions concerning Councils and their independence regards the influence of the parliament or the government (especially the Ministry of Justice) or any other public body on its composition and functioning.<sup>325</sup> Influence concerning the composition of Councils can be seen through the selection process of members of the Council. It can be observed that differences exist between EU Member States in this respect. While some members of the Council are members by virtue of their function, others can become members in a variety of ways. Judges are elected by the representatives of courts (e.g. by their peers) in Belgium, Estonia,<sup>326</sup> Hungary,<sup>327</sup> Italy,<sup>328</sup> Latvia,<sup>329</sup> Lithuania,<sup>330</sup> Poland,<sup>331</sup> Portugal,<sup>332</sup> Romania, Slovakia and Slovenia. An exception to this can be observed in Spain, where judges (along with other members) are elected by the Congress of Deputies and the Senate.<sup>333</sup>

The authority to elect other members lies with the Parliament in Belgium,<sup>334</sup> Croatia, Estonia, France, Italy, Poland, Portugal, Romania,<sup>335</sup> Slovenia and Slovakia.<sup>336</sup> There are also some Member States, where the competence to appoint a member of the Council lies with the executive branch, namely with the President (in France,<sup>337</sup> Poland,<sup>338</sup> Portugal<sup>339</sup> and Slovakia), the King (in Spain)<sup>340</sup>

<sup>325</sup> It might be relevant in this respect that the CCJE commends a system that entrusts appointments of non-judge members to non-political authorities (so that they are not appointed by the executive branch of government). See point 32 of Opinion no. 10 of CCJE on the Council for the Judiciary at the service of society.

<sup>326</sup> They are selected by all the judges (*en banc*). See Arts. 38 and 40 of Estonian Courts Act.

<sup>327</sup> The judge members are elected in a secret ballot by a majority vote at the meeting of delegated judges.

<sup>328</sup> Two thirds of the members of the Council are elected by all the ordinary judges belonging to the various categories. See Art. 104 of Italian Constitution.

<sup>329</sup> Six out of nine judges are elected by the conference of judges, where they represent first and second court instances and judges of the land registers (also from regions).

<sup>330</sup> All candidates are being nominated and elected during the general meeting of judges by the representatives of relevant courts. They are elected for four years and after the term expires, a new general meeting of judges is organised in order to elect new members of the Council.

<sup>331</sup> Supreme Court judges are appointed by the general assembly of judges of the Supreme Court from among the judges of that Court - see Art. 11 of the Act on National Council of the Judiciary of 12th May 2011. Other judge members are appointed by the general assembly of judges of the Supreme Administrative Court together with the representatives of assemblies of courts of different tiers - see Arts. 12 and 13 of the Act on National Council of the Judiciary.

<sup>332</sup> The members are elected by their peers in accordance with the principle of proportional representation by a secret ballot.

<sup>333</sup> Selection requires three fifths of every chamber, so the candidates should not be politically influenced. This has been subject of public debate in Spain for many years though.

<sup>334</sup> Members other than judges and public prosecution officers are appointed by the Senate by a two-thirds majority of the votes cast.

<sup>335</sup> Two representatives of the civil society, specialists in law, who enjoy a good professional and moral reputation, are elected by the Senate. Senate also validates the members who were elected in the general meetings of magistrates.

<sup>336</sup> For an overview of all Member States see the response of Slovak Council to the questionnaire on Judicial independence in 2015 on p. 10, available at: [https://www.encj.eu/images/stories/pdf/Scoreboard/sk\\_judicial\\_independence\\_questionnaire\\_2015.pdf](https://www.encj.eu/images/stories/pdf/Scoreboard/sk_judicial_independence_questionnaire_2015.pdf) (last visited 28th March 2017).

<sup>337</sup> President of the Republic, National Assembly and the Senate each appoint two prominent citizens who are not a member of either of the Parliament or the Judiciary. See Art. 65 of French Constitution.

<sup>338</sup> One member is appointed by the President of the Republic of Poland.

<sup>339</sup> Seven out of 17 members are elected by the national Assembly and two are appointed by the President of Portugal.

<sup>340</sup> Twenty out of twenty-one members of the Council are appointed by the King for a five-year period. Four are nominated by the Congress and four by the Senate, elected in both cases by three-fifths of their members amongst lawyers and other jurists of acknowledged competence with more than fifteen years of professional practice. See Sec. 122 of Spanish Constitution.

or the Government (in Slovakia).<sup>341</sup> In Poland, there have been recent draft proposals to changes of legislation that might seriously politically influence the Council and endanger its independence.<sup>342</sup> In Estonia, members can be appointed by the Bar association, the Prosecutor's office and the Chancellor of Justice. A unique approach exists in Latvia, where non-judge members are members by virtue of their function. Ex officio member from the executive branch of government is the Minister of Justice and from the legislative branch of government the Chair of the Legal Affairs Committee of the Parliament. Other non-judge members are the general Prosecutor and the Chairs of the Council of Sworn Advocates, the Council of Sworn Notaries and of the Council of Sworn Bailiffs.

### 3. COMPETENCES OF COUNCILS FOR THE JUDICIARY

#### A. Cooperation in the process of election or appointment of judges

Fundamentally, the Councils are bodies designed to take appointment and promotion of judges away from the political process,<sup>343</sup> while attempting to ensure a due level of their accountability. They therefore lie somewhere in between the diametrical extremes of letting judges appoint their own successors and maintain internal responsibility for judicial discipline, and the alternative of complete political control of judges' appointments, discipline and promotion. The first model of judicial self-selection arguably errs too far on the side of independence, while pure political control may make judges too accountable in the sense that they will consider the preferences of their political principals in the course of deciding specific cases. The Council, as an intermediate body between politically influenced branches of government and judges, therefore provides a potential to enhance both accountability and independence.<sup>344</sup>

This fundamental role of the Council can be best seen through their competences in a specific Member State. While the competences and powers of all members of the Council are reportedly equal<sup>345</sup> (for instance) in Hungary, Latvia, Lithuania, Poland and Romania, the competences of the Council itself differ significantly among Member States.

The most widely recognised competence of the Councils is their involvement in the process of election or appointment of judges.<sup>346</sup> This can be achieved either by assessing and proposing candidates (Belgium,<sup>347</sup>

<sup>341</sup> Three members are appointed by the President, three by the Government and three by the National Council, while the judges elect nine members of the Council. Each candidate is required to be of impeccable character with a university qualification in law and at least 15 years of professional practice.

<sup>342</sup> See Opinion of the ENCJ Executive Board on the request of the Polish Council, available at: [https://www.encj.eu/images/stories/pdf/Members/rfc\\_krs\\_pl\\_opinion\\_encj\\_eb\\_30\\_1\\_2017\\_final.pdf](https://www.encj.eu/images/stories/pdf/Members/rfc_krs_pl_opinion_encj_eb_30_1_2017_final.pdf) (last visited 28th March 2017).

<sup>343</sup> The underlying rationale for the creation of Councils was the need to insulate the judiciary from the executive branch of government. See Autheman Violaine, Elena Sandra. *Global best practices: Judicial Councils - Lessons Learned from Europe and Latin America*, IFES Rule of Law White Paper Series, April 2004, p. 2.

<sup>344</sup> Garoupa Nuno, Ginsburg Tom. *The Comparative Law and Economics of Judicial Councils*, Law and Economics Working Papers, University of Illinois College of Law, Year 2008, Paper 96, p. 7.

<sup>345</sup> This does not refer to duties or operational powers of the Chair, such as convening sessions, determining agenda, etc. This also does not refer to specific functions that an individual member has as a member of the Council, for instance being a member of a disciplinary or a standing committee. Such internal commissions in the Council are present in many Member States. Equal status of judicial and non-judicial members of the Council is also recommended in the ENCJ Report 2015-2016, Standards VI: Non-judicial Members in Judicial Governance, p. 12.

<sup>346</sup> According to Art. 9 of the Universal Charter of the Judge, adopted on 17th November 1999, the selection of judges should be carried out by an independent body that includes substantial judicial representation. See also Venice Commission Opinion no. 403/2006 of 22nd June 2007, p. 5.

<sup>347</sup> See Art. 151 of Belgian Constitution.

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Croatia,<sup>348</sup> Poland,<sup>349</sup> Romania,<sup>350</sup> Slovenia<sup>351</sup> and Slovakia<sup>352</sup>), providing opinion on the candidates (France,<sup>353</sup> Lithuania,<sup>354</sup> Malta<sup>355</sup> and Estonia)<sup>356</sup> or even consenting in the assessment of applications for a position of a judge (Hungary).<sup>357</sup> There are no competences in the selection and appointment of judges in England and Wales,<sup>358</sup> Northern Ireland<sup>359</sup> and Scotland.<sup>360</sup> These three Councils in the UK also do not have any competences regarding the assessment, promotion, transfer and dismissal of judges or court presidents.

Interestingly, the Spanish Council also has an influence on the composition of the Constitutional Court. It nominates two out of the twelve Constitutional Court justices, which are appointed by the King.<sup>361</sup> In a broader sense, the influence of the Council extends also to the sphere of prosecution

<sup>348</sup> The Council autonomously decides, in conformity with the Constitution and law, on the appointment, promotion, transfer, dismissal and disciplinary accountability of judges and presiding judges, except in the case of the Chief Justice of the Supreme Court. These decisions are made in an impartial manner on the basis of the criteria set forth by law. See Art. 124 of Croatian Constitution.

<sup>349</sup> For competences see Art. 3 of Act on National Council of the Judiciary of 12th May 2011 with amendments.

<sup>350</sup> See Art. 134 of Romanian Constitution.

<sup>351</sup> For competences see Art. 28 of Slovenian Courts Act, Official Gazette of Republic of Slovenia no. 94/07 with amendments.

<sup>352</sup> In relation to the administration of the Supreme Court, the Council is authorized to submit to the President of Slovakia the proposal for appointment and dismissal of the President and the Vice-President of the Supreme Court. See Sec. 27a of Act on the Judicial Council of the Slovakia no. 185/2002 Coll. of 11th April 2002.

<sup>353</sup> The Council makes recommendations for the appointment of judges to the Cour de Cassation, the Chief presidents of Courts of Appeal and the Presidents of the Tribunaux de grande instance. Other judges are appointed with the consultation of the Council. See Art. 65 of French Constitution.

<sup>354</sup> In Lithuania, the opinion of the Council is not an opinion in its common sense. Without a consent (positive opinion) of the Council, judge (including Supreme Court judge and even its President) cannot be appointed, promoted, transferred or dismissed from office. This opinion is given to the President of the Republic. The same applies for the appointment and removal from office of Chairpersons and Deputy Chairpersons of courts or their divisions. The Council's consent is not necessary only, if a judge from an ordinary court is appointed as a judge of the Constitutional Court or as a Minister of Government or is dismissed from office by Parliament in an impeachment procedure. The latter is applicable for dismissal from office of judge of the Supreme Court and Court of Appeals, if they grossly violate the Constitution or breach judge's oath, or when they are found to have committed a crime. The Council's approval is not necessary in impeachment procedure, because the Constitutional Court plays a significant role in this procedure and, therefore, acts as counterbalance to political powers. The Council also forms the Examination Commission of candidates to judicial office and approves the regulations concerning its procedure.

<sup>355</sup> Advice on appointment is done upon the request of the Prime Minister. See ENCJ Factsheet on Malta.

<sup>356</sup> The Council and all the judges of the Supreme Court provide an opinion to the Chief Justice of the Supreme Court on the candidates for a vacant position of a justice of the Supreme Court. A justice of the Supreme Court can then be appointed to office by the Parliament on the proposal by the Chief Justice. See Art. 55 of Estonian Courts Act.

<sup>357</sup> The Council has the right to exercise consent in the assessment of applications for a judge's position where the President of the National Office for the Judiciary or the President of the Curia wishes to award a position to the applicant in the second or third position in the rankings. It also determines the principles to be applied when assessing applications and then annually publishes its opinion on the relevant practice regarding the assessment of applications for a judge's position and court leader's positions.

<sup>358</sup> The Council does have a specific statutory responsibility for appointment of three members of the Judicial Appointments Commission under the Constitutional Reform Act 2005. Apart from this role the Judges' Council is not concerned in the selection, appointment or promotion of judges or in the assessment of judicial activities. Its primary function is to be a body broadly representative of the judiciary as a whole which will inform and advise the Lord Chief Justice on matters requested from time to time.

<sup>359</sup> The Council also does have any competences regarding promotion of judges. Its competences are to represent the judiciary in Northern Ireland on a wide range of issues and to advise the Lord Chief Justice as Head of the Judiciary. In essence, the Council serves the judiciary. See ENCJ Factsheet on Northern Ireland.

<sup>360</sup> The objectives of the Council are to preserve the independence of the judiciary, to protect and promote the due administration of justice, to coordinate the views and actions of the judges to those ends, to promote the professional and pastoral interests of the judiciary, to provide guidance to the judiciary on questions of ethics and other matters of relevance due to the administration of justice, to facilitate communication between the various branches of the judiciary and, where appropriate, collect and collate their views, to provide information and advice to the Lord President so that they may be aware of the views of the judiciary and to deal with all matters of concern to the judiciary.

<sup>361</sup> See Sec. 159 of Spanish Constitution.

in Belgium,<sup>362</sup> France,<sup>363</sup> Italy,<sup>364</sup> Latvia,<sup>365</sup> Romania<sup>366</sup> and Spain.<sup>367</sup> This correlates to Councils' composition, where members are also prosecutors (in Belgium, France, Italy and Romania).<sup>368</sup> The cooperation of the Council in the process of appointment of judges strengthens the principle of division of powers, as judges are, as a last step, elected by the legislative (through national Parliaments)<sup>369</sup> or the executive branch (by the President).<sup>370</sup> Since the path towards election of a judge should present a fundamental guarantee for the independence of the judiciary, it is therefore logical that constant tensions and search for a proper balance<sup>371</sup> with the political (legislative and executive) branches of government might exist.<sup>372</sup>

## Recommendations and best practices

**The Council should play an important role in the process of electing or appointing judges. This could be done either by proposing candidates, providing opinion on them or even consenting to the proposed candidates.**

**Composition of the Council influences its competences. The more it is involved in the process of selecting the judges, the fewer judges could be represented in the Council in order to avoid self-appointment of judges. A qualified majority for adopting decisions or opinions in this respect might be considered.**

<sup>362</sup> Main competences of the Council in Belgium include admission to the profession of a prosecutor, presentation of candidates to be nominated as a prosecutor or as chief prosecutor. It also draws up the general profile of chief prosecutors. See ENCJ Factsheet on Belgium.

<sup>363</sup> The formation of the Council with jurisdiction over public prosecutors has the task to issue a simple 'favourable' or 'unfavourable' opinion on proposed appointments by the Minister of Justice who is not bound by this opinion. See ENCJ Factsheet on France.

<sup>364</sup> According to the Italian Constitution, the Council is responsible for recruitment, assignment, transfer, promotion and disciplinary measures concerning magistrates – judges and public prosecutors. See Art. 105 of Italian Constitution.

<sup>365</sup> The Council issues a recommendation to the Parliament on appointment to the post of the general Prosecutor every 5 years.

<sup>366</sup> The Council ensures the observance of competence criteria in the magistrates' career and offers consultative advice on the proposal of the Minister of Justice for the appointment into and release from the leading positions within the Prosecutor's Office by the High Court of Cassation and Justice. See ENCJ Factsheet on Romania.

<sup>367</sup> The State's Public prosecutor is appointed by the King on the Government's proposal after consultation with the Council. See Sec. 124 of Spanish Constitution.

<sup>368</sup> See p. 10 of Belgian response to the questionnaire on Judicial independence in 2015, available at: [https://www.encj.eu/images/stories/pdf/Scoreboard/be\\_judicial\\_independence\\_questionnaire\\_2015.pdf](https://www.encj.eu/images/stories/pdf/Scoreboard/be_judicial_independence_questionnaire_2015.pdf) (last visited 28th March 2017).

<sup>369</sup> An example of this option exists in Slovenia. See Art. 130 of Slovenian Constitution.

<sup>370</sup> Judges are appointed by the President of the Republic on the proposal of the Council in Lithuania (see Art. 112 of Lithuanian Constitution), Poland (see Art. 179 of Polish Constitution), Romania (see Art. 134 of Romanian Constitution) and Slovakia (see Art. 145 of Slovak Constitution). The President of the State belongs to the executive power in these Member States. Interestingly, the President of Poland refused to appoint as judges ten proposed candidates of the Council, which echoed even in international circles. See Comments by the CCJE Bureau following the request of the Polish Judges' Association 'IUSTITIA', available at: [http://www.coe.int/t/dghl/cooperation/ccje/Cooperation/CCJE\\_BU\\_2016\\_9\\_en.pdf](http://www.coe.int/t/dghl/cooperation/ccje/Cooperation/CCJE_BU_2016_9_en.pdf) (last visited 28th March 2017).

<sup>371</sup> The tensions between the judiciary and other two branches of government of the State should not necessarily be seen as a threat to the judiciary or its independence, but as a sign that the judiciary is fulfilling its constitutional duty of holding other branches of government to account on behalf of society as a whole. See point 9 of Opinion no. 18 of CCJE on the position of the judiciary and its relation with the other powers of state in a modern democracy, available at: [https://wcd.coe.int/ViewDoc.jsp?p=&Ref=CCJE\(2015\)4&Language=lanEnglish&Ver=original&BackColorInternet=DBDCF2&BackColorIntranet=FD-C864&BackColorLogged=FDC864&direct=true](https://wcd.coe.int/ViewDoc.jsp?p=&Ref=CCJE(2015)4&Language=lanEnglish&Ver=original&BackColorInternet=DBDCF2&BackColorIntranet=FD-C864&BackColorLogged=FDC864&direct=true) (last visited 28th March 2017).

<sup>372</sup> Kaučič Igor. *Predsednik republike in sodstvo*, Podjetje in delo, 2002, št. 6-7, letn. 28, p. 1255. An example of this is observed in Slovenia, where a judge is elected by the Parliament and its vote is required also for the appointment as a judge of the Supreme Court. The necessity of such a vote for appointment as a Supreme Court justice is now being questioned, since it is not the constitutional requirement, but has been established by the legislator in the Judicial Service Act (Art. 21).

## VI B. Cooperation in the process of appointing court presidents

The Council not only participates in the process of appointment of judges, it can also have the competence to elect court presidents. This is the case in Estonia,<sup>373</sup> Italy, Romania<sup>374</sup> and Slovenia.<sup>375</sup> The Council proposes nominees for the position of a court president in Belgium,<sup>376</sup> Romania,<sup>377</sup> Slovakia<sup>378</sup> and Spain,<sup>379</sup> while in Hungary,<sup>380</sup> Latvia,<sup>381</sup> Lithuania,<sup>382</sup> Netherlands<sup>383</sup> and Poland<sup>384</sup> it expresses its opinion on their appointment and dismissal.

Appointment of presidents of courts is more an internal matter of the judiciary (for instance in Italy<sup>385</sup> and Portugal)<sup>386</sup> and it seems plausible that other state branches of government are not necessarily involved in this process.<sup>387</sup> However, in order to ensure the proper checks and balances, their involvement might be required if the concerned president is the president of the Supreme Court.<sup>388</sup> Election of Supreme Court presidents is usually different from the election of presidents of courts of first and second instance. As the head of the judicial branch, they might be elected by the legislative branch on the proposal of the executive branch of government, e. g. by the Head of

<sup>373</sup> This applies for Chairmen of circuit, administrative and county courts – see Arts. 12, 20 and 24 of Estonian Court Act.

<sup>374</sup> This applies for court presidents of courts of first and second instance.

<sup>375</sup> This does not apply for the President of the Supreme Court. See Art. 28 of Slovenian Courts Act.

<sup>376</sup> It nominates the candidates to the King for the positions of the first president of the Supreme Court, the first presidents of the appeal courts and the presidents of the lower courts.

<sup>377</sup> The assignment of the President of the High Court of Cassation and Justice is done by the Romanian President at the proposal of the Council (judges section). The assignment of President and Vice-president Positions in Courts of Appeal, second jurisdiction and specialized jurisdiction and first instance court is made only through open competition or organized exam, held anytime necessary by the superior Council of Magistrates through the National Institute of Magistrates. See points 1.2 and 4.1 of Answer of Romania to questionnaire for the preparation of the CCJE Opinion no. 19 on the role of court presidents, available at: [http://www.coe.int/t/dghl/cooperation/ccje/textes/OP\\_19\\_Questionnaire%20Romania.asp](http://www.coe.int/t/dghl/cooperation/ccje/textes/OP_19_Questionnaire%20Romania.asp) (last visited 28th March 2017).

<sup>378</sup> See Art. 141a of Slovak Constitution.

<sup>379</sup> The President of the Supreme Court is appointed by the King on the proposal of the Council. See Sec. 123 of Spanish Constitution.

<sup>380</sup> A preliminary opinion can be expressed regarding nominees for President of the National Office for Judiciary and President of the Curia on the basis of a personal interview. The Council can also initiate the deprivation of office of the President of the National Office for the Judiciary. The Council also has some special competences with respect to court leaders. It can exercise a right of consent regarding the appointment of court leaders who did not receive the approval of the reviewing board, decide on the repeated appointment of certain court leaders, if the office has already been filled by the applicant two times, and form a preliminary opinion on an application for a court leader position if the President of the National Office for the Judiciary or the President of the Curia would like to defer from the majority opinion of the body that has formed an opinion on the appointment.

<sup>381</sup> The Council is consulted when appointment of the Chair of a district or regional court is made (with the Minister of Justice who decides on it). Currently legislation reforms have been initiated to strengthen the role of the Council in this respect.

<sup>382</sup> In Lithuania, an opinion of the Council is not an opinion in its common sense. Without a consent (positive opinion) of the Council judges as a general rule cannot be appointed, promoted, transferred or dismissed from office. This opinion is therefore mandatory.

<sup>383</sup> The Council gives a recommendation for the appointment of the presidents of the courts of first instance and courts of appeal to the Minister of Justice. The presidents of the courts are appointed by Royal Decree, upon recommendation of the Minister of Justice. See point 1.2 of Answers from the Netherlands on the questionnaire for the preparation of the CCJE Opinion No. 19 on the role of court presidents, available at: [http://www.coe.int/t/DGHL/cooperation/ccje/textes/OP\\_19\\_Questionnaire%20Netherlands.asp](http://www.coe.int/t/DGHL/cooperation/ccje/textes/OP_19_Questionnaire%20Netherlands.asp) (last visited 28th March 2017).

<sup>384</sup> Opinion can be expressed regarding appointment and dismissal of presidents and deputy presidents of common and military courts. See Art. 3 of Act on the National Council of the Judiciary.

<sup>385</sup> The Council decides on the appointment of all judges and court presidents. See response of Italy to questionnaire on Judicial independence in 2015, available at: [https://www.enj.eu/images/stories/pdf/Scoreboard/it\\_csm\\_judicial\\_independence\\_questionnaire\\_2015.pdf](https://www.enj.eu/images/stories/pdf/Scoreboard/it_csm_judicial_independence_questionnaire_2015.pdf) (last visited 28th March 2017).

<sup>386</sup> In Portugal, the Council decides on appointment of judges and court presidents of all instances, only the president of the Supreme Court is chosen by the Supreme Court. See response of Portugal to questionnaire on Judicial independence in 2015, available at: [https://www.enj.eu/images/stories/pdf/Scoreboard/pt\\_judicial\\_independence\\_questionnaire\\_2015.pdf](https://www.enj.eu/images/stories/pdf/Scoreboard/pt_judicial_independence_questionnaire_2015.pdf) (last visited 28th March 2017).

<sup>387</sup> In Latvia, the selection procedure for the presidents of courts is much in control of the executive power. See point 1.4 of Latvian response to the questionnaire for the preparation of CCJE Opinion no. 19 on the role of court presidents, available at: [http://www.coe.int/t/dghl/cooperation/ccje/textes/Travaux19\\_en.asp](http://www.coe.int/t/dghl/cooperation/ccje/textes/Travaux19_en.asp) (last visited 28th March 2017). Currently legislation reforms have been initiated to strengthen the role of the Council in this respect.

<sup>388</sup> There are also doubts whether such a solution (e.g. that Parliament elects the President of the Supreme Court) within the system of checks and balances is adequate. It is possible to find a different solution, where the Councils proposes a nominee and they are approved by the President of the Republic. This has been recently, on several occasions, the subject of debate in Slovenia.

State (in Croatia and Hungary).<sup>389</sup> In Slovenia, for instance, the president of the Supreme Court is elected by the Parliament, on the proposal of the Minister of Justice, after obtaining opinions of the Supreme Court and the Council.<sup>390</sup> In Estonia, the Chief Justice of the Supreme Court is appointed by the Parliament on the proposal of the President of the Republic.<sup>391</sup> A different situation exists in Latvia, where the Parliament confirms the President of the Supreme Court on the proposal of the plenary session of the Supreme Court, while the Council hears the candidates for the office and provides an opinion to the plenary session of the Supreme Court. The proposal similarly comes from the Supreme Court to the Head of State that adopts the final decision in Poland<sup>392</sup> or to the Minister of Justice who makes a formal appointment in Denmark.<sup>393</sup>

### C. Assessment, promotion, transfer of judges and the standards of professional ethics

The Councils have many competences that affect the career of a judge. Along with their role in the process of judges' appointment, they can, in some Member States, assess the work of judges (as in Italy, Portugal, Romania,<sup>394</sup> Slovenia<sup>395</sup> and Spain) or approve the description of assessment of the judges' activities (in Lithuania)<sup>396</sup> and even adopt criteria (in Slovenia) or procedure (in Latvia)<sup>397</sup> for the assessment of quality of work of judges.

Connected to these is the competence to advise (in Lithuania) or decide on the promotion (in Croatia, Estonia, France, Italy, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia and Spain)<sup>398</sup> and the transfer of judges (in Croatia,<sup>399</sup> Estonia,<sup>400</sup> France,<sup>401</sup> Hungary, Italy, Latvia,<sup>402</sup> Lithuania,<sup>403</sup>

<sup>389</sup> The Parliament decides with the consultative opinion of the Council. See response of Hungary to questionnaire on Judicial independence in 2015, available at: [https://www.ency.eu/images/stories/pdf/Scoreboard/hu\\_judicial\\_independence\\_questionnaire\\_2015.pdf](https://www.ency.eu/images/stories/pdf/Scoreboard/hu_judicial_independence_questionnaire_2015.pdf) (last visited 28th March 2017).

<sup>390</sup> See Arts 28 and 62.a of Slovenian Judicial Service Act.

<sup>391</sup> See Art. 27 of Estonian Courts Act.

<sup>392</sup> See response of Poland to the questionnaire on Judicial independence in 2015, available at: [https://www.ency.eu/images/stories/pdf/Scoreboard/pl\\_judicial\\_independence\\_questionnaire\\_2015.pdf](https://www.ency.eu/images/stories/pdf/Scoreboard/pl_judicial_independence_questionnaire_2015.pdf) (last visited 28th March 2017).

<sup>393</sup> See point 4.1 of Answer of Denmark to questionnaire for the preparation of the CCJE Opinion no. 19 on the role of court presidents, available at: [http://www.coe.int/t/dghl/cooperation/ccje/textes/OP\\_19\\_Questionnaire%20Danemark.asp](http://www.coe.int/t/dghl/cooperation/ccje/textes/OP_19_Questionnaire%20Danemark.asp) (last visited 28th March 2017).

<sup>394</sup> For Italy and Romania see responses to questionnaire on Judicial independence in 2015, available at: [https://www.ency.eu/index.php?option=com\\_content&view=category&layout=blog&id=26&Itemid=101&lang=en](https://www.ency.eu/index.php?option=com_content&view=category&layout=blog&id=26&Itemid=101&lang=en) (last visited 28th March 2017).

<sup>395</sup> The Council itself does not evaluate the work of judges in Slovenia, however, it can request from the personnel council to prepare an evaluation of the judge. The Council cannot change the evaluation of the personnel council and it (mostly) serves as grounds for determination of a promotion. See Arts. 31, 33, 34, 34.a, 52 of the Judicial Service Act and Art. 28 of Courts Act.

<sup>396</sup> In Lithuania, the Council approves the description of assessment of the judges' activities. This document sets criteria and procedure for the assessment. The Council also appoints four out of seven members of Permanent Assessment Commission, elects its Chair and can hear judges' complaints regarding the results of assessment.

<sup>397</sup> The Council can determine the content and procedure for assessing judges' professional knowledge and sample the documents necessary for assessment.

<sup>398</sup> See responses of Member States to the questionnaire on Judicial independence in 2015, available at: [https://www.ency.eu/index.php?option=com\\_content&view=category&layout=blog&id=26&Itemid=101&lang=en](https://www.ency.eu/index.php?option=com_content&view=category&layout=blog&id=26&Itemid=101&lang=en) (last visited 28th March 2017).

<sup>399</sup> Transfer of a judge is possible due to organisational reasons.

<sup>400</sup> For Estonia see Figure 50 of the 2016 EU Justice Scoreboard, available at: [http://ec.europa.eu/justice/effective-justice/files/justice\\_scoreboard\\_2016\\_en.pdf](http://ec.europa.eu/justice/effective-justice/files/justice_scoreboard_2016_en.pdf) (last visited 28th March 2017).

<sup>401</sup> This is possible due to disciplinary reasons.

<sup>402</sup> This can be done for transfers of judges within the same court instance on the basis of recommendation of the Minister of Justice and a positive statement of the Judicial Qualification Committee. For transfers of judges to a court of lower or higher tier, the Council submits its proposal to the Parliament.

<sup>403</sup> This is possible due to organisational reasons for a temporary period when there is an urgent need to ensure the proper functioning of the court, when judge is ill or on maternity leave or when there is an enlarged workload. Permanent transfer is possible when the Council identifies the essential difference of workload in courts and there is no judge who wishes to be transferred.

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Portugal,<sup>404</sup> Romania,<sup>405</sup> Slovakia, Slovenia<sup>406</sup> and Spain).<sup>407</sup> The Council in Latvia may determine the court where a judge will serve following the appointment by the competent body or determine which judge will fill a vacant post or substitute for a judge that is temporary absent.

The Councils also have powers concerning professional ethics of judges in some Member States. For instance, the Scottish<sup>408</sup> and Polish Councils can adopt the principles of professional ethics of judges and these are approved by the Council in Slovakia. In Spain, it can reportedly adopt standards of professional ethics, and in Slovenia even a code of professional ethics of judges. The Council has adopted a code of conduct also in Malta, Belgium (in 2012)<sup>409</sup> and in Hungary (in 2014).<sup>410</sup> Such a code is not adopted by the Council, but it is approved by it in Romania.<sup>411</sup> The Council in France formulates and publishes a repository of ethical obligations for magistrates.<sup>412</sup>

Moreover, the Councils in Hungary, Poland and Romania ensure observance of judicial ethics, while in Slovenia<sup>413</sup> and Lithuania<sup>414</sup> the Council can appoint members of a special commission for ethics and integrity. The Councils in Bulgaria, the Netherlands<sup>415</sup> and Portugal have a role to promote judicial ethics. In England and Wales, the Council hears reports of a special committee on any points of principle that may need to be dealt with in an ethics guide.<sup>416</sup> It follows from the 2016 EU Justice Scoreboard that adoption of ethical standards is also a competence of the Council in Estonia.<sup>417</sup> There is no specific role of the Council in the field of judicial ethics in Greece, Italy<sup>418</sup> and Northern Ireland. It is interesting to note that some Member States have also touched on the question whether the national Councils have adopted a code of conduct (ethical principles) which apply to their own Council members (and not to judiciary or judges in general as discussed above).

#### D. Investigative and disciplinary competences

In some Member States the Councils have certain investigative and disciplinary competences. The Council in Portugal has the competence to order investigations, inquiries and inspection to court's services and it adopts an annual inspection plan. In Poland the Council can visit the court or its organizational unit, make inspections at the court or the inspections of the career of a judge or a trainee judge, whose individual matter is to be addressed by the Council.<sup>419</sup> In Hungary, the Council

<sup>404</sup> The transfer is possible due to organisational or disciplinary reasons.

<sup>405</sup> It is possible for disciplinary reasons.

<sup>406</sup> This is possible due to disciplinary or organisational reasons if the court where the judge performs judicial service closes, if the volume of work at the court (where the judge performs judicial service) decreases significantly for an extended period, if the organisation of the courts is changed or if it is so required in order to eliminate backlogs in the court's work. See Slovenian response to questionnaire on Judicial independence in 2015, available at: [https://www.encj.eu/images/stories/pdf/Scoreboard/si\\_judicial\\_independence\\_questionnaire\\_2015.pdf](https://www.encj.eu/images/stories/pdf/Scoreboard/si_judicial_independence_questionnaire_2015.pdf) (last visited 28th March 2017).

<sup>407</sup> The transfer is possible due to disciplinary reasons.

<sup>408</sup> The Statement of Principles of Judicial Ethics for the Scottish Judiciary is kept under review by the Council and its Judicial Conduct Committee. The last revisions were implemented in May 2013. See ENCJ Factsheet on Scotland.

<sup>409</sup> It is called 'Guide for the magistrates, principles, values and qualities'. This guide was inspired by the guidelines issued by the ENCJ. The Council promotes judicial ethics through its legal competences in training, advices and proposals and through the external control on the judiciary. See ENCJ Factsheet on Belgium.

<sup>410</sup> See ENCJ Factsheet on Hungary.

<sup>411</sup> The Council approves the Code of judicial ethics and deontology. See ENCJ Factsheet on Romania.

<sup>412</sup> See ENCJ Factsheet on France.

<sup>413</sup> In Slovenia, one member of the Council for the Judiciary is also a member of the Commission for ethics and integrity.

<sup>414</sup> Members of the Judicial Ethics and Discipline Commission are elected and appointed by a secret ballot within the Council, which also adopts regulations concerning the commission, hears its reports and may withdraw commission's members on the grounds laid down by the law.

<sup>415</sup> Strengthening awareness of integrity is a key objective of the Council. A special working group of the judiciary and policy advisors of the Council is currently working on integrity issues, such as a handbook, amendment of the Code of conduct for the judiciary and opening the debate on accessory functions. See ENCJ Factsheet on the Netherlands.

<sup>416</sup> See ENCJ Factsheet on England and Wales.

<sup>417</sup> See Figure 50 of the 2016 EU Justice Scoreboard, available at:

[http://ec.europa.eu/justice/effective-justice/files/justice\\_scoreboard\\_2016\\_en.pdf](http://ec.europa.eu/justice/effective-justice/files/justice_scoreboard_2016_en.pdf) (last visited 28th March 2017).

<sup>418</sup> See ENCJ Factsheet on Italy.

<sup>419</sup> Such inspections shall not interfere with areas in which judges and trainee judges are independent. See Art. 5 of the Act on the National Council of the Judiciary.

can perform checks related to the property declarations of judges. Lithuanian Council has a right to receive information required for performing its functions from state institutions and can investigate administrative activities of all courts of Lithuania, including the Supreme Court. The Hungarian Council has a right of access to documents related to the operation of the National Office for the Judiciary and it can request data and information from its President. The Council can require a report of the national courts administration on its activities in Estonia<sup>420</sup> and Lithuania<sup>421</sup> or on exercising the court's administrative tasks from court presidents in Slovenia. In Slovenia, it can also give the court presidents binding instructions about the implementation of proposals, given by the Ministry of Justice after the inspection, and order a court president to carry out an official oversight of the work of an individual judge.<sup>422</sup>

The Councils may not only investigate administrative matters, but may also be involved in disciplinary measures against judges. Disciplinary power over judges by the Council is established in Bulgaria, Croatia,<sup>423</sup> Estonia, France,<sup>424</sup> Italy,<sup>425</sup> Malta, Portugal,<sup>426</sup> Romania<sup>427</sup> and Spain. The Council is the body that appoints members of the disciplinary bodies in Lithuania,<sup>428</sup> Poland<sup>429</sup> and Slovakia.<sup>430</sup> The Council is the body that proposes a disciplinary action against a judge to the competent body in Lithuania.<sup>431</sup> The Councils in Belgium, England and Wales, Greece,<sup>432</sup> Hungary, Latvia,<sup>433</sup> the Netherlands, Northern Ireland, Slovenia and Scotland do not have disciplinary competences. It is valuable to mention that it is necessary to ensure an independent appeal in the cases where Councils take part in disciplinary matters.<sup>434</sup>

Disciplinary proceedings may lead to a judge being dismissed from his or her office. The Council plays a role in this process, where it is its competence to decide on dismissal of a judge from office (in Bulgaria, Croatia<sup>435</sup> and Italy<sup>436</sup>), propose that to the competent body (to the Parliament in Slovenia or the President in Slovakia)<sup>437</sup> or to give consent for dismissal (in Lithuania). However, in Slovenia for instance, the Parliament may only dismiss a judge if they violate the Constitution or seriously violate the law.<sup>438</sup> These cases are extremely rare. It is more common that the Staff Council establishes

<sup>420</sup> The Council deliberates in advance the review to be presented to the Parliament by the Chief Justice of the Supreme Court concerning courts administration, administration of justice and the uniform application of law.

<sup>421</sup> The Council can also adopt the regulations on administration in courts and resolve other issues of administration.

<sup>422</sup> See Art. 79.b of Slovenian Judicial Service Act.

<sup>423</sup> See Art. 123 of Croatian Constitution. The Council conducts disciplinary proceedings and decides on the disciplinary liability of judges. It can also decide on the dismissal of judges. See ENCJ Factsheet on Croatia.

<sup>424</sup> It is the disciplinary tribunal for judges that is presided over by the Chief President of the Cour de cassation. See Art. 65 of French Constitution.

<sup>425</sup> The Minister of Justice has the power to originate disciplinary action. See Arts. 105 and 107 of Italian Constitution.

<sup>426</sup> For Bulgaria, Estonia and Portugal see Figure 50 of the 2016 EU Justice Scoreboard, available at: [http://ec.europa.eu/justice/effective-justice/files/justice\\_scoreboard\\_2016\\_en.pdf](http://ec.europa.eu/justice/effective-justice/files/justice_scoreboard_2016_en.pdf) (last visited 28th March 2017). See also the ENCJ Factsheet on Romania.

<sup>427</sup> See Art. 134 of Romanian Constitution.

<sup>428</sup> The Council participates in the formation of the Judicial Ethics and Discipline Commission, where it appoints four out of its seven members. See ENCJ Factsheet on Lithuania.

<sup>429</sup> The Council appoints the disciplinary commissioner for matters regarding judges and trainee judges.

<sup>430</sup> The Council elects or recalls members of the disciplinary panel and chairmen of disciplinary senates.

<sup>431</sup> It is not only the Council that has a right to propose disciplinary action in Lithuania. This can also be done by the President of the Court, where the judge works, and the President of every higher court. Moreover, in principle every citizen can ask for disciplinary action against a judge.

<sup>432</sup> See ENCJ Factsheet on Greece.

<sup>433</sup> In Latvia, it is the competence of the Judicial Disciplinary Committee and Disciplinary Court. See ENCJ Factsheet on Latvia.

<sup>434</sup> See for instance the case of *Mr Ramos Nunes de Carvalho e Sá v. Portugal*, ECLI:CE:ECHR:2016:0621JUD005539113, decided on 21st of June 2016, where the European Court of Human Rights decided that domestic authorities had failed to secure the guarantees of a public hearing, thus hindering the applicants ability to defend his case and call a witness and failing to ensure the safeguards of a fair hearing.

<sup>435</sup> If the Council so decides due to the perpetration of grave infringement of discipline. See Art. 123 of Croatian Constitution.

<sup>436</sup> Judges may not be dismissed or suspended from office or assigned to other courts or functions unless by a decision of the Council, taken either for the reasons and with the guarantees of defence established by the provisions concerning the organisation of Judiciary or with the consent of the judges themselves. See Art. 107 of Italian Constitution.

<sup>437</sup> See Art. 28 of Slovenian Courts Act, Art. 147 of Slovak Constitution.

<sup>438</sup> Art. 132 of Slovenian Constitution.

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a judge as incompetent to perform judicial service and their service ceases when such an assessment is confirmed by the Council.<sup>439</sup> In Estonia, the Council merely provides an opinion regarding the dismissal of a judge. Interestingly, in Hungary the Council plays a role also in cases of resignation of judges.<sup>440</sup>

## Recommendations and best practices

**The Council could have a role in the disciplinary proceedings against judges and in the process of their dismissal. This can be done by adopting relevant decisions or by instigating the proceedings.**

### E. Competences in training of judges or their qualification

Additional competence of the Councils in some Member States relates to the quality of judicial service, which can be improved through organizing the training of judges. This is not very common as many of the Councils (e.g. in Bulgaria,<sup>441</sup> England and Wales, Estonia, Greece, Italy,<sup>442</sup> Latvia, Malta, Northern Ireland, Portugal, Scotland, Slovakia<sup>443</sup> and Slovenia) do not have a direct<sup>444</sup> role in judicial educational or training activities.

The opposite can be said about Spain and some other Member States. In Spain, there is a judicial training service within the Council. This department organizes seminars with the participation of judges of the Supreme Court and of lower courts in order to share knowledge, in particular when new legislation is passed. In Denmark, the Danish Court Administration is responsible for the training of all court staff, including the judges and deputy judges. Each year, an extensive training catalogue is published, and a large number of training activities are organised.<sup>445</sup> In the Netherlands, the Council coordinates the training activities of the lower courts only and is a part owner of the body in charge for developing and organizing the judicial training.<sup>446</sup> Moreover, the competence of the Council for training of judges and prosecution officers exist in Belgium.<sup>447</sup> The Council has the role to participate

<sup>439</sup> Art. 33 of the Slovenian Judicial Service Act.

<sup>440</sup> It can approve a notice period shorter than three months and relieve the judge from their work related duties for the notice period in full or in part. In the case of a judge retiring or reaching the upper age limit, it makes a decision concerning the relief of the judge of their duties during the notice period (in line with the Hungarian Act on the Legal Status and Remuneration of Judges).

<sup>441</sup> The responsibility for the organization of the judicial training is to the National Institute of Justice. It is headed by a management board that includes 5 representatives of the Council. The Council also coordinates the curriculums of the National Institute of Justice.

<sup>442</sup> The training was organized until 2013, when a special body (e.g. School of the judiciary) started to operate. At this stage, the Council can merely give guidelines and they are being considered when the School of the judiciary draws up its annual program of training courses.

<sup>443</sup> Nevertheless, the Council determines the subject matter to be included in judges' education in agreement with the Minister of Justice. Moreover, it elects 5 members of the Board of the Academy and proposes members of the pedagogical staff of the Academy, as well as the members of the examination committees for the professional judicial exam and the prosecutor exam. See ENCJ Factsheet on Slovakia.

<sup>444</sup> The Council may have an indirect role though. For instance, one member of the Slovenian Council is a member of a special Council that provides professional assistance for the implementation of tasks of Slovenian Centre for Judicial Training (*Center za izobraževanje v pravosodju*), which enables them to influence the content of training. Moreover, the Commission for Ethics and Integrity (a special commission of the Council in Slovenia) has, as an umbrella body, the duty of care (in collaboration with Centre for Judicial Training) for the training of judges in the field of ethics. See Arts. 74.a and 28.d of Slovenian Courts Act. The Portugal Council also has a member in the Pedagogical Council and can also organize training activities. See ENCJ Factsheet on Portugal.

<sup>445</sup> See ENCJ Factsheet on Denmark.

<sup>446</sup> Judicial training is developed and organized by the SSR (National Judicial Training Centre). The Council is a part owner of SSR (2/3 Council and 1/3 Prosecutor General's Office) and therefore responsible for the organization and supervision of SSR. See ENCJ Factsheet on the Netherlands.

<sup>447</sup> See Art. 151 of Belgian Constitution. The Council determines the general guidelines for the training of members of the judiciary. See ENCJ Factsheet on Belgium.

in the training and personal development of judges and other judicial personnel also in Croatia.<sup>448</sup> In Romania, the Council coordinates the activity of the National Institute of Magistracy and approves annually the Programme of Professional training for judges and prosecutors.<sup>449</sup>

An educational or a training role in a broader sense exists in Poland, Lithuania and Hungary. In Poland, the Council can express its opinion on the program of training as part of the judges' training period, the scope and manner of conducting the judges' training period entry contests and judges' exams, it can express opinion on annual schedules of training and professional education of judges, trainee judges and court officers, and it names or expresses opinions on the appointment of members of an educational or training body.<sup>450</sup> In Lithuania, the Council adopts rules on judges' training organization, approves training program, annual training plans and requirements for lecturers. The Council in Lithuania also has a say on the training budget and has a training committee, which consists of certain number of Council members. Moreover, the Council in Lithuania can adopt regulations on organising the training of judges, the training programmes, the annual plans for improving the qualifications and qualification requirements to the lecturers. In Hungary, the Council can form an opinion on the rules pertaining to the training system of judges and to the performance of the training obligation.

With respect to the qualifications of judges, the Council in Latvia is competent to determine the procedure of how judges pass qualification exam in the cases provided by law.

Competences of the Council concerning the training of judges can be seen as an opportunity towards an independent and professionally competent judiciary. This is supported by the fact that it has already been established that the body responsible for supervising the quality of the training program should be one that is independent from the executive and legislative power, with at least half of its members being judges.<sup>451</sup>

## Recommendations and best practices

**The Council can contribute to a more efficient and better quality administration of justice by participating in judicial education and training. At the very least, the Council could participate in the process of adopting the training program for judges.**

## F. Protection of independence of judges

In order to safeguard the independence of the judiciary and the judges individually, the Council is one of the bodies that could have the task of their protection. This can be achieved in various ways. For instance, if a judge is adjudicating in a significant legal case that is also covered thoroughly by the media, they can find themselves under pressure from the general public, political parties or other actors. It is a fact that individual judges, who have been under scrutiny, often hesitate to defend themselves (particularly in the case of a pending trial) in order to preserve their independence and to demonstrate that they remain impartial.<sup>452</sup> In such a case, the Council could protect an individual judge by issuing public statement(s) in their support or inform the public with truthful facts, that

<sup>448</sup> See Art. 123 of Croatian Constitution.

<sup>449</sup> See ENCJ Factsheet on Romania.

<sup>450</sup> The Council can name three members of the Board and express opinion on the appointment of Director of the National School of Judiciary and Public Prosecution. See Art. 3 of the Polish Act on the National Council of the Judiciary.

<sup>451</sup> See paragraph 3 of point 2 of the European Charter on the Statute for judges.

<sup>452</sup> See point 53 of Opinion no. 18 of CCJE on the position of the judiciary and its relation with the other powers of state in a modern democracy, available at: [https://wcd.coe.int/ViewDoc.jsp?p=&Ref=CCJE\(2015\)4&Language=lanEnglish&Ver=original&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864&direct=true](https://wcd.coe.int/ViewDoc.jsp?p=&Ref=CCJE(2015)4&Language=lanEnglish&Ver=original&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864&direct=true) (last visited 28th March 2017).

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are often lopsided in the media and put additional stress on a judge and their independence when adjudicating a case. If the judiciaries do not provide information and answers, other members of the society (who could be less informed) might do it for them instead.<sup>453</sup>

The protective role of the Council may as well be very different. For instance, in Croatia, a judge may not be remanded in custody or detention without the prior consent of the Council for an initiated criminal prosecution for a criminal offence perpetrated in the performance of their judicial duty.<sup>454</sup> In Slovenia, the judges can appeal to the Council when they consider their independence is being under attack from within the judiciary.<sup>455</sup>

## Recommendations and best practices

**The Council may also contribute to the independence of the judiciary by communicating with the media on these matters.**

### G. Functioning of courts

The Councils indisputably play a significant role in the functioning of the courts by having numerous competences related to the judges' careers. But they also play a role in the functioning of the courts in a broader sense. The Council in Italy can establish criteria that each court – in defining its own organizational plan – must follow in the assignment of the judges to the chambers and in the distribution of cases.

The Council can also (for instance) influence the number of judges in courts by giving advice (to the President of Republic in Lithuania) or proposal (to the Parliament in Latvia) or even by determining or changing the number of judges in courts in Estonia. Furthermore, it can approve model structures of courts, model list of positions and job descriptions in Lithuania and approve the regulations for forming the chambers of judges and of the distribution of cases to judges in Lithuania, Portugal<sup>456</sup> and Spain for instance.

The Councils can also have various other competences related to the functioning of the courts. For instance, in Estonia, it can grant approval for the determination of the territorial jurisdiction of courts, it can approve the determination of the number of lay judges, the amount of remuneration paid to them in county courts<sup>457</sup> and consent to the increase of the maximum age of a judge.<sup>458</sup> In Slovenia, the Council decides on the incompatibility of a judicial function.

### H. Competences regarding the financing of the Courts

In order to ensure and strengthen the separation of powers, the Council (or a body in which the judiciary is represented) should be closely involved and fully informed at all stages in the budgetary process and should have an opportunity to express its views about the proposed budget to the Parliament.<sup>459</sup>

Part of the Councils do not have any competences with respect to the financing of the courts. This is

<sup>453</sup> Thomas John. *Some perspectives on Councils for the Judiciary*, Frankfurt Symposium: 7th-8th November 2008, p. 8.

<sup>454</sup> See Art. 122 of Croatian Constitution.

<sup>455</sup> See Art. 12 of Slovenian Courts Act.

<sup>456</sup> The Council can suspend or reduce case allocation of judges, tasked with other functions of recognised interest for courts' jurisdiction or involved in other situations, where the adoption of such measures is justified. It can also establish, on an annual basis, with the support of the Ministry of Justice, the maximum number of cases to be allocated to each judge, as well as the maximum term for the respective procedural acts, whose time limit is not fixed by the law.

<sup>457</sup> See Art. 14 of Estonian Courts Act.

<sup>458</sup> Ibidem. See Art. 99.

<sup>459</sup> See ENCJ Report 2015-2016, Funding of the Judiciary, p. 3.

reportedly the case in Belgium, Croatia, France, Italy, Portugal, Romania and Spain. The Councils in some other Member States do, however, have certain competences related to the financing of courts. This seems reasonable considering that the Council is an intermediary body between the judicial and the executive or legislative branch of government of a Member State (that adopt the State budget).

In the Netherlands, the Council negotiates the budget for the whole judiciary with the Minister of Security and Justice and they both present their proposals to the Parliament (who chooses) if they do not agree on the budget.<sup>460</sup> The Danish Court Administration has a similar role to negotiate on the budget of the whole judiciary.<sup>461</sup>

In certain other Member states the Council can form an opinion on the proposed budget of the courts (in Hungary,<sup>462</sup> Latvia,<sup>463</sup> the Netherlands,<sup>464</sup> Poland, Slovenia<sup>465</sup> and Slovakia) and on the report regarding the implementation of the budget (in Hungary). In Lithuania, it can consider and approve proposal on draft investment programmes for courts and proposals for budgets of courts and submit them to the Government. In Estonia, it can provide a preliminary opinion on the principle of the formation and amendment of annual budgets of courts.<sup>466</sup> Involvement of the Council in the preparation of the budget allocated to courts exists also in Denmark.<sup>467</sup>

This coordinative role in preparing requests for court funding is desirable and considered as a strength if an independent body - like the Council - represents all the courts in a Member State.<sup>468</sup>

## Recommendations and best practices

**One of the major issues of independence of the judiciary is its financing. Close involvement of a Council or equivalent body at all stages of the budgetary procedure is necessary to ensure due respect for the opinion of judiciary regarding the financial resources required for effective and efficient justice system.**

<sup>460</sup> The Council is fully accountable to the Minister with regard to the way this budget is spent. The budget covers all costs and activities of the Council, the courts under its responsibility and also the salaries of judges. The Council allocates the budget to the courts and supervises their financial administration. The courts are accountable to the Council with regard to the way their budgets are spent. See ENCJ Factsheet on the Netherlands and the response of the Netherlands to the questionnaire on Judicial independence in 2015, available at:

[https://www.ency.eu/images/stories/pdf/Scoreboard/nl\\_judicial\\_independence\\_questionnaire\\_2015.pdf](https://www.ency.eu/images/stories/pdf/Scoreboard/nl_judicial_independence_questionnaire_2015.pdf) (last visited 28th March 2017).

<sup>461</sup> The total budget for the judiciary is part of the annual Finance Act. The Ministry of Justice delegates the budget (appropriations) to the Danish Court Administration, which in turn allocates the budget to the courts. Ultimately, the economic responsibility for the judiciary lies with the board of governors of the Danish Court Administration. The board has the possibility to address Parliament directly with a budget proposal should they find that the appropriations are insufficient. See ENCJ Factsheet on Denmark.

<sup>462</sup> See Annex II (containing preparatory work, questionnaire and replies) to the ENCJ Report 2015-2016 on Funding of the Judiciary, p. 57.

<sup>463</sup> An opinion on formal proposal on the budget allocated to courts. See Latvian response to a questionnaire on Judicial independence in 2015, available at: [https://www.ency.eu/images/stories/pdf/Scoreboard/lv\\_judicial\\_independence\\_questionnaire\\_2015.pdf](https://www.ency.eu/images/stories/pdf/Scoreboard/lv_judicial_independence_questionnaire_2015.pdf) (last visited 28th March 2017).

<sup>464</sup> The Council provides a mandatory opinion to the formal proposal on the annual budget for the whole judiciary to the Ministry of Security and Justice, who proposes it to Parliament.

<sup>465</sup> See Art. 28 of Slovenian Courts Act.

<sup>466</sup> The Minister of Justice approves the budget of courts of the first instance or courts of appeal within two months after the state budget is passed as an Act, considering the opinion formulated by the Council. See Art. 43 of Estonian Courts Act.

<sup>467</sup> The Danish Court Administration plays an active role in the negotiations of the budget to be allocated to the judiciary. This happens through the channels of the Ministry of Justice.

<sup>468</sup> See also point 11 of Opinion no. 2 of CCJE on the funding and management of courts with reference to the efficiency of the judiciary and to article 6 of the European Convention on human rights.

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**I. Competences concerning legislative acts regarding the judiciary**

The Councils, as the institutional bodies ensuring independence of the judiciaries and the judges, often have a say in numerous areas that affect the courts or judges. One of such areas is the legislation that concerns the judiciary. To this end the Council can form opinions on draft legislations concerning the judiciary (in Belgium,<sup>469</sup> Bulgaria, Croatia,<sup>470</sup> Denmark,<sup>471</sup> France,<sup>472</sup> Italy, Latvia,<sup>473</sup> Lithuania,<sup>474</sup> Malta, the Netherlands,<sup>475</sup> Poland, Portugal, Romania, Scotland,<sup>476</sup> Slovakia,<sup>477</sup> Slovenia and Spain) and present proposals in this regard (like in Hungary,<sup>478</sup> Poland and Portugal).<sup>479</sup> The Councils in Greece, Northern Ireland and England and Wales do not comment on the merits of proposed government policy.

The Council may also make an application to the Constitutional Tribunal regarding the constitutional conformity of normative acts to the extent that they relate to the independence of courts and judges in Latvia,<sup>480</sup> Poland<sup>481</sup> and Slovakia.<sup>482</sup>

Consultation with the Council on all draft legislation, likely to have a direct impact on the judiciary prior to its deliberation in Parliament, is an opportunity that professional and representative voice during the legislative procedure is heard from amongst the judges themselves.

It is important to note that the Council may not only react when the current position of the functioning of the judiciary is concerned, but may express its opinion on the regulation of the judiciary in the future (*de lege ferenda*).<sup>483</sup>

**Recommendations and best practices**

**The Council may not only provide opinion on the existing legislative framework, but should also have the possibility to express its opinion on the regulation of the judiciary in the future.**

<sup>469</sup> The Council delivers recommendations, opinions and advice on proposed legislation regarding the general functioning and organization of the judiciary. See ENCJ Factsheet on Belgium.

<sup>470</sup> This is done at the request of the Ministry of Justice. See ENCJ Factsheet on Croatia.

<sup>471</sup> The Danish Court Administration regularly takes part in legislative preparatory work and hearings. It also provides advice on legal matters and policy proposals that affect (directly or indirectly) the judiciary. See ENCJ Factsheet on Denmark.

<sup>472</sup> Requests for an opinion are formulated by the President of the Republic. See ENCJ Factsheet on France.

<sup>473</sup> The Council has the possibility to express an opinion to the legislator on issues which affect the functioning of the courts.

<sup>474</sup> The Council has a right to submit reasoned opinion regarding legislative issues to the Government or to the President of the Republic. See ENCJ Factsheet on Lithuania.

<sup>475</sup> One of the Councils' main duties is providing advice to the Government and to the Parliament on bills and policy proposals that affect the judiciary. This only involves proposals that have a direct impact on the organisation of the judiciary, as well as on the introduction or amendment of (new) legal proceedings. The Council's advice is ratified following consultation with the courts. The Council can provide legislative advice both on request and on a non-solicited basis.

<sup>476</sup> The Lord President has a statutory responsibility for representing the views of the Scottish Judiciary to the Scottish Parliament and the Ministers and may consult and be advised in that regard by the Council.

<sup>477</sup> The Council can express an opinion on proposals of generally binding legal regulations setting out the organization of the judiciary, proceedings before courts and the status of judges. See ENCJ Factsheet on Slovakia.

<sup>478</sup> The Council can make a proposal to the President of the National Office for the Judiciary on initiating legislation affecting the courts or form an opinion on the regulations and recommendations issued by the President of the National Office for the Judiciary.

<sup>479</sup> The Portuguese Council can issue an opinion on legal acts related to the judiciary and, in general, study and propose to the Ministry of Justice the legislative measures to improve the efficiency of the judiciary. See ENCJ Factsheet on Portugal.

<sup>480</sup> This has actually happened recently in Latvia, where the Council instituted proceedings before the Constitutional Court concerning judges' and public prosecutors' salaries. More information is available at: <http://at.gov.lv/en/news/about-the-council-for-judiciary/2016/8051-the-constitutional-court-based-on-application-by-the-council-for-the-judiciary-institutes-proceedings-in-case-of-the-remuneration-system-of-judges/> (last visited 28th March 2017).

<sup>481</sup> See Art. 186 of Polish Constitution.

<sup>482</sup> See Art. 141a of Slovak Constitution.

<sup>483</sup> Slovenian Council can adopt principled position on the situation in the judiciary (see Art. 28.a of Slovenian Courts Act). Such a document can, for instance, serve also as grounds for an initiation of a legislative change.

## J. Other competences

The Councils in some Member States have certain competences additional to the ones mentioned above. For instance, Lithuanian Council (and this is assumed for other Councils as well) can cooperate with other national, international and foreign institutions and organisations concerning the issues of court autonomy, administration and other issues relevant to the activities of the courts. Polish Council has the competence to pass opinions on the condition of the judiciary including both trainee judges and judges.<sup>484</sup> One of the powers of the Council can also be related towards convening the meetings of the judges, like General Meetings of Judges in Lithuania or convocation of Judge's conference in Latvia (while setting issues to be included in the agenda).

The Council can award honorary titles in Hungary<sup>485</sup> or propose them in Latvia for instance.<sup>486</sup> In Latvia it has the competence to approve procedure for using judges' robe and insignia and it approves a sample of judges' identification card.

The Council also has some competences that result in determination of a specific procedure. For instance, in Hungary it can approve the rules of procedure of the service court and publish them on the courts' central website. In Lithuania, the Council can adopt regulations on the procedure of entering the candidates into the list of judicial vacancies at the district court and the procedure of entering the candidates in the register of persons seeking judicial promotion. It can also set the procedure and grounds for establishing the judges' specialisation, approve Courts' Communication Plan, Rules of Publication of Judgments, Courts' Openness Strategy, Rules on Providing Information about Courts' Activities to Media, Court Mediation Rules, Document Management Rules, etc. In principle, the Council in Lithuania has a power to regulate all general administrative activities of courts. In Latvia it was proposed (and approved in October 2016) that the Council approves of procedure for determining the caseload for the management of the judges' workload.

Lastly, the Council discusses other issues at the initiative of the competent person or body (in France,<sup>487</sup> Poland<sup>488</sup> and Estonia)<sup>489</sup> or decides on other issues or powers prescribed by law (in Lithuania and Portugal).

<sup>484</sup> Competences of the Polish Council are being re-considered. See subchapter 'Selection process of the members of the Council' for more information.

<sup>485</sup> Upon initiative of the President of the National office for the judiciary, the Council can award the title 'honorary judge of the Curia' and 'Councillor of the Curia'. For the judicial employees it can propose that they are awarded with decorations, prizes, diplomas or plaque. It can also approve their awarding by others.

<sup>486</sup> The Council can propose to the Parliament to award a judge with the title of the Judge Emeritus.

<sup>487</sup> The Council shall reply to the requests for opinions made by the President of the Republic and it shall also express its opinion in plenary session on questions concerning the deontology of judges or on any question concerning the operation of justice which is referred to it by the Minister of Justice. See Art. 65 of French Constitution.

<sup>488</sup> Matters can be brought up under the agenda by the President of Republic, other public authorities or bodies of judicial self-government.

<sup>489</sup> Chief Justice of the Supreme Court or the Minister of Justice.

## VI 4. COUNCIL FOR THE JUDICIARY AND ADMINISTRATION OF THE SUPREME COURT

### A. Influence of the Council for the Judiciary on the administration of the Supreme Court

One of the aims of the research that has been done was to determine how the Supreme Court and the Council influence each other in their mutual relations. A specific area of our focus was the influence of the Council on the administration of the Supreme Court and vice versa (for this see the following subchapter). Through our research and the information provided by the respondents it has been established that generally, the Council influences the administration of the Supreme Court in the sense that it has the competence to participate in the process of appointment or release of Supreme Court justices, their promotion and transfer, evaluation of judges and disciplinary proceedings against them. These possibilities of its participation have already been discussed above. What might be interesting in this respect is that the competences of the Councils in relation to Supreme Courts may be much narrower than in the relation to other courts. For instance, the competence of the Council in Poland in disciplinary proceedings concerning judges of the Supreme Court is considerably limited.<sup>490</sup>

Apart from these participative roles, the Councils reportedly do not directly affect the administration of the Supreme Court in Latvia, Portugal and Romania<sup>491</sup> for instance. In Slovenia, the Council is responsible for the matters concerning judges and the Supreme Court<sup>492</sup> is responsible for the administration (operational procedures and management) in courts. Therefore, their functions are generally separated.<sup>493</sup> A slightly different situation exists in Hungary, where the Council does not have the task of the central administration of courts, but it does supervise the competent body for it.<sup>494</sup> The reason for such a state is of a historical nature. In many EU Member States, including those where the Councils originated (e.g. France, Italy, Spain and Portugal), the improvement of administrative management was not the rationale for their creation. Therefore, in these countries, there have not been significant demands for transfer of these powers to the judiciary or the Council.<sup>495</sup>

### B. Involvement of Supreme Courts in administering the work of the Councils for the Judiciary

In our research the reverse influence was also examined, e.g. the influence or involvement of the Supreme Courts in administering the work of the Councils. It was established that, as a rule, the Supreme Court is not directly involved, apart from having Supreme Court justices as members or

<sup>490</sup> The Council is not entitled to request that disciplinary proceedings be initiated against a Supreme Court judge. It does also not participate in the election of the Supreme Court disciplinary commissioner and their deputy (who are elected by the Board of the Supreme Court for a four-year term).

<sup>491</sup> This is due to the fact that the Council has been primarily formed to deal with the court administration of first and second instance courts (but not the Supreme Court as this is an independent constitutional institution).

<sup>492</sup> The concrete administrative decisions are in the power of the President of the Supreme Court and its Secretary General. For other courts, this is the responsibility of court presidents, which may delegate some matters to court directors.

<sup>493</sup> Nevertheless, the Slovenian Council does have some competences related to the administration of the Supreme Court. It gives consent to the policy of detection and control of risks of corruption and exposure of the courts to them, that is adopted by the President of the Supreme Court who monitors its implementation and may propose amendments (Arts. 28 and 60.č of Courts Act); it hears annual reports and analyses on the effectiveness and efficiency of the work of judges (Arts. 60.a and 60.b of Courts Act); it discusses the annual programs of the courts and their realization with the President of the Supreme Court, other court presidents and the Minister of Justice (Art. 71.a of Courts Act); participates in the judicial budgetary committee, dedicated to the coordination of proposed financial plans of the courts and the human resources plans of the courts (Art. 75 of Courts Act).

<sup>494</sup> The competent body is the President of the National Office for the Judiciary.

<sup>495</sup> Autheman V., Elena S., 2004, p. 3.

chairs, in administering the work of the Council. This applies to Estonia,<sup>496</sup> Hungary,<sup>497</sup> Italy,<sup>498</sup> Lithuania,<sup>499</sup> Poland, Romania, Slovakia,<sup>500</sup> Spain and Slovenia. Interestingly, in the latter, the budget for the functioning of the Council is given to the Supreme Court, which may in this way exercise substantial influence<sup>501</sup> on the functioning of the Slovenian Council. However, new legislative act on the Judicial Council of Slovenia was proposed and the Council could become an independent budgetary user in the near future. In Latvia, the work of the Council is ensured by the administration of the Supreme Court (in 2017, a Secretariat of the Council was established, which is a new division at the Supreme Court).<sup>502</sup>

## Recommendations and best practices

**There is a delicate balance between the Council and the Supreme Court. The Council may be considered as part of the state judicial branch of government, but could at the same time be independent from it, including independence from substantive decision-making of the Supreme Court.**

## 5. COUNCIL FOR THE JUDICIARY AS PROVIDER OF THE INFORMATION TO THE SOCIETY

In light of the required transparency of State bodies and Courts, one might wonder how transparency can be achieved in regard to the functioning of the Council.<sup>503</sup> Transparency is above all a precondition for the confidence of the citizens in the functioning of the justice system and the guarantee from the danger of political influence. This is achieved in Member States through publishing of summaries of their meetings (in Hungary and Slovakia), their audio recordings or press releases (in Slovakia). This includes Councils' decisions (like in Slovenia)<sup>504</sup> or opinions with respect to selection of judges or candidates for judges (in Slovakia, where this is true even for judges of the European Court of Human Rights and the Court of Justice of the EU). In Lithuania and Latvia, one can find agenda of the Council meetings (which are usually open), minutes of them and decisions of the Council on a general website of the courts (with supporting material). A press release is also issued and (sometimes) a press conference organized as a follow-up to the adoption of major decisions or events of the Council. In order to provide greater transparency, Council meetings may be open for all judges as well (like in Hungary). An interesting form of transparency is also live broadcasting of Councils' sessions

<sup>496</sup> The officials of the Ministry of Justice are responsible for administering the work of the Council, as the Council does not have its own officials. See Art. 40 of Estonian Courts Act.

<sup>497</sup> Administrative and operational support regarding the filing system, the organization of meetings and the general operation of the Council is provided by the permanent office of the Council. The Curia is not involved.

<sup>498</sup> Equipment and administrative staff of the Council is provided by the Ministry of Justice.

<sup>499</sup> The responsible body for providing services to the Council is the National Courts' Administration.

<sup>500</sup> Currently it is not, but the Supreme Court closely cooperates with the Council.

<sup>501</sup> The current situation in Slovenia is that the Supreme Court provides full information technology to the Council (e.g. e-register, computer support), which (in addition to the financial aspect) further binds the Council and its work on the Supreme Court. This is far from trivial and the Supreme Court can have a very strong impact on the Councils' work in this manner.

<sup>502</sup> More information is available at the website of the Latvian Supreme Court: <http://at.gov.lv/en/news/about-the-council-for-judiciary/2017/8114-for-ensuring-the-operation-of-the-council-for-the-judiciary-the-secretariat-is-established/> (last visited on 28th March 2017).

<sup>503</sup> Transparency and reasoning of the decision of the Council is stressed in the fourth chapter of the Recommendation CM/Rec(2010)12 and explanatory memorandum.

<sup>504</sup> Slovenian Council publishes decisions for each term of office, decisions connected to ethics and integrity, and to the provision concerning incompatibility with the function of a judge. It also issues explanations regarding the promotion of judges and warnings, opinions and explanations of the Council in other matters.

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on the internet when it discusses the appointment or promotion of judges. This has recently been discussed within the ENCJ.

The Council does not always have a role in providing information to the society. This can be left to the Ministry of Justice, the respective courts or their special press units (like in Estonia).<sup>505</sup> Nevertheless, the Council might also have a press or communication office. This is the case in Spain<sup>506</sup> and the Netherlands.<sup>507</sup> Another way of providing information to the society is through publication of a review of the previous court activities. This is done for the previous year in Lithuania<sup>508</sup> and Hungary, while in Poland it is done for each quarter of the year.<sup>509</sup> Furthermore, the Council in Hungary also holds a press conference about its duties and operations.<sup>510</sup>

The Council can also provide information to the society concerning the judiciary by issuing opinions on draft legislation concerning the judiciary and judges or by issuing statements on current events and developments (like in Poland). In Lithuania and Portugal<sup>511</sup> it can also publish statements and comments on topical issues, while in Romania it publishes info letters and guides concerning judiciary. A substantial part of communication with the public can also be based on the inquiries of press or individuals as is the case in Slovenia.<sup>512</sup>

The Councils in several member states have approved guidelines on communication of the court system,<sup>513</sup> therefore determining the manner in which the information is communicated to the media. Interestingly, in Italy the Council follows a specific communication strategy with press releases, interviews given to the press and other media, by allowing the presence of journalists in public sessions of the general assembly, through visits of schools and universities or through meetings organized with other institutions with a strong communicative impact.

It is important to stress that when providing information to the society, a proper balance between the secrecy of judicial inquiries on the one hand, and freedom of expression (regarding the right to inform and to be informed) on the other hand needs to be maintained.

## Recommendations and best practices

**In order to safeguard the independence and transparency of the functioning of the courts, the Council itself might need to have an open and transparent relation with the general public.**

<sup>505</sup> The Council has, however, adopted Recommendations for the Courts' Media Relations.

<sup>506</sup> Their members are active on the social networks and they provide wide information through their website, available at: [www.poderjudicial.es](http://www.poderjudicial.es) (last visited 28th March 2017).

<sup>507</sup> It is responsible for liaising with the media and for setting national policies on behalf of the Judiciary. The department is also responsible for press communications and for providing information to the public. The Judiciary maintains a series of press guidelines, which indicate what journalists, district courts and courts of appeal can expect and how the courts should provide information to the media prior to, during and after court cases. The media, for their part, are expected to comply with internal rules regarding court sessions.

<sup>508</sup> It is published before the 31st of March on the website of the National Courts Administration.

<sup>509</sup> National Council of the Judiciary Quarterly, published since 2008, where current problems of the judiciary are also discussed.

<sup>510</sup> Press conference can be organised by the President of the Council, vice-president or the delegated spokesperson and its members have the right to give information to the society about its operation.

<sup>511</sup> The Council, whenever necessary, exercises its right to reply to the media whenever they transmit untruthful news or need additional information or clarification.

<sup>512</sup> The statutory basis for these inquiries are Public Information Access Act (Official Gazette of Republic of Slovenia, no. 51/06 with amendments) and Media Act (Official Gazette of Republic of Slovenia, no. 110/06 with amendments).

<sup>513</sup> In the EU, many Member States have adopted guidelines on the communication with the press for judges. These Member States are Austria, Belgium, Bulgaria, Denmark, Estonia, Finland, Germany, Hungary, Latvia, Lithuania, Luxembourg, the Netherlands, Romania and Spain. See the 2016 EU Justice Scoreboard, Figure 24.

## 6. FUNCTIONING OF COUNCILS FOR THE JUDICIARY

### A. Term of office

As this is the final part of this contribution, some paragraphs are devoted to the functioning of the Council. The starting point of functioning (in a broader sense) is the term of the office that members are elected or appointed for. It can be observed that it is different among the Member States. It lasts one year in Greece, three years in Northern Ireland, England and Wales, four years in Belgium, Croatia,<sup>514</sup> Denmark, France, Italy,<sup>515</sup> Latvia,<sup>516</sup> Lithuania, Malta and Poland,<sup>517</sup> and five years in Slovakia<sup>518</sup> and Spain.<sup>519</sup> The term of office in Hungary, the Netherlands and Romania<sup>520</sup> is six years. In Slovenia the term is also six years, but it is unequally distributed, so that half of the Council members are replaced every three years.<sup>521</sup> Such a provision ensures the preservation of the continuity of the Council's activities. It seems appropriate that members of the Council should not all be replaced at the same time.<sup>522</sup>

The other point regarding terms of the office is whether a member can be elected for several terms, perhaps even consecutively. It is important to note that the same person cannot hold the office of being a member of the Council for two consecutive terms in Belgium, Bulgaria, France, Hungary, Italy,<sup>523</sup> Romania, Slovenia<sup>524</sup> and Spain<sup>525</sup> or for more than two terms in Croatia,<sup>526</sup> Latvia, Poland and Slovakia.<sup>527</sup>

A different approach exists in Bulgaria<sup>528</sup> and Portugal,<sup>529</sup> where the term of office is different for different groups of members. The same applies also for the possibility of its renewal in Portugal.<sup>530</sup>

Once the members of the Council are elected, there is a need for the determination of its chair or president. In several Member States, for instance in Estonia, Latvia, Portugal and Spain, the chair is the President of the Supreme Court. In other cases the Chairperson is selected internally among its members. This is done in Croatia,<sup>531</sup> Lithuania,<sup>532</sup> Poland,<sup>533</sup> Romania,<sup>534</sup> Slovenia<sup>535</sup> and Slovakia.<sup>536</sup> An interesting solution exists in Belgium and Hungary, where the presidential position is filled by Councils' members on rotational basis.<sup>537</sup>

<sup>514</sup> See Art. 124 of Croatian Constitution.

<sup>515</sup> See Art. 104 of Italian Constitution.

<sup>516</sup> See Art. 89.<sup>3</sup> of law 'On Judicial Power'

<sup>517</sup> See Art. 187 of Polish Constitution.

<sup>518</sup> See Art. 141a of Slovakian Constitution.

<sup>519</sup> See Sec. 122 of Spanish Constitution.

<sup>520</sup> See Art. 133 of Romanian Constitution.

<sup>521</sup> See Art. 18 of Slovenian Courts Act.

<sup>522</sup> See point 35 of Opinion no. 10 of CCJE on the Council for the Judiciary at the service of society.

<sup>523</sup> They cannot be immediately re-elected. See Art. 104 of Italian Constitution.

<sup>524</sup> See Art. 18 of Slovenian Courts Act.

<sup>525</sup> This does not apply for the Council's President in Spain.

<sup>526</sup> See Art. 124 of Croatian Constitution.

<sup>527</sup> The same person may be elected or appointed as the Chair or as a member of the Council for a maximum of two consecutive terms. See Art. 141a of Slovakian Constitution.

<sup>528</sup> Elected members have a term of office of 5 years and the ex officio members (e.g. the President of the Supreme Court of Cassation, the President of the Supreme Administrative Court and the Prosecutor General) have a term of 7 years. See ENCJ Factsheet on Bulgaria.

<sup>529</sup> Term of office for members appointed by the President of the Republic is 5 years, for those appointed by the Parliament it is 4 years and for the elected judicial members it is 3 years. See ENCJ Factsheet on Portugal.

<sup>530</sup> Ibidem. There are limits only for judicial members, who cannot be members for more than two terms of office.

<sup>531</sup> See Art. 124 of Croatian Constitution.

<sup>532</sup> The President of the Council is elected for two years.

<sup>533</sup> A chair and two deputy chairpersons are chosen from amongst the members of the Council. See Art. 187 of Polish Constitution.

<sup>534</sup> The President of the Council is elected among the judge members for one year's term of office, which cannot be renewed. See Art. 133 of Romanian Constitution.

<sup>535</sup> See Art. 131 of Slovenian Constitution.

<sup>536</sup> The Chair is elected and recalled among and by the members of the Council.

<sup>537</sup> The members in Hungary rotate every six months in the following manner: the first to fill the position is the judge with the longest judicial service, followed by the other members in descending order of the length of their judicial service.

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**B. Professional role**

An important element of the functioning of the Council concerns the type of function that the members are elected or appointed for. They can be elected or appointed for the purposes of performing an honorary function (in England and Wales, France, Greece, Hungary, Latvia, Lithuania, Malta, Northern Ireland, Poland,<sup>538</sup> Slovenia<sup>539</sup> and Slovakia),<sup>540</sup> part- (in Croatia<sup>541</sup> and Scotland)<sup>542</sup> or even full-time function (in Bulgaria, Italy, the Netherlands and Romania).<sup>543</sup>

In Portugal, it is up to the respective member to decide, but it possible to have a full-time function.<sup>544</sup> In other Member States, only some members have a full-time position. This applies for Belgium,<sup>545</sup> Denmark,<sup>546</sup> Slovakia<sup>547</sup> and Spain.<sup>548</sup>

This element has an enormous influence on the Councils' functioning. If the function of a member is honorary, the members of the Council (may) only discuss and adopt decisions, while office staff prepares majority of agenda and its documents.<sup>549</sup> If the function is part- or full-time, then members of the Council have sufficient time to prepare themselves for the sessions and they can prepare or at the very least review the documents related to the agenda of each session. It is plausible that a part- or even full-time function presents an opportunity towards a more effective work, but poses a threat on the other hand concerning the continuity of the judicial work of the (judge) members. It seems that a balance between the two could be achieved by part-time function as a member of the Council (while simultaneously preserving court practice).<sup>550</sup>

The type of function is of significant importance also to the members of the Council who are court presidents. In this case they combine three functions – being a judge, president of a court and a member of the Council.

<sup>538</sup> The members of the Council usually meet once a month for a whole week, so the judges remain full-time judges.

<sup>539</sup> The members gather in meetings every 2-3 weeks.

<sup>540</sup> See ENCJ Factsheets on France, Hungary, Latvia, Lithuania, Poland, Slovenia and Slovakia.

<sup>541</sup> Judges that are members of the Croatian Council have their work obligations as judges reduced by half. The president of the Council has their working obligations reduced by three quarters. The members gather in meetings that are one or two weeks apart.

<sup>542</sup> The Council meets twice each year and on-going work is carried out via a committee structure with members performing these duties on a part-time basis. All members are serving judges. See ENCJ Factsheet on Scotland.

<sup>543</sup> See ENCJ Factsheets on Italy, the Netherlands and Romania.

<sup>544</sup> Only judge members were in a full-time position in 2015. See ENCJ Factsheet on Portugal.

<sup>545</sup> Only four members of the bureau are in a full-time position. See ENCJ Factsheet on Belgium.

<sup>546</sup> The only person with a full-time position is the Director General, who is appointed by the board of governors and is responsible for the day-to-day management of the Danish Court Administration. See ENCJ Factsheet on Denmark.

<sup>547</sup> Only the President of the Council is a full-time member. Other members of the Council fully keep their original functions and are not entitled to remuneration as members of the Council. See ENCJ Factsheet on Slovakia.

<sup>548</sup> Only six members (president and five other members) have full-time position according to the last amendment introduced by the Organic Law on the Judiciary of June 2013. These members are the ones who make up the Standing Committee. See ENCJ Factsheet on Spain.

<sup>549</sup> Interestingly, in Romania the works for sessions are prepared with the support of an administrative staff of 260 persons. See Report of ENCJ Working Group Mission and Vision III, 2006-2007, p. 31.

<sup>550</sup> See also point 34 of Opinion no. 10 of CCJE on the Council for the Judiciary at the service of society, available at: [https://wcd.coe.int/ViewDoc.jsp?p=&Ref=CCJE\(2007\)OP10&Language=lanEnglish&Ver=original&Site=COE&BackColorInternet=FEF2E0&BackColorIntranet=FEF2E0&BackColorLogged=c3c3c3&direct=true](https://wcd.coe.int/ViewDoc.jsp?p=&Ref=CCJE(2007)OP10&Language=lanEnglish&Ver=original&Site=COE&BackColorInternet=FEF2E0&BackColorIntranet=FEF2E0&BackColorLogged=c3c3c3&direct=true) (last visited 28th March 2017).

## Recommendations and best practices

**In order that the Council's members have sufficient time for the quality performance of their work, they could have a full-time position in the Council or part-time position with the preservation of court practice or other non-judicial function (of non-judges) at the same time.**

### C. Quorum and voting

While the starting chapter of this contribution dealt with the composition of the Council, a reference to it needs to be made here. The regulation of the functioning (and even of the competences) of the Council is essentially dependent on its composition. Nevertheless, another point of enormous influence has to be highlighted here. The functioning of the Council is also largely dependent on the provisions concerning the quorum for adopting decisions and the majority required for it. For instance, Estonian and Lithuanian Councils have a quorum if more than half of its members are present, while the Hungarian Council requires at least two-thirds of the members present. In Estonia, the Council adopts decisions by a majority vote of the members present and with a majority in Hungary, while the tiebreaker is the President's vote. In Slovenia, the Council adopts decisions with the majority of all of its members unless an Act or Rules of procedure of the Council determine otherwise.<sup>551</sup> This is the case, for instance, when decisions, that are more significant, are adopted. The Council in Slovenia then decides with a qualified two-thirds majority of all members of the Council. Such a vote is required when the selection or promotion of judges is performed, in order not to give the judges in the Council the possibility to make a selection by themselves.<sup>552</sup> Despite the fact that judges have a majority in the Council, such a condition means that significant decisions are not adopted unless there are (with the intent to reach consensus) sufficient votes among the judge and non-judge members.

## Recommendations and best practices

**Significant decisions of the Council could be adopted by the qualified majority, making it necessary that members attend Council's sessions and that sufficient consensus is achieved between judge and non-judge members.**

### D. Financing of the Councils for the Judiciary

Additional reference needs to be made towards having adequate human and financial resources for the functioning of the Council. If this is not guaranteed, the Council will clearly have a difficulty in effectively carrying out its function.<sup>553</sup> Considering the fact that the Council is an independent body, it is of utmost importance that it is financed in a way that enables it to function properly.<sup>554</sup> Therefore it should have the appropriate means to operate as well as the power and capacity to negotiate and

<sup>551</sup> See Art. 23 of Rules of procedure of the Council in Slovenia, available at: [http://www.sodni-svet.si/images/stories/Poslovnik/Neuradni\\_cistopis\\_Poslovnika\\_Sodnega\\_sveta\\_5\\_11\\_2015.pdf](http://www.sodni-svet.si/images/stories/Poslovnik/Neuradni_cistopis_Poslovnika_Sodnega_sveta_5_11_2015.pdf) (last visited 28th March 2017).

<sup>552</sup> See Art. 28 of Slovenian Courts Act. Such cases are proposals for election of judges, their promotions, etc.

<sup>553</sup> P. Gilligan, Address to the Working Group of the High Judicial and Prosecutorial Council of Bosnia and Herzegovina, ENCJ. Sarajevo, 2nd November 2010, p. 11, available at: <https://www.encj.eu/images/stories/pdf/speeches/addressjusticegilligantohjpcbih.pdf> (last visited 28th March 2017).

<sup>554</sup> In Poland and Portugal, the Council has its budget as a separate part of the State budget, making it financially independent body.

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organise its own budget effectively.<sup>555</sup> When the Council has budgetary powers, it is only logical that it should then be accountable for the use of the funds to the Parliament (which adopted the budget),<sup>556</sup> or other supervisory body, such as the Court of Audit (e.g. in Slovenia).

The Council has an independent budget in Belgium,<sup>557</sup> Bulgaria, Croatia,<sup>558</sup> France,<sup>559</sup> Hungary,<sup>560</sup> Poland,<sup>561</sup> Portugal,<sup>562</sup> Romania<sup>563</sup> and Spain.<sup>564</sup> The Council does not have an independent budget in Greece, Latvia,<sup>565</sup> Northern Ireland, Scotland, Slovenia<sup>566</sup> and Slovakia.<sup>567</sup> The Councils in the Netherlands and Denmark are responsible not only the budget for the Council, but the whole budget for the judiciary.

## Recommendations and best practices

**The Council should have the appropriate means to operate as well as the power and capacity to negotiate and organize its budget effectively.**

<sup>555</sup> See also point 37 of Opinion no. 10 of CCJE on the Council for the Judiciary at the service of society, available at: [https://wcd.coe.int/ViewDoc.jsp?p=&Ref=CCJE\(2007\)OP10&Language=lanEnglish&Ver=original&Site=COE&BackColorIntranet=FEF2E0&BackColorIntranet=FEF2E0&BackColorLogged=c3c3c3&direct=true](https://wcd.coe.int/ViewDoc.jsp?p=&Ref=CCJE(2007)OP10&Language=lanEnglish&Ver=original&Site=COE&BackColorIntranet=FEF2E0&BackColorIntranet=FEF2E0&BackColorLogged=c3c3c3&direct=true) (last visited 28th March 2017).

<sup>556</sup> *Ibidem*, point 94.

<sup>557</sup> The Council presents its annual report to both Chambers of Parliament and its annual budget has to be approved by the Chamber of Representatives. The budget allocated to the Council is to cover the expenses related to its functioning in the exercise of its competences.

<sup>558</sup> See ENCJ Factsheet on Croatia.

<sup>559</sup> The Council's budget is autonomous in relation to the budget of the judiciary services. The President of the Court de Cassation manages the budget and negotiates the budget with the Minister of economy and finances. The budget allocated to the Council is to cover expenses related to its functioning in the exercise of its competences. See ENCJ Factsheet on France.

<sup>560</sup> This is the case since 1st January 2013. See ENCJ Factsheet on Hungary.

<sup>561</sup> It is separate from the State budget. It is decided by the Parliament and spent on the statutory activities of the Council and on the remuneration of the Council's staff. See ENCJ Factsheet on Poland.

<sup>562</sup> The Council has its financial autonomy equipped with its own budget, enrolled in the General Charges State of the State budget. It is approved by the Assembly of the Republic under proposal of the Council that is sent every year by the end of August. See ENCJ Factsheet on Portugal.

<sup>563</sup> The Council has its own budget which is approved annually by the Romanian Parliament. The Council files its own budget proposal to the Ministry of Public Finance, which is included in the draft budget law. After the endorsement of the draft by the government, the Parliament approves the budget. See ENCJ Factsheet on Romania.

<sup>564</sup> According to articles 107 and 127 of the Law on the Judiciary, the Council itself is in charge of preparing the proposal of budget that must be approved by the Parliament. So far the Parliament has never amended the budget proposal. See ENCJ Factsheet on Spain.

<sup>565</sup> See ENCJ Factsheet on Latvia.

<sup>566</sup> Currently, Slovenian Council is financed through a joint budget for courts, where coordination and distribution of funds is in the competence of the Supreme Court. A legislative proposal of the Act on Judicial Council is currently in the legislative procedure and one of its goals is to determine the Council as a directly financed budgetary body that proposes its budget itself. See Proposal of Act on Judicial Council (*predlog Zakona o sodnem svetu*), first discussion, EVA 2015-2030-0019, p. 7-8.

<sup>567</sup> Budgets for all state organizations are prepared by the Ministry of Finance and are approved by the Parliament. See ENCJ Factsheet on Slovakia.



