REINFORCEMENT OF THE RULE OF LAW

Final report on the First Part of the Project

August 2002

PHARE HORIZONTAL PROGRAMME ON JUSTICE AND HOME AFFAIRS

Reinforcement of the rule of law; Final report on the First Part of the Project. PHARE Horizontal Programme on Justice and Home Affairs

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FOREWORD

This final report on the first part of the Phare Horizontal Project "Reinforcement of the Rule of Law" did not come about without some difficulties.
Though a more or less general understanding exists on what the rule of law implies, there is not such a thing as an "acquis communautaire" on it – notwithstanding it is one of the Copenhagen criteria that stipulates the conditions for membership of the European Union. The European Council of Copenhagen (1993) concluded with regard to the rule of law that "membership requires that the candidate country has achieved stability of institutions guaranteeing democracy, the rule of law, human rights, and the respect for and protection of minorities". So, first of all, this general understanding had to be formulated for the purpose of this project.
Secondly, right from the start of the project there was a certain reluctance within the candidate countries to collaborate on its implementation. Not being sufficiently informed about the project beforehand – it was a project they had not requested – there was, understandably, fear for interference with the negotiations on enlargement if a report on the state of play had to be made. Especially as it concerned this extremely, politically sensitive area of the rule of law where so much room for interpretation was open. Moreover, there were strong doubts on the horizontal character of the project given the considerable differences between their judicial systems (likewise between the member states within the European Union). The extra burden on their already heavily overburdened, small administrations, and doubts on its added value played also a role in explaining the reluctance of the candidate countries.
Nonetheless, in order to identify the existing gaps and needs and to formulate the recommendations related to forms of assistance, it was essential to have a report on the actual state of affairs in each of the candidate countries. Although fully appreciating their worries, the collaboration of the candidate countries in producing the report was nevertheless essential.
In order to cope with these worries major changes in the project were made in agreement with the services of the Commission. These changes basically came down to the following. All candidate countries were to be treated separately and consensus with them was aimed for at every step in the project. In that way a not challenged report could be produced while interference with the negotiations on enlargement could be avoided. On this basis the candidate countries were willing to participate in the project.
Although the final responsibility for this final report of the first part stays with the management of the project, one might see it as a result of a joint effort between the authorities of the candidate countries and the management of the project. We want

to thank them for their cooperation that has always been very friendly. Consensus was reached on the facts and to a very large extent on the recommendations. They certainly represent an added value in terms of technical assistance. Together with the good relations developed during the first part of the project, they form a sound basis for the second part in which technical assistance will be given. Though considerable progress has been made improvements are still needed.
The fruitful collaboration during the first part of the project contributed to the increase of the awareness about, and the political commitment, to the rule of law among the relevant professional groups. The importance of the concept of the rule of law is well recognised as being essential for the functioning of democracy also realising that mutual trust in each others judicial system lies at the basis of the European integration. This applies to the member states of the European Union as well. Hopefully this report will stimulate the necessary debate on reinforcement of the rule of law.

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I. PREFACE

This report forms the final piece of the third phase of the first part of the European Commission's Phare Horizontal Programme on Justice and Home Affairs (JHA) "Reinforcement of the Rule of Law".

This project is based on the intention of the Candidate Countries (CCs): the Republic of Bulgaria, the Czech Republic, the Republic of Estonia, the Republic of Hungary, the Republic of Latvia, the Republic of Lithuania, the Republic of Poland, the Republic of Romania, the Slovak Republic and the Republic of Slovenia, to become members of the European Union (EU) and therefore to adapt their legal basis to the requirements of the EU. Its aim is to assist the CCs in their efforts to strengthen the principles of the rule of law in the functioning of their judicial systems by introducing or enhancing reforms of the judiciary, administrative bodies and their procedures, working standards and practices, in order to bring the CCs' legislation, institutions, procedures, training provisions and practices up to the EU standards with the aim of implementing effectively the JHA 'acquis' of the EU and its Member States.

The project does not deal with the entire concept of the Rule of Law, but addresses four major components of the judicial system and judicial proceedings – elaborated in four module texts – :
- an independent judiciary;
- status and role of the public prosecutor;
- court procedures and execution of judgements;
- safety of victims, witnesses, judges, prosecutors, defence lawyers and jurors.

The *first phase* of this part of the project was an *Inception Phase*, consisting of a desk study of existing documents and reports concerning aspects of the four spearheads of the project to give an indication about the state of affairs in each of the CCs with regard to the rule of law.
Independent experts, named by the management partners of the project, drafted country overviews on the state of affairs in each of the ten CCs with respect to their respective modules. Apart from the desk studies a general inception report was drafted, containing general summaries per module and the preliminary conclusions per CC. This report was published in May 2001.

The *second phase* started with visits by a high official of the Ministry of Justice of The Netherlands, responsible for the overall organisation and co-ordination of the project, the project co-ordinator of the Central Co-ordination Unit of the project in Leyden, The Netherlands, and the general key-expert to each of the CCs to present the inception report, to inform the Ministry of Justice, the Judiciary, the Prosecution Service and the Delegation of the European Commission about the results of the desk study and to discuss further steps.

The desk studies were – in respect of the correctness of the facts – severely criticized by the CCs as outdated and/or incorrect and not reflecting the reality. They should be replaced by documents, indicating the actual state of affairs in the CCs and not challenged by them. With this end in view, the CCs were prepared to provide the Central Co-ordination Unit with written commentaries on the desk studies, required legislation and other important documents. The CCs declared themselves fully committed to achieve the objectives of the project and expressed their wish to become actively involved in the project.

The CCs endorsed the forming of small teams of highly respected and qualified experts from the EU Member States with a long experience in legal practice, to visit the CCs with the purpose to verify the facts, to make an assessment of the actual state of affairs and to draft recommendations related to forms of assistance. To each team a national member would be added, a person originating from the CC to visit, well respected in the legal community, with a deep knowledge of the legal system of the country and a native speaker of the language.

It was agreed that there exists a difference of nature between the modules 1, 2 and 3 of the programme on the one hand and module 4 on the other hand. The first three modules – an independent judiciary, status and role of the public prosecutor, court procedures and execution of judgements – have a strong internal connection and should be considered as a coherent whole, whereas the fourth module – safety of victims, witnesses, judges, prosecutors, defence lawyers and jurors – has its own dynamics and should follow a separate strategy.

A team of junior legal staff members was formed at the Central Co-ordination Unit to study and analyse with regard to modules 1, 2 and 3 the commentaries, legislation and other additional documents, received from the CCs, and incorporate them in the desk studies. During this process the desk studies underwent significant revision.
By this legal staff also the coming missions of the teams of experts were prepared. A Gaps and Needs Analysis regarding the modules 1, 2 and 3 was drafted for each CC, containing suggestions for the priority areas to focus on. On the basis of this analysis an Annotated Agenda, concerning the first three modules, was prepared for each visit and sent to the respective CCs before the mission of the team of experts.
The project co-ordinator visited each CC to prepare the missions and to make the necessary arrangements.

In the *third phase* the expert missions took place, the first in November 2001 to the Republic of Hungary, the last in April 2002 to the Republic of Bulgaria.
On the basis of the findings during these missions the already reviewed desk studies, regarding the first three modules, were readjusted. After each mission the remaining gaps and needs, covering the first three modules, were formulated and corresponding recommendations were drafted. These were submitted to the CCs. During visits to each CC by the high official of the Ministry of Justice of The Netherlands and the leading expert of the respective mission these gaps and needs, and recommendations were discussed with the aim to reach consensus on them.

Activities to make these recommendations operational, will be implemented in the following stage of the project.

The readjusted desk studies concerning the first three modules of the project were reviewed by the national experts and sent to the CCs for comment. They are attached as Annex I to this final report.

The experts for the fourth module had their own agenda's. This fourth module is managed by the UK Home Office and the Italian Ministry of Justice. Concerning the chapters of the module, managed by the UK Home Office, a Summary Report, containing the principal broad findings and recommendations of the experts on the missions visiting the CCs, is part of this final report. The complete mission reports are attached in Annex I.
The reports made by the experts with regard to the chapters of the module, managed by the Italian Ministry of Justice, are not part of this final report, but will be published separately.

II. EXECUTIVE SUMMARY OF THE FIRST THREE MODULES

A. General remarks

Amongst the Member States of the European Union there is a more or less general understanding on what the 'Rule of Law' implies, namely a constitutional system by which the different organs of the state are aligned and limited in such a way that the state cannot illegally infringe on a citizen's right. These are often referred to as the 'guiding principles of the Rule of Law'. These 'guiding principles' are elaborated and applied in the case law of the European Court of Human Rights. To a limited extent they are taken into consideration in the case law of the European Court of Justice as well.

Since the judicial systems of the Member States of the European Union are very diverse, an obstacle in the transformation process is the lack, in official EU documents and the 'acquis communautaire' of the European Union in the field of Justice and Home Affairs, of complete defined principles of the 'Rule of Law' and of commensurate, described conditions with which a state has to comply.

In the area covered by this project, EU law itself provides only limited, specific parameters for the necessary reforms. Nonetheless, membership of the European Union requires that CCs meet certain standards in respect of the functioning of their judicial systems. Therefore, the government of The Netherlands, in charge of the EU presidency during the first half of 1997, decided to convene an international conference on the Rule of Law at Noordwijk in June 1997. The participants of this conference included representatives of the legal profession, the judiciary, public prosecutors and the Ministries of Justice of EU Member States and the CCs, the European Commission, the Council of Europe and other international organizations. The conference underlined the importance of the Rule of Law to the functioning of a democratic society. The Noordwijk Conference resulted in a number of recommendations on how to strengthen further the Rule of Law. The JHA Council (28 May 1998) took note of the Noordwijk conclusions and reaffirmed the useful reflections on the Rule of Law. The European Council of Cardiff also referred to those conclusions. This project is built to a large extent on the Noordwijk conclusions.

The concept of the independence of the judiciary attained historically its full development after the proposition of Montesquieu (*De l'esprit des lois, 1748)* to separate the legislative, executive and judicial powers. From this historic perspective it is understandable that autonomous formation of a judgement is the essence of judicial independence. The European countries developed this basic concept according to their own political and constitutional reforms. Although there have always been differences in legislation and practice, the legal systems of the Central and Eastern European states were not radically different from those in Western Europe.

Under the rule of communism in Central and Eastern Europe the existing legal systems all changed. State power was consolidated in the hands of the ruling communist party. Where these powers were first separated and where the mechanism of interdependence and checks and balances predominated, in the Central and Eastern European countries the principle of unity of powers became predominant. Accordingly the judiciary pursued the aims of the ruling communist party. The role of the judiciary in those times is well known.

In the late 1980s and early 1990s, with the decline of communism and the end of totalitarianism, the judiciary, like the Ministry of Justice, had to regain its proper role in a democratic society. Legal and judicial reform became a vital part of the overall transition because it provides the structural framework for economic and other reforms. A viable legal system is also needed to attract investments, combat corruption, and protect basic human rights. But not only legal and judicial reform was needed, also the mentality of the legislators and the judges had to be changed.

The 'guiding principles' of the Rule of Law require the guarantee of an independent judicial system. This includes a true balance of power between the legislature, the executive and the judiciary, which can ensure an independent position of the judiciary. Independence of the judiciary is a precondition for confidence in and the authority and success of any judicial procedure. The essence of judicial independence may be described as follows: a judge should be able to reach his / her decision on the basis of his / her own judgement without the existence of an improper relationship with the parties before him / her or the authorities, and without his / her decision being subject to another authority. In other words: autonomous formation of a judgement is the essence of judicial independence. A judge may not be subjected to any authority, except the law, if the law is developed in accordance with democratic principles, and his own conscience and sense of justice, as far as the law leaves room for interpretation. Therefore also a qualified and effective system of justice and the guarantee of independence of individual judges are required. To these requirements the structure and organisation of judicial training, the scope of such training, the needs, the methods and the goals must be tuned.

All European States have a state agency with the power to prosecute criminal offences and most of them also have powers of investigation. In the majority of these states, the prosecution service was originally based on the same concept: the French 'ministère public', as set down in the Napoleonic Code.

Under the rule of communism in Central and Eastern Europe the public prosecution service was organised according to a communist model, named 'the procuracy'.

The 'procuracy' was a totally autonomous organ that depended directly and exclusively on the communist party. Beside the main tasks such as initiating, investigating and prosecuting criminal cases, the 'procuracy' developed a strong supervisory role. This supervision implied both legislative power and the power to enforce exact and uniform compliance with the laws by all agencies of executive power, at a central and a local level. The 'procuracy' had complete authority over the police in its investigative activities. In addition, it controlled politics, mass movements and all types of enterprises and

organisations. Public officers as well as citizens were monitored, to ensure strict compliance with the ruling party and its doctrine.

The accumulation of too many functions and responsibilities was clearly undesirable. The supervisory role influenced the structure and accountability of the office of the public prosecutor, its constitutional position and the appointment of the procurator-general. It impaired the independence of the service and affected the proper execution of prosecutorial tasks.

With the decline of communism, the institution of 'the procuracy' was considered incompatible with the concepts and structures of public prosecution as they have gradually become accepted by the Member States of the European Union. The concept of the Rule of Law requires different standards in respect of the functioning, the role and the position of the public prosecutor.

The CCs have already initiated a number of reform programmes in this area. The abolition or restriction of supervisory powers, together with the increase of the democratic value of state power, has led to a prosecutorial organisation and accountability which now seems more similar to the Western European legal systems.

The proper functioning of the public prosecution in a constitutional and legal system, and in a democratic society requires certain basic standards. The position of the public prosecutor in its relation with the executive, legislative and judicial powers should be independent. The relationship between the public prosecution service and the police should be clear and established by law. Public prosecutors should execute their diverse tasks and responsibilities according to the law, ethical codes and criminal policy. The legal position of the public prosecutor should be established by law and strengthened by organisational aspects. The recruitment and education of public prosecutors should be organised in a fair and impartial way.

However, prosecutorial functions cannot be explained simply by referring to rules and procedures. Much depends on how these powers are exercised in day-to-day practice and how they are reflected in existing case law. The legal system is dynamic and legal developments are continuous. The legal position of the public prosecution as well as its functional tasks and responsibilities can therefore differ substantially within and between the Member States of the European Union and within and between the Candidate Countries.

The principle of the Rule of Law also requires that certain standards in respect of court procedures in civil, commercial, criminal and administrative matters must be adhered to. These include guarantees for an access to courts and for a fair trial, as well as an effective system of execution of judgements.

Furthermore, EC law as interpreted by the European Court of Justice requires that Member States provide appropriate rules for access to courts, court procedures and execution of judgements in order to ensure an effective enforcement of EC law and the rights of individuals which follow from primary and secondary Community law.

An individual can only exercise his rights if he –has proper access to court. Therefore structures are necessary which ensure that the individual is guaranteed local, formal and material access to court. An important issue in this field is the provision of free legal aid.

To guarantee a fair trial the Rule of Law asks for the observation of some general rules, as described in art. 6, § 1 ECHR.
In addition to these general rules, in criminal matters the principle of the Rule of Law is asking for the observation of some specific rules, as described in art. 6, § 2 and 3 ECHR and for following some principles on decision making.
In the case of pre-trial detention the Rule of Law is also asking for the observation of art. 5 ECHR.

For justice to be done, the judicial decision must be enforced. Therefore it must be ensured that in civil and commercial as well as in criminal and administrative matters courts sufficient means and powers for courts are available and competent bodies exist in order to enforce judgements without undue delay.

B. General assessment

There are considerable differences between the Central and Eastern European Candidate Countries with regard to the developments in the area of the first three modules. However, there can be no doubt that all the candidate countries – given the comparatively short period since the rule of communism came to an end – made tremendous efforts to come up to the European standards and achieved important results.

Although, like in the Member States of the European Union, the implementation of the standards of the Rule of Law in the candidate countries can be diverse, there are some characteristics, which are more or less common in the CCs.

All the CCs have legislated the necessary constitutional and statutory guarantees for judicial independence. However, problems arise as soon as the independent status of the judiciary is implemented in terms of every day organisation. The role of the Minister of Justice in the organisation and administration of the courts is very often predominating and establishes a danger to the judicial autonomy. The same goes for the influence of the Minister of Justice on the selection, recommendation, appointment, promotion and dismissal of judges.

In a country governed by the rule of law the separation of powers of the State must be based on a system of checks and balances, which can prosper only when built on mutual trust and respect. That depends not only of the attitude of the executive, the legislative and the judiciary towards each other, but also of a just conception by the judiciary itself of its independence and of the duties and responsibilities, which result from this. The interpretation of judicial independence by the judges themselves is sometimes exaggerated, as if it should mean absence of any rules and obligations and judges should

be not accountable. On the other hand, there is to sense a reluctance with the executive and the legislative to commit themselves really to the independence of judges and to respect the judges' independence in the decision-making process.

It must be clear that the process of achieving the right balance between the state powers is not always easy. Conflicting interests play sometimes an important role. Therefore an open communication and good relations between the main partners in the field of the Rule of Law – the Ministry of Justice, the judiciary and the Prosecution Service – are important. In most Candidate Countries that communication and those relations are lacking and must be improved.

Delays of procedures and organisational weaknesses of court work are quite common in the CCs., as are backlogs and the delay in the execution of judgements. More material investments in data processing, training of judges as well as court secretaries are required to overcome these problems.

An acute problem is posed by building up institutions for training and retraining. The enormous output of new legislation, which particularly affects matters of economic and administrative law, but also rapidly changes the more traditional fields of social and family law, asks for increased efforts in individual learning and further training. Academies of the magistrates are being planned in some countries, but countries often are content, if they can manage to offer special courses at universities and schools for legal practitioners. With so much law and so many organisational rules changing at the same time, books on entire fields of law have to be rewritten and teachers have to develop the necessary (new) teaching materials. But also the apathy of judges, with respect to their double task of managing growing caseloads at court and at the same time keeping up with the changes in law, plays a role.
Therefore, training programmes must be developed to create a sense of conscience of the role the judiciary has to play in a democratic society, governed by the rule of law, in which exists a true balance of power, and to learn the judges and other court personnel the tasks they have to perform in such a system.

C. Assessment per candidate Country

In the following assessment the Candidate Countries are arranged in the alphabetical order.

1. The Republic of Bulgaria

The mission of experts took place from 8 to 12 April 2002. The mission formulated certain gaps and needs, and proposed recommendations.
On June 7, 2002, the Advisor for International Affairs of the Ministry of Justice of The Netherlands, and the leader of the mission of experts presented the report at hand to the Minister of Justice of Bulgaria, the Deputy Minister of Justice, the Director European Legal Integration, the Director International Legal Cooperation and International Legal

Assistance, and the Chief Expert of the European Legal Integration Directorate. The Minister of Justice welcomed the report and declared himself in agreement with the gaps and needs, and the proposed recommendations.

The implementation of Rule of Law standards is high on the agenda of the Republic of Bulgaria. On October 1, 2001, the new Government of Bulgaria adopted the *Strategy for Reform of the Judicial System in Bulgaria (SRJ)*. Its aim is to develop European Standards in justice by determining the political and legislative priorities in the reform of the judiciary, thus contributing to the preparation for membership of the European Union. An ambitious Program for the implementation of that Strategy is devised as the next step in an ongoing process aimed at realizing the objectives of the Strategy. The Strategy and the Action Plan cover a five-year period. The adoption of this Strategy and Action Plan is important and encouraging. Indeed, many efforts are needed to develop a strong, independent, effective and professional judicial system in Bulgaria. Therefore the measures proposed by the Government deserve support. Their implementation and the monitoring of their effectiveness must have high priority. It is suggested that expert assistance might be particularly valuable in this field.
One major problem, however, is that the Strategy does not deal with issues, where constitutional change will be required.

Many gaps and needs have been inserted in the Strategy and the Action Plan. Therefore, those gaps and needs are formulated, of which the solution is most pressing.

It has to be assumed that in a country governed by the rule of law the separation of powers of the State must be based on a system of checks and balances, which can prosper only when built on mutual trust and respect. That depends not only of the attitude of the executive, the legislative and the judiciary towards each other, but also of a just conception by the judiciary itself of its independence and of the duties and responsibilities, which result from this. In Bulgaria there seems to be a low commitment to the independence of judges, and the respect for independence in the process of decision-making by judges seems to be not much developed. The formal guarantees for separation of State powers and independence of the judiciary are provided for in the Constitution and the Judicial System Act.

A main problem, however, is that in Bulgaria the judiciary consists of three branches, namely the judges, the prosecutors and the investigators, the latter exercising functions, elsewhere done by the police or the investigating judge. So, the judiciary pur sang or the judges are not a separate and independent State body. That alone makes the separation of powers unclear. The Supreme Judicial Council, the body responsible for representing and administering the judiciary, reflects this problem, as it is composed not only of judges, but also of prosecutors and investigators. It goes without saying that, given e.g. the fact that the Supreme Judicial Council exercises considerable authority over the career of judges, the mixed composition of the Council can be a source of tension among the three branches of the judicial power and can contribute to conflicts of interests. Moreover, given such a structure, it will be difficult for the public to distinguish the singular position of the judge, the prosecutor and the investigator and what they are accountable for.

Although the mission acknowledges that a main principle of the Strategy to Reform the Bulgarian Judiciary is that solutions will be sought within the framework of the Constitution, nevertheless it must be emphasized that constitutional amendments are inevitable to bring the judicial system up to the standards of the European Union. In this respect the mission wants to underline the unusual composition of the judiciary in Bulgaria and the risks this composition carries. The mission recommends that the working group, which discusses the need of constitutional amendments arising from the procedures of accession to the European Union, gives much attention to this problem. Of course, constitutional changes are dependent of the composition of the parliament. Therefore, the mission sees it as a task for the Ministry of Justice to mobilize all its forces to strengthen the political will to accept the necessary constitutional amendments.

The division of roles between the Ministry of Justice and the Supreme Judicial Council is confused. The Supreme Judicial Council should act as the administrator of the judiciary; in practice the Ministry of Justice exercises extensive administrative powers, also towards the judiciary pur sang, i.e. the courts and the judges, for instance with regard to court buildings and court facilities, court administration and court personnel. Besides, the Ministry of Justice has supervisory and information-gathering competencies, which involve it in the daily routine of the courts. Through its Inspectorate the Ministry of Justice supervises the organisation of administrative activities of district, regional and appellate courts and it prepares an annual report on the activities of these courts. These administrative and supervisory competencies of the Ministry of Justice seem to be at odds with the principle of self-governing of the judiciary, as laid down in the Constitution and the Judicial System Act. Apart from that, the Supreme Judicial Council is insufficiently equipped for exercising the extensive powers, vested in it. It has too small a staff and meets too infrequently to be an effective administrator.

The Supreme Judicial Council represents all three kinds of magistrates, not only judges. Still, the position of judges is different from the position of prosecutors and investigators. According to European standards, judges should be independent of all forms of external non-judicial influences which might affect their decision-making process. That forms the basic assumption of the principle of their self-governing. The extensive administrative and supervisory competencies of the Ministry of Justice are incompatible with that principle. In certain matters, the representatives in the Supreme Judicial Council of the three parts of the magistracy have separate competencies.

» *It is recommended that, for the time being, possibilities are explored to extend the competencies of the branch of the judiciary pur sang vis-à-vis the Ministry of Justice, to give more shape to the said principle of self-governing, meanwhile creating a clear distinction between the role of the Supreme Judicial Council as the organ through which self-government of the judiciary pur sang must be carried out, and the role of the Ministry of Justice. In this respect, also much attention must be given to extension of the (legal) staff of the Council.*

All judges, except the Presidents of the two Supreme Courts, are selected by the Supreme Judicial Council. However, there are no clearly established methods or criteria for selection of candidates for judicial office. The criteria applied are not transparent and

there is no national competition for recruitment. There is no law regulating the selection procedure. Also there are no special procedures governing promotion to higher posts, such as court president or a seat on a higher court. When appointed, a junior judge is not tenured until he or she has served three years in a position. During this period, the junior judge – who is adjudicating cases – is not irremovable from office.

» *It is strongly recommended that objective and transparent methods for selection, appointment and promotion of candidates for judicial office are constituted. Also the position of junior judges (not tenured and not irremovable from office) must be called into question, seen in connection with a new concept of training.*

There is no comprehensive and systematic training structure for judges and prosecutors. Training for magistrates, i.e. for judges, prosecutors and investigators is provided by the Magistrates' Training Center, a non-governmental organization, which is funded largely by foreign donors. The Center organizes, among other things, initial training for junior judges. The mission highly recognizes the accomplishments of this Center. However, the quality of justice and the judicial system is a responsibility of the State. Therefore, the mission with approval has taken note of the fact that the need to establish a national public institute for the training of members of the judiciary is recognized by the Ministry of Justice and the Supreme Judicial Council. One of the objectives should be the development of a strategy and general concept of the training of judicial candidates or trainees, preceding their appointment as a judge or prosecutor.
The establishment of a national public institute for the training of members of the judiciary must be encouraged.

» *It is strongly recommended to transform the Magistrates' Training Center, while retaining its existing structure and its staff with all its merits and experience, into such a national public institute. Financing such an institute by the State has to have high priority. However, the Ministry of Justice should keep its proper distance from the development of the training-curricula of such an institute. A comprehensive training strategy for members of the judiciary should be developed. Among other things the development of a strategy and general concept for the training of judicial candidates or trainees, preceding their first appointment, deserves high priority.*

Corruption is considered as one of the main problems facing Bulgarian society. There seems to be a widespread public perception that the courts are affected by corruption. True or not, the image of the judiciary and its independence in the public eye can be affected negatively by such perception. All members of the Bulgarian judiciary have constitutionally immunity for all but serious crimes and this will make it difficult to investigate possible corruption.

It seems that corruption in the Bulgarian society is still not seen as a crime, let alone as a serious crime. Since October 1st, 2001, a national Strategy for Combating Corruption is adopted, which includes anti-corruption reform in the judiciary.

» *It is recommended, unless a constitutional amendment to abolish the immunity of magistrates is possible, to introduce rules for the implementation of that immunity.*

» *In the framework of combat against corruption it is recommended that the judiciary formulates a binding code of ethics for the three branches of its members, to focus in the training curricula on rules of ethics, and that a debate between the judges, the prosecutors and the investigators on the moral standards of their profession is stimulated. Also the professional associations of the branches of the judiciary must be involved in this debate. The main actors in the field of the Rule of Law are encouraged to consider a common approach to enhancing the image of the judiciary. The Ministry of Justice, the Supreme Judicial Council, the Public Prosecution, the professional associations of judges and public prosecutors and the Bar Association can all play an important role in this respect. The judiciary itself could try to improve the flow of information to the media and the public, preferably through specially trained staff for external relations.*

Working conditions are unsatisfactory, especially concerning office space and equipment. In general courts and judges are overburdened. Fringe benefits are lacking. The same goes for public prosecution offices and public prosecutors. Judges and also prosecutors and investigators have to spend a considerable amount of time on administrative matters, due to a lack of legally trained staff, which reduces the time for handling the caseload. There is no nation-wide system of information technology. The judicial system as a whole still relies on donor assistance in setting up a uniform information system.

» *It is recommended to give high priority to the improvement of the working conditions and fringe benefits of the judiciary. Recruitment and training of administrative and legal staff for the courts is necessary to reduce undue delays and backlogs. There must be invested in information technology. Computerization of courts and public prosecution offices is urgent.*

» *To keep cases out of court, ways of alternative dispute resolution should be developed. Also, existing legislation could be reviewed to see whether it is possible to implement greater incentives for both parties to agree on arbitration or to reach a friendly settlement.*

The strong hierarchy within the public prosecution service and the preponderant position of the Chief Prosecutor, together with the wide decision-making powers of the public prosecutor, may affect not only the policy of appointment and promotion but the very core of the principle of the Rule of Law. Policies of selection, appointment and promotion of members of the public prosecution service are non-transparent. Vacancies, also with regard to promotion functions, are not publicly known within the public prosecution service and there exists no fair, open and transparent competition.

» *It is recommended to make efforts, by way of introducing amendments to the Judicial System Act and the Code of (Criminal) Procedure, to break open the hierarchical system of the public prosecution service and to limit the public prosecutor's decision-making powers with a judicial effect. The policy of selection, appointment and promotion of the members of the public prosecution service must be made objective, transparent and competitive.*

The separate status of the investigators as one of the three branches of the judiciary affects the relation with the public prosecution. Within the European Union it is a basic assumption that the principal role of the public prosecutor is to represent the society in the courts in order to guarantee the application of the law and to institute prosecuting proceedings. Public prosecutors should be vigilant with respect to any violation of the criminal law and should ensure that investigative services, especially the police, respect legal provisions which guarantee the fundamental human rights and protect the individual against torture and inhuman treatment. This position of the public prosecution presupposes a certain extent of supervision over the investigative services. Co-operation between the prosecutors and investigators, however, seems to be weak and reports about police violence give cause for serious concern. Also the quality of criminal investigations is reportedly often unsatisfactory, through which courts have to send cases frequently back to the public prosecution, which causes undue delays in the concluding of cases.

» *It is recommended that the supervisory powers of the public prosecution service over the police and the investigators are strengthened.*

There is concern about the system of pre-trial detention. It is true that detainees are brought before a judge soon after their apprehension, but after this initial review a judge will only assess the position of the detainee upon request. At no subsequent point during the pre-trial detention a judge is obliged to review the detention or hear the detainee ex officio.

» *It is recommended that a regular, ex officio review of pre-trial detention by a judge is established. The institution of a special pre-trial judge must be considered.*

The profession of lawyer plays an essential role in guaranteeing the Rule of Law. The Charter of Fundamental Rights underlines the importance of access to legal assistance. Although the profession of lawyer has not been harmonized, it contributes in all Member States of the European Union to the effectiveness of access to justice by its assistance not only to citizens who can afford to pay a lawyers' fees but also to those who have only limited resources. This result is achieved by public funding, by the financial contribution of the profession itself or by a combination of both schemes. Thus in most law suits parties are assisted by a lawyer. In Bulgaria, lawyers are organized in the Bulgarian Bar Association. At each District Court there exists a Chamber of the Bar, of which a lawyer has to be a member to be able to appear in court. The Bar Association, however, has not the exclusive right to provide legal assistance. There are also lawyers, who are not members of a Chamber of the Bar, who are admitted to the courts. However, these lawyers are not bound to the regulations and code of ethics of the Bar Association, nor are the disciplinary rules applicable to them.
There exists in Bulgaria a system of free legal aid, but it works in practice not satisfactorily. In many criminal cases defendants have no access to a lawyer in the pre-trial phase, nor during trial before a court of first instance.

» *It is recommended to create a solution in the law of the problem of lawyers, who are not members of the Bar Association. The acceptance of and public esteem for the judicial*

system in a country is closely related to the possibilities for the citizen to bring his case to court and to have disputes settled by a judge. Therefore, access to justice is an important element of the rule of law. Access to justice comprises various aspects, like (free) legal aid. The latter is not well structured in Bulgaria. The mission strongly recommends to improve the existing system of legal aid and bring it up to the standards of the European Union.

2. The Czech Republic

The mission of experts took place from 4 to 8 February 2002. The mission formulated some gaps and needs, and proposed recommendations.
On April 5, 2002, the Advisor for International Affairs of the Ministry of Justice of The Netherlands, and the leader of the mission of experts discussed the gaps and needs, and the corresponding draft-recommendations with the Minister of Justice of the Czech Republic, the Deputy Minister of Justice, the Director of the European Integration Department and the Director of the Legislative Department. During that meeting the Minister of Justice emphasized that the process of implementing the standards of the Rule of Law is still going on and that the Ministry will assess what is still needed. The new Act No. 6/2002 Coll., on Courts, Judges, Lay-Judges, and State-Administration of the Courts must be seen as a first step. The position of the Czech Republic towards the draft recommendations, based on the conclusions of that meeting, has been put in writing, and is incorporated in the gaps and needs, and the recommendations formulated below, with which the Czech counterparts declared themselves in agreement

The pace of change in the judicial system of the Czech Republic is impressive. While drafting legal acts, the Ministry of Justice cooperates with all actors, judicial public included. According to the Government's legislative rules, all drafts of the acts are circulated in the intra- and extra departmental commentary procedure. Practical experience of experts is also exploited. However, the immense number of new measures and the speed with which they are introduced, induce certain concerns.
Firstly, it seems that sometimes the necessary implementation and accommodation strategies, and means for new measures are lacking. As a main example may be cited the new tasks for prosecutors and judges after the amendment to the Code of Criminal Procedure, for which little or no support or compensation are provided. The transfer of disciplinary proceedings to the High Courts and the introduction of Judicial Councils at all courts could be mentioned as other examples.
A second concern is the fact that several parties active in the field of the Rule of Law have the impression that some initiatives are to a greater or lesser extent of a 'trial and error' nature. Measures are perceived as not adequate to solve existing problems and in some cases even are seen to aggravate the existing situation.

It is suggested that from the early stages of drafting new legislation, a watchful eye be kept on practical problems the new law could cause and on ways how to support the law's implementation. If new measures burden certain professionals more heavily, means should be found to accommodate the increased workload.

» *While drafting legislation, it is recommended that the Ministry within the established intra- and extra departmental commentary procedure and within the established conduct, maintains intensive contacts with all relevant actors. This way, new measures can truly be tailored to fit the needs of those who will have to work with them.*

It goes without saying that a high standard of professionalism may be required from judges. Therefore, it is common practice in various jurisdictions to evaluate regularly judges' work. However, concerns exist as to the specific design of the new system of Evaluation of Professional Competence in the Czech Republic. These concerns focus mainly on the way the State-Administration of courts is involved in initiating the evaluation, and the fact that judges may be dismissed as a result of a negative evaluation. The concept of the evaluation of professional competence of judges is built upon the main role of the Council for Professional Competence, established for the branches of criminal law, civil law and administrative judiciary. From the nine members of each Council, five are judges, one of them elected by the judges of the Supreme Court, two of them are elected by the judges of the High Courts and the other two are selected by ballot from the judges proposed in the elections by individual Regional Courts. The rest is represented by experts from other professions. If the Council proclaims the incompetence of a judge, the judge has the right to ask the Supreme Court for consideration of his/her professional competence. The Supreme Court decides in full jurisdiction. The body of state administration (the President of the Court) does not decide about the professional competence himself/herself, but only on the basis of insufficiency found during the evaluation of the judge's professional results (however his/her independence in the decision making activities is not subject to challenge) he/she can file request for evaluation of the judge's professional competence with the body independent from the court administration. The same system applies also for the public prosecutors. The compliance of this legal institute with the Constitution, however, will be examined by the Constitutional Court upon the request of the President of the Czech Republic. So, any (possible) recommendation with regard to this new system of professional competence is premature.

The installation of a Judicial Academy is to be welcomed. The Judicial Academy is not subordinated to the Ministry of Justice. It is an agency of state administration and a self-standing accounting unit. The curriculum will be determined by the Council of the Judicial Academy. The Council will, according to the law, consist of judges, state prosecutors, advocates, notaries, law professors and other experts. Close cooperation with Courts in preparation of the curricula is defined in detail as part of the Academy's Statute. However, it would be regrettable if the judiciary itself will be involved only to a very limited extent in the shaping of the Academy and of the education it will provide. Concern also rises with regard to the fact that a clear, comprehensive concept of what judicial training should encompass, seems to be lacking.

» *It is suggested that the judiciary be given an important voice in the management of the Judicial Academy and in the establishment of the curriculum. It is advised that the Council of the Judicial Academy elaborates a comprehensive approach to initial and life-long training.*

Salaries for the judiciary and the prosecution service have increased significantly over the past few years, on the understanding that the salaries of the prosecutors amount only to 90 % of the judges' salaries. Pensions however, are notably lower than widely accepted international standards, which indicate a minimum of 50 to 60 percent of the last salary for judicial pensions. The Ministry of Justice will seek further for improvement of retirement conditions for judges and public prosecutors as well as for leveling the salaries of judges and prosecutors. However, solution of this problem does not depend only upon the opinion of the Ministry of Justice, but primarily upon that of the Ministry of Labour and Social Affairs, Government as a whole and naturally the Parliament.

» *The level of pensions of judges and prosecutors should be reconsidered as to bring them more in line with international practice and the dignity and responsibilities of the office. It should also be considered as in line with the dignity and the responsibilities of the office of the prosecutor to bring the salaries of the prosecutors up to the same level as the salaries of the judges. These considerations are however not only in hands of the Ministry of Justice but primarily of the Ministry of Labour and Social Affairs, Government as a whole and the Parliament. It is advised that the Ministry of Justice further seeks for improvements of retirement conditions for judges and state prosecutors as well as for leveling the salaries of judges and state prosecutors.*

Act No. 6/2002 Coll. on Courts, Judges, Lay-Judges, and State Administration of the Courts separates strictly the exercise of judiciary from the exercise of state administration of the Courts. The Minister of Justice can, also under this new Act, recall court presidents (in their function of body of state administration) at any time. The criterion is that the court president fails to fulfil his duties diligently. The decision by the Minister of Justice must be justified in this respect also. Although this does not happen frequently, the mere possibility of this measure casts a shadow on the relationship between the Ministry, court presidents and the judiciary as a whole.

» *It is recommended that clear and unambiguous criteria for the recall of court presidents be applied. Such practice would increase the transparency in the relations between the Ministry, the local court-administration and the judiciary.*

The Supreme Court of the Czech Republic has the duty to unify the case law of the various lower courts. It seems that the Supreme Court encounters practical difficulties in carrying out this function in the context of extraordinary appeals. It is often difficult and time-consuming to find out whether differences in case law exist between the appeal courts. However, the whole system of extraordinary appeals in civil and criminal proceedings will be subject to reconsideration as part of re-codifications to the civil and criminal proceedings law.

» *A review of the practical functioning of the system of extraordinary appeals is recommended.*

Especially in an environment where true judicial self-administration has not yet come into being, professional associations are vital to the representation of the interests of the judiciary. In a strongly hierarchical organization like the public prosecution service,

professional associations are also important for the protection of the interests of individual prosecutors and, vis-à-vis the outside world, of the service as a whole.

» *It is recommended that the Ministry considers ways to support the work of associations as the Czech Union of Judges and the Association of State Prosecutors.*

The Media play an important role in creating an image of the judiciary and informing the public of issues concerning the Rule of Law. The Ministry of Justice possesses a unit for press and public relations that is responsible for providing information related to the Ministry of Justice and department of justice. It also mounts press conferences on matters of interest. It is perceived that relations between courts and the Ministry on the one hand and the media on the other hand, are open to improvement.

» *To enhance the image of the judiciary and to improve the flow of information to the public, it is recommended that ways be sought to achieve better communication with the media. Especially until the introduction of an organ representative of the entire judiciary, the Ministry has a special responsibility to act on behalf of the judiciary and to defend judges and courts against unjustified attacks.*

3. The Republic of Estonia

The mission of experts took place from 14 to 18 January 2002. The mission formulated certain gaps and needs, and proposed recommendations.
On January 31, 2002, the Advisor for International Affairs of the Ministry of Justice of The Netherlands, and the leader of the mission of experts presented the report at hand to the Deputy Secretary General of the Ministry of Justice of Estonia, who declared himself in agreement with the gaps and needs, and the proposed recommendations.

The independence of the individual judges seems to be well embedded in legislation and internalised by all concerned in the adjudication of justice.
As far as the institutional independence (autonomy) of the judiciary is concerned, the actual situation gives a rather wide influence to the ministry of justice. Apparently, the Estonian authorities also felt this situation had to be changed in order to give more autonomy to the judiciary.
The draft Courts Act has introduced an Advisory Committee on judicial administration in order to strengthen the independence of the judiciary. However, as the name suggests, this committee has mostly advisory powers. Thus, the Advisory Committee does not quite have the competence to safeguard the independence of the Judiciary in a way befitting to one of the pillars of the *trias politica*.
On the other hand, this draft Courts Act and especially the provisions on the Advisory Committee have been the subject of political debate which has resulted in the current text, which could be considered a compromise. The fact that the Advisory Committee cannot make itself heard officially should be considered a gap and a need.
Once the Courts Act has entered into force, the Advisory Committee will start functioning. For the Advisory Committee to be effective it will need a staff, an

organisation and working procedures. The absence of these essential elements can be considered a gap and a need.

» *The situation would improve if the Advisory Committee would be able to address Parliament on matters within its competence and on which no agreement with the Minister of Justice has been reached. Thus, the judiciary as one of the pillars within the trias politica could make itself heard in practice.*
In order to enable the Advisory Committee to start functioning effectively, an organisational plan and working procedures have to devised, with the object of enhancing its advisory and administrative tasks.

Although some complaints on the level of salaries were heard, the complaints in essence were more concerned with the fact that, although the salaries of the judiciary are linked with comparable salaries of civil servants, many more or less high-ranking civil servants are awarded additional benefits to which judges are not entitled. Thus, the balance existing between the salaries of judges and civil servants of comparable rank is distorted. It is important that judges are adequately paid and that the level of the salaries is in line with those of other civil servants of comparable rank. It is necessary that the judiciary offers an attractive career, also from a financial point of view, and that young people do not avoid choosing that career, solely because of the fact that the remuneration is deemed to be insufficient.

» *The system of salaries of judges in comparison to civil servants of comparable rank should be reconsidered.*

The courts, which were visited, proved to be in excellent state. Housing and other working conditions of judges were satisfactory. It is assumed that the buildings not yet having been renovated and modernised, will in time be on the same level.
It was reported, however, that the salaries and other benefits of the staff members (legal and other) were insufficient, and remarkably below the salary and benefits enjoyed by the staff of the executive branch. It should be stressed that, in order to work efficiently, courts should be able to attract competent staff. This implies that the level of remuneration has to be competitive with that of jobs offered by the civil service to people with comparable skills

The level of remuneration of staff in the courts in relation to the remuneration of staff with comparable skills within the civil service is mainly a budgetary issue and it is not within the scope of this project to make recommendations on budgetary matters. Nevertheless, this is a matter of concern, and it deserves consideration.

Training of judges seems to be well organised, and judges appear to avail themselves of all training courses offered, notwithstanding their workload. It should be noted that some training courses are provided by the Ministry of Justice and others by the Estonian Legal Centre in Tartu. However, a coordinated view on training is presented in the "strategy for training of judges and prosecutors for the years 2001–2004", a document approved by the Estonian government on February 20, 2001.

The Ministry of Justice in Estonia seems to be very well aware of the necessity to work on good relations with the press and to have a properly functioning Public Relations Department.
Yet, the current situation seems to be slightly problematic, as it is the Ministry of Justice that seems to deal with the media concerning individual cases and all kinds of other issues concerning the judiciary.
In order to make it absolutely clear that the judiciary is independent from the Ministry of Justice, and that the Ministry of Justice has no influence on the way the judiciary adjudicates justice, it seems essential that the judiciary develops its own way of giving information to the media on pending or upcoming cases and also on matters concerning the administration of law in the courts.
Thus, it would seem to be the best solution that the courts were to choose one of the judges to become the "press-judge", the judge who is the spokesperson for the relevant court and the liaison for representatives of the media. This implies two things. First, the "press-judge" has to be knowledgeable in the way how to communicate with the media. Second, the "press-judge" has to be aware of which cases are of interest to the media and also of the issues in those cases. This in its turn implies that the judges handling a case of interest should supply their "press-judge" with the relevant information.
The same goes mutatis mutandis for the prosecution service.

» *It is recommended that a training programme is introduced to train and develop skills of judges and prosecutors appointed to be liaisons with the press. Also, a seminar might be organised with judges and/or prosecutors and representatives of the media in order to develop mutual understanding and assess the reasonable expectations by the one group towards the other. These activities ought to be organised/initiated by preference outside the sphere of the Ministry of Justice.*

The prosecution service in Estonia seems well embedded in proper legislation. It also seems to function well. Housing and facilities are satisfactory, the same applies here as was said on the judges (see above). The same goes for the level of salaries and benefits. In this respect it should be noted that the salaries of judges and prosecutors ought to be on the same level, taking into consideration that judges and prosecutors have the same level of education, comparable training and comparable responsibilities within the judicial system.
The level of remuneration of prosecutors in comparison to that of judges is mainly a budgetary issue and it is not within the scope of this project to make recommendations on budgetary matters. However, this issue deserves consideration.

Considering that the new draft Code of Criminal Procedure will give the prosecutor more responsibilities e.g. regarding the fast procedure and the application of the opportunity principle (setting the priorities) and also regarding the general trend in criminal cases to become more complex, it would be advisable to provide the prosecutors with legal assistants in order to cope with the inevitable increasing workload. However no recommendation in this respect will be made, because a recommendation in this sense would have budgetary consequences.
Once the new Code on Criminal Procedure has entered into force, the prosecutors and the police will have to be sufficiently trained in applying the new rules. To this end,

training programmes, aimed at enforcement of the new Code on Criminal Procedure have been developed; these need to be sustained. In this context, the introduction of the new Code on Criminal Procedure, the administrative capacity of the Prosecution Service and of the Police could be enhanced.

» *Though (joint) training programmes for prosecutors and police on the application and enforcement of the new Code on Criminal Procedure already exist, there still is room for sustained additional (joint) training. The administrative capacity of the prosecution service and the police should be enhanced also.*

Under the present situation the police investigator has a rather pre-eminent role in the pre-trial investigation and in some respects he seems to have more competence than the public prosecutor. It has not become clear in what way the draft Code of Criminal Procedure will position the different roles of the police investigator and the public prosecutor.

» *In order to guarantee the legality of the investigation from the very first, it would be advisable to stipulate quite clearly in the new draft Code of Criminal Procedure, that it is the public prosecutor who supervises and is in charge of the pre-trial investigation and has the authority to instruct the police investigators on the way the investigation has to be conducted.*

In Estonia the judicial system seems to be well organised. The state of the buildings and the equipment of the courts is more than adequate; from their appearance, access to justice is easy. Furthermore, the level of training of judges and prosecutors is satisfactory and is being worked upon continuously.

Although backlogs were reported, the situation with regard hereto does not seem worrisome. The workload of the judges reportedly is heavy, but they seem to cope. Only in the northeastern part of the country the situation is reported to be serious. The authorities are aware of this situation and they are trying to redress this. Apparently it is difficult to find judges willing to work and live in this part of the country.

» *Within the scope of this project, it is difficult to make recommendations on the improvement of the situation. However, it is necessary that the Estonian authorities continue to give attention to provide the courts in the northeastern part of the country with a sufficient number of judges.*

It was reported that the execution of judgements was slow and even that quite often execution did not take place at all. The Estonian authorities have introduced the Bailiffs Act and the recently introduced bailiff-system is well conceived and should bring considerable improvements.

» *It is desirable that the Estonian authorities keep monitoring the effectiveness of the execution of judgements under the new bailiff-system.*

Pending before Parliament right now is a draft Act on Legal Aid of which an English translation is not available. One of the striking issues in that draft was reported to be the introduction of a new kind of legal advisor, beside the regular advocates from the Bar. One of the features of this new legal advisor who has to have had some legal training, is the fact that they will not be organised in a kind of professional association with its own set of rules, norms and regulations. Another feature being mentioned was that the new legal advisor apparently has a training inferior to that of the regular advocate and is supposed to be cheaper.

It should be noted that there is a danger in having two different kinds of people providing legal aid. There is a considerable chance that indigent people will take recourse to the legal advisors, because they are cheaper, whereas the more well-to-do people would choose a professional advocate to provide them with legal aid. This would be a bad development from the perspective of the parties in a legal procedure, because the parties being assisted by a new legal advisor could have doubts about their having the same chances as the parties having the assistance of a professional advocate. Thus, the principles of equality of arms and fair trial might be infringed. From the perspective of judges and prosecutors it would be preferable to have dealings with advocates because these are bound by rules and regulations and are subject to disciplinary action if they do not comply with them.
It is understood that this new draft act on legal aid, and especially the issue of the new legal advisor has been discussed extensively and that politically speaking the course has been run. Nevertheless, the situation could be remedied in a way to make it more acceptable.
Also it appears that in the present system of free legal aid, a disproportionate burden is put on the advocates of the Bar.
The draft Act on Legal Aid could be amended in such a way that the new legal advisors will be organised in a professional organisation with rules and regulations and a disciplinary system, in order to assure an acceptable level of professional behaviour.

» *It is difficult to make a recommendation with regard to (free) legal aid. However, it is hoped for, that the draft Act on Legal Aid, would provide a coherent and balanced policy regarding the distribution of (free) legal aid.*

4. The Republic of Hungary

The mission of experts took place from 18 to 23 November 2001. The mission formulated on four issues certain gaps and needs, and proposed recommendations.
On December 11, 2001, the Advisor for International Affairs of the Ministry of Justice of The Netherlands and the leader of the mission of experts presented the report at hand to the State Secretary for International Cooperation of the Ministry of Justice of Hungary, the Director General International, European and Administrative Affairs of the Office of the Prosecutor General, the Head of Secretariate of the Office of the National Council of Justice, and the Director for International Relations of the Office of the National Council of Justice.

The Hungarian counterparts declared themselves in agreement with the gaps and needs, and the proposed recommendations.

During various meetings in Hungary it was said that the level of training of judges and public prosecutors has improved during the last years. However, Hungary does not have a training institute for judges and/or public prosecutors. The initial training for trainee-judges is decentralised. Trainee-judges receive training in their working place. It is expected that the same applies to the training of trainee-prosecutors. As a consequence there is no general basic training, which is the same for all trainees.

» *It is strongly recommended that a national, central training strategy policy and training scheme for judges and public prosecutors is established. Ideally that should result in the end in one training institute for both judges and prosecutors. A joint training institute would reduce possible tensions between the judiciary and the prosecution service, and would improve working relations.*

Related to this is the training of the legal and administrative staff of the courts. In Hungary, judges spend a lot of their time on non-judicial, administrative tasks. This leaves (too) little time for deciding court cases, which causes a high workload and backlogs. If a judge can rely on well-trained staff members to take over certain tasks, the efficiency of the courts is likely to increase, which will have a positive spin-off to a number of areas (reducing backlogs, shortening the length of procedures, etc.).

» *Therefore it is recommended that attention will be paid to the training of legal staff members and administrative personnel at the courts. This training can be incorporated in a central judicial training strategy and scheme.*

The acceptance of and public esteem for the judicial system in a country is closely related to the possibilities for the citizen to bring his case to court and to have disputes settled by a judge. Therefore, access to justice is an important element of the rule of law. Access to justice comprises various aspects, like the rate of court fees and (free) legal aid. It was found that there is in Hungary no coherent policy regarding the access to justice. Furthermore, the system of free legal aid could be improved. However, this is mainly a budgetary issue.

» *It is recommended that activities are organised to raise awareness regarding the access to justice. The various aspects of access to justice are closely linked and problems must be addressed in a coherent manner. An example of such activities could be a comprehensive seminar on access to justice.*

The opinion of the general public regarding the judiciary is likely to be formed by the information it receives through the media. It is therefore important that there are professional working relations between the judiciary and the media. The media must know how the judiciary and the prosecution work, how court procedures work and what impact the coverage of court cases in the media can have. On the other hand, the judiciary and the prosecution service must know to inform the media and how to react to certain publications.

» *In order to improve the relations with the press/media, it is recommended to develop training activities for the judiciary and the public prosecution service in this field.*

5. The Republic of Latvia

The mission of experts took place from 17 to 21 December 2001. The mission formulated certain gaps and needs, and proposed recommendations.
On January 11, 2002, the Advisor for International Affairs of the Ministry of Justice of The Netherlands, and the leader of the mission of experts presented the report at hand to the Secretary of State of the Latvian Ministry of Justice, who declared herself in agreement with the gaps and needs, and the proposed recommendations.

In general, the independence of the judiciary in Latvia seems well assured both in law and in practice. Nevertheless, some aspects of judicial independence could be improved. In practice, the institutional independence seems to suffer from the lack of financial autonomy of courts. The Ministry of Justice decides upon the budget for each individual court (except for the Supreme Court and the Constitutional Court) and furthermore courts are dependent on the Ministry for the assignment of an extra judge, extra staff members or for having the court premises repaired/renovated. This practice creates a dependent relationship between the ministry and courts.

The recruiting and appointing of new judges is another matter in which the influence of the Ministry of Justice is rather large. The probation period of 3 years might infringe the independence of the individual judge in that period. Furthermore the influence of the Minister of Justice in the field of supervision/inspections of the courts implies a possible infringement of the independence of the judiciary.

» *The creation of a National Judicial Council, having either advisory tasks and/or decisive tasks in the recruitment, in appointing and in the career paths (promotion) of new judges is recommended. Another possible task for such a Judicial Council could be the (drafting of the) budget for the judiciary, instead of the Ministry of Justice.*

Judges and Prosecutors in Latvia complain about their salaries and additional benefits. This in itself is not exceptional in European countries, yet for salaries and additional benefits in the judiciary to be reasonable, they should be a reflection of the economic strength of a country and they should be linked to the salaries and additional benefits of civil servants of comparable ranking. In Latvia it is not sure whether this is the case. The respect for the judiciary declines, if young people do not choose a career in the Judiciary, because of financial motives.
Both the court and the prosecutor's office of Preili were visited; the conclusion of this visit as regards the available facilities was simply that the working conditions for prosecutors and for judges are poor; they are insufficient for an efficient court practice. Being informed that the situation in Preili is not exceptional in Latvia, this matter should be considered as a gap and a need. The current state of working conditions, while being inadequate cannot give an incentive to improve the quality of the work of judges and prosecutors. Neither can this situation contribute to the improvement of the public

opinion on the judiciary in general, nor to the increase of the esteem of the judiciary in particular. However, there is a plan for the reconstruction and renovation of court buildings, for which there is a special state investment programme for big projects, whereas there exists a separate line of financing of smaller projects. This reconstruction and renovation plan runs over several years, in the course of which Preili Court's turn will come in two years time.
Judges in the regional and district courts apparently do not have a decent library available. It was reported that some judges buy a book every now and then at their own expense, but their income actually does not allow them to afford such a practice.

During the various meetings it appeared that judges have to spend a considerable amount of time on administrative matters, because they do not have enough (legally trained) staff. If a judge can rely on well-trained staff members to take over certain tasks, the efficiency of the court is likely to increase, which will have a positive spin-off to other areas (reducing backlogs, shortening the length of procedures, et cetera.). Not only judges and prosecutors need training, also the legal and administrative staff in courts and prosecutors' offices need good training.

During various meetings in Latvia it was said that the level of training of judges and public prosecutors has improved during the last years, especially due to the courses provided for by the Judicial Training Centre. Still, the obligatory 6 months of initial training for young judges before entering into office on a probationary basis, seems rather short.
In Latvia, prosecutors are trained separately (except for some joint seminars etc.) from judges. Taking into account that the prosecution service is part of the Latvian judiciary, it is a rather odd situation that prosecutors are trained separately within the Prosecutor General's Office and not within the Judicial Training Centre. Even though this situation is not a serious gap in the training of judges and prosecutors, improvements in this field should be achieved.

Notwithstanding the need to improve the current state of affairs in Latvia concerning the court facilities, the court staff and the salaries in the judiciary, it still is mainly a budgetary issue. It is not within the scope of this project to make recommendations on budgetary matters. Nevertheless, the actual state of affairs concerning the salaries, facilities and staff must be considered a matter of serious concern.

» *Yet, concerning legal- and administrative staff, it is strongly recommended to develop training programmes to help management of courts improve. Perhaps it is possible to incorporate such training in the Judicial Training Centre.*

» *Continuous improvement is recommended of the curriculum for the programme of training of new judges and public prosecutors as well as the reinforcement of permanent education of judges and public prosecutors already in office. Joint training of judges and prosecutors is recommended. The Judicial Training Centre could play a central role in this field.*

The public opinion on the judiciary was reported not to be very high in Latvia. Causes for this could be the following; in general there are two sides of the picture in the forming of the public opinion on the judiciary: the media and the judiciary/the prosecution service.
The general opinion of the public regarding the judiciary is likely to be formed by the information they receive through the media. Therefore, the media must know how the judiciary and the prosecution work, how court procedures work and what impact the coverage of court cases in the media can have. The objectivity and the correctness of journalism in this respect is important (even though it might not be very interesting to write objectively from a commercial point of view). It seems in Latvia that this side of the picture is insufficiently being given attention.
On the other hand, the judiciary and the prosecution service must know how to inform the media and how to react to certain publications (in other words how to 'sell' their judgements to the public); the 'public relations' of Latvian courts and prosecutors' offices can surely be improved.

Yet, issues like salaries, the state of the court premises and facilities, are also important factors to increase the public esteem of the judiciary and the prosecution office. Also access to justice (see below) is a main factor in the forming of the public opinion on the judiciary. These factors should be conceived as a gap and a need concerning the creation of a positive, objective public opinion on the judiciary and the prosecution service.

» *The role of the mass media should be improved in this respect. Journalists should perhaps get better training in judicial matters. In order to improve the relations with the press/media, training activities for the judiciary and the public prosecution service in this field could be developed. A joint seminar with both representatives from the media and of the judiciary, might contribute to a better relationship between the judiciary and the media. Such a seminar might be organised by the Judicial Training Centre.*

Contrary to most other European countries, the Prosecutor General's Office has a very high degree of institutional independence vis-à-vis the Ministry of Justice. In itself this is not problematic, but as it comes to – for instance – the (future) implementation of European policy in the field of justice, the strict separation of the responsibilities of the Minister of Justice and the Prosecutor General's Office might become problematic as there does not exist an official means for the Minister of Justice to give instructions to the prosecution service, in order to effect this policy.

» *Since the Minister of Justice of any given country is responsible for the functioning of the Rule of Law and for the enforcement of criminal policy, it is strongly recommended that the Latvian authorities devise a way in which the Minister of Justice can fulfil his obligations, pursuant to the aforementioned responsibilities.*

The acceptance of and public esteem for the judicial system in a country is closely related also to the possibilities for the citizen to bring his case to court and to have disputes settled by a judge (see also above). Therefore, access to justice is an important element of the rule of law.

Access to justice comprises various aspects, like the rate of court fees and (free) legal aid. Apparently there is no coherent policy regarding the access to justice. If it were true, that in civil cases free legal aid being supplied by a lawyer is remunerated by the Bar, this in itself seems to be contrary to the intentions of the European Convention on Human Rights, as the guaranteeing of free access to justice for indigent parties could be considered as an obligation for the State.
Since this matter is for a large part a budgetary issue, it is not within the scope of this project to make concrete recommendations with regard to this topic.

» *It is recommended that activities are organised to raise awareness regarding the access to justice. The various aspects of access to justice are closely linked and problems must be addressed in a coherent manner. This could be done by means of a broad seminar on the question of (free) access to justice, in the context of the European Convention on Human Rights. This seminar could be organised by the Judicial Training Centre.*

One of the key criteria for having a fair trial in accordance with the European Convention on Human Rights, is to have a procedure within a reasonable time. Backlogs are therefore a clear threat to having such a fair trial. In the Latvian courts backlogs do exist, probably mostly due to the shortage of staff and the lack of other court facilities. In the Riga City Court, the expansion of the court building will help solving this problem in Riga.
Also the alleged slow and heavy court procedures seem to be a major cause for some backlogs. A Task Force within the Ministry of Justice is drafting a new Criminal Procedure Law, but it has not become clear when this new criminal procedure will enter into force. The Code of Civil Procedure will also be reviewed.

Execution of judgements is a key element in any judicial system. In Latvia there appears to be a general dissatisfaction with regard to this topic. The new draft law on Court Bailiffs, which addresses these problems, will soon have its second reading in the Saeima.

» *It is recommended that the Latvian authorities keep a close watch on the development of thre situation with regard to backlogs and that they start monitoring the execution of judgements under the new Court Bailiffs Act. They might consider whether there is room for assistance in this field.*

In some cases pre-trial detention tends to be quite long in Latvia. The need for the Latvian judges and prosecutors to limit the period of pre-trial detention as much as possible should be stressed. This matter is addressed by amendments to the current Code of Criminal Procedure, which already have been presented to the Saeima. The same provisions will be incorporated in the new Code of Criminal Procedure.

» *It is recommended that the Latvian authorities keep focussing on this very important issue.*

Police brutalities have been reported. Factual proof of these allegations was not presented. Yet, this matter needs attention. Currently, all kinds of complaints about police brutalities apparently have to be lodged at the relevant police office.

» *It is recommended that the Latvian authorities keep focussing on the reported police brutalities. An improvement would be, to introduce the possibility to lodge complaints with an independent authority.*

6. The Republic of Lithuania

The mission of experts took place from 4 to 8 February 2002. The mission formulated certain gaps and needs, and proposed recommendations.
On February 20, 2002, the Advisor for International Affairs of the Ministry of Justice of The Netherlands, and the leader of the mission of experts presented the report at hand to the Vice-Minister of the Ministry of Justice of Lithuania, who declared himself in agreement with the gaps and needs, and the proposed recommendations.

The independence of the individual judges seems to be well embedded in legislation and internalised by all concerned in the adjudication of justice.
As far as the institutional independence of the judiciary is concerned, the actual situation is rather unclear. On 21 December 1999, the Constitutional Court of Lithuania issued a ruling on the compliance of the then existing Law on Courts with the Constitution. The Constitutional Court found that the possibilities for the Minister of Justice to propose appointments and dismissals of judges in the courts, the competence for the Minister to arrange for financial supply for the district and county courts and the Court of Appeal, contradicts the Constitution. Since then, a new draft Law on Courts has been prepared in line with the ruling and recently a new Law on Courts has been approved by Parliament. This law will enter into force on 1 May 2002.
Unfortunately, an English translation of the text of this Law was not available. Therefore, it is difficult to assess the independence of the judiciary according to this Law. However, the most interested parties, the judges and in particular the Lithuanian Association of Judges, unanimously agreed that the new Law satisfactorily guarantees the independence of the judiciary. The main topic in the new Law will be the creation of a Council of Courts consisting of 24 members, amongst whom there will be 18 members of the Judiciary. The main functions of this Council are advisory to the President of the State on the appointment of judges, the establishment and administration of the Court of Honour, administration of the National Court Administration and other functions, which are provided for in the Charter of Judges. On this basis, it can be concluded that as from 1 May 2002 the independence of the judiciary will be adequately embedded in legislation.
Implementation of the new Law on Courts needs serious attention. Moreover, once this law has entered into force, the new Council of Courts will start functioning. For this Council to be effective it will need working procedures. The absence of this essential element can be considered a gap and a need.

» *In order to enable the Council of Courts to start functioning effectively, working procedures have to be developed and devised, with the object of enhancing its advisory and administrative tasks.*

As to the state of the court buildings, some are excellent, some are satisfactory, most are reported to be average and some are below average. Improvement of the situation will, to a large extent, be a responsibility of the Council of Courts in inducing the Ministry of Justice to procure the necessary funds. In addition, the initiative of individual court presidents may be of significance in this respect.
The computerisation of the courts is proceeding and by now the majority of judges has a PC available. Also courses on the use of computers are taking place. However, there is still a need for PCs for the hearing secretaries (court reporters). Access to the Internet is generally available. However, a national computer network is lacking.
Not many books seem to be available; proper libraries in the courts do not exist. In Vilnius Second District Court and possibly in other courts there is a shortage of courtrooms.

Notwithstanding the need to improve the current state of affairs in Lithuania concerning computerisation, this still is mainly a budgetary issue. It is not within the scope of this project to make recommendations on budgetary matters. It is assumed that the Lithuanian authorities will proceed with the computerisation as far as is possible within the existing means. The same goes for the situation regarding the state of the court buildings and the shortage of space within these buildings.

» *It is recommended that a national courts' computer network be developed. It is also recommended that proper libraries with sufficient legal books and documentation are made available to the judiciary.*

During several meetings, it was mentioned that judges in the lower courts have to spend a considerable amount of time on matters which could as well be done by (legally trained) staff. If a judge can rely on well-trained staff members to take over certain tasks, the efficiency of the court is likely to increase, which will have a positive spin-off to other areas (reducing backlogs, shortening the length of procedures, *et cetera*.). However, such staff is not available at the present moment in the lower courts.

» *As the introduction of the function of a legally trained assistant to the judge would mainly be a budgetary issue, it is not within the scope of this project to make a recommendation in this respect. However, the Lithuanian authorities could improve the effectiveness of the lower courts by introducing such a position.*

Under the new Law on Courts, candidate judges must have a previous working experience of five years in the legal field, before being able to take the Judges' Examination. Thereafter, the training for judges is being organised by the Lithuanian Judicial Training Centre, which seems to be very well organised. Judges are reported to avail themselves of all training courses offered, notwithstanding their workload. The Lithuanian Judicial Training Centre, however, is to a large extent dependent on non-governmental (foreign) funds. This lack of sustainable funding makes it difficult to plan for curricula in the years ahead.
Under the new Law on Courts 1,5 percent of the grand total of the salaries of judges will be spent on training, which might make planning ahead easier. As for the future situation regarding the Judicial Training Centre, under the new Law on Courts the Council of

Courts and the Ministry of Justice will be responsible for the training of judges. It is envisaged that some training courses will be organised by the University/Law Faculty and others by the Judicial Training Centre.
Evidently, the Council of Courts would have a predominant role in determining the underlying general concept of the training of judges.

» *It is recommended, that the Judicial Training Centre will continue having a firm place in the future judicial training structures in Lithuania and that it will be enabled to offer training activities on a more permanent basis, in order to develop curricula based on an underlying general concept, which is determined by the Council of Courts.*

In general, the Lithuanian judges are being trained in European law and are aware of human rights issues. However, the need for continuous training on a broader approach was mentioned. There also seems to be a need for training in more general topics, like judicial skills, ethics, interpretation of laws, etc.

» *It is recommended that training programmes on European law and on human rights' issues will continue. In addition, general topics like judicial skills, ethics, interpretation of law, etc, should receive continuous attention in the training of judges.*

The public opinion on the judiciary was reported not to be very high in Lithuania. The general opinion of the public regarding the judiciary is likely to be formed by the information they receive through the media. Therefore, the media must know how the judiciary and the prosecution work, how court procedures work and what impact the coverage of court cases in the media can have. The objectivity and the correctness of journalism in this respect are important (although it might not be very interesting to write objectively from a commercial point of view). It seems that in Lithuania this side of the picture is insufficiently being given attention. This could be considered a gap and a need.
On the other hand, the judiciary and the prosecution service must know how to inform the media and how to react to certain publications (in other words: how to 'sell' their judgements to the public); the 'public relations' of Lithuanian courts and prosecutors' offices can surely be improved.
Already, this issue has been identified and it was reported that the superior courts have spokespersons, who maintain relations with the media. In the lower courts, such an institution has not been organised.

» *It is recommended that a training programme be introduced to train and develop skills of judges appointed to be liaisons with the press. Also, a seminar might be organised with judges and representatives of the media in order to develop mutual understanding and assess the reasonable expectations of the one group towards the other.*

In Lithuania, the Prosecutor General's Office has a very high degree of institutional independence vis-à-vis the Government. In itself this is not problematic, but as it comes to – for instance – the (future) implementation of European policy in the field of justice, the strict separation of the responsibilities of the Minister of Justice and the Prosecutor General's Office might become problematic as there does not exist a direct, official

means for the Minister of Justice to give instructions to the prosecution service in order to effect this policy.

» *Since the Minister of Justice of any given country is responsible for the functioning of the Rule of Law and for the enforcement of criminal policy, it is strongly recommended that the Lithuanian authorities put in place a mechanism by which the Minister of Justice can fulfil his obligations, pursuant to the aforementioned responsibilities.*

The new Code of Criminal Procedure will give the prosecutor more powers with regard to the preliminary investigation. In future, the prosecutor will lead and organise the pre-trial investigation and as such, it can be considered a major reform of the position of the prosecutor. It is expected that the new Code will be adopted by Parliament in the coming months. It is intended to enter into force together with the new Criminal Code on 1 January 2003.
Once these Codes have entered into force, the judges, the prosecutors and the police will have to be sufficiently trained in applying the new rules. To this end, training programmes aimed at enforcement of the new codes should be developed and sustained. In this context, the introduction of the new Code on Criminal Procedure, the administrative capacity of the Prosecution Service and of the Police should be enhanced.

» *Training programmes for judges, prosecutors and police on the application and enforcement of the new Criminal Code and the new Code of Criminal Procedure should be designed and organised. Also the administrative capacity of the Prosecution Service and the Police should be enhanced.*

In Lithuania, prosecutors are trained separately (except for some joint seminars etc.) from judges. Taking into account that the prosecution service is part of the Lithuanian judiciary, it is a rather odd situation that prosecutors are trained separately within the Prosecutor General's Office and not within the Judicial Training Centre. Although this situation is not a serious gap in the training of judges and prosecutors, improvements in this field should be achieved.

» *It is recommended that prosecutors and judges have joint training in the subjects common to their respective functions.*

The acceptance of and public esteem for the judicial system in a country is closely related also to the possibilities for the citizen to bring his case to court and to have disputes settled by a judge. Therefore, access to justice is an important element of the rule of law. Access to justice comprises various aspects, like the rate of court fees and (free) legal aid. Access to justice in general is guaranteed in Lithuania. The free legal aid is being regulated by the Law on State Guaranteed Legal Aid, which entered into force on the 1 January 2001. In theory, this Law provides for a coherent system of legal aid and the funding thereof. In practice, however, it appears to be complicated to collect the documents necessary for an application for free legal aid, especially on the level of the municipalities.

» *It is recommended to find a way to simplify the procedure to apply for free legal aid.*

Execution of judgements is an essential element in any judicial system. In earlier reports, it was mentioned that civil judgements often did go unenforced. Evidently, the Lithuanian authorities recognised this problem and to address it, a new act regarding the status and role of bailiffs has been drafted and is debated. This law will introduce a system of private bailiffs. It seems to be well received and should bring considerable improvement.

» *It is desirable that the Lithuanian authorities monitor the effectiveness of the execution of judgements under the new bailiff system.*

7. The Republic of Poland

The mission of experts took place from 11 to 15 March 2002. The mission formulated certain gaps and needs, and proposed recommendations.
On 9 May 2002, the Advisor for International Affairs of the Ministry of Justice of The Netherlands, and the leader of the mission of experts presented the report at hand to the Deputy Director of Judicial Assistance & European Law of the Ministry of Justice of Poland. He welcomed the report, but he considered the report of the experts to be the responsibility of the management of the Programme. An open and fruitful discussion took place in which common thoughts but also differences in appreciation of the facts and differences of opinion were exchanged. There was agreement that the recommendations constitute – where appropriate – a valid basis for the development of further activities.

For the most part, the boundary between the judiciary and the executive has been clearly defined. However, the executive, in particular the Minister of Justice, retains considerable supervisory authority over the organisation and affairs of the judiciary. Judges must refrain from political or other public activities incompatible with the principle of independence. They must also refrain from administrative functions. However, judges working e.g. as directors of departments within the Ministry of Justice are in fact members of the judiciary – also adjudicating cases – and at the same time working for the executive power. This is not a clear situation – anyhow for the one seeking justice – which can compromise their independence. It is recognized, however, that seconding of judges and also of public prosecutors to the Ministry of Justice is valuable. A kind of special leave for instance could be a solution, in which guarantees have to be built in for the career prospects of the judge or public prosecutor in question to make the seconding attractive.

» *It is recommended to strengthen the boundaries between the judiciary and the executive. Legal instruments should be found or created to release judges working e.g. as directors of departments within the Ministry of Justice from their adjudicating authority, for instance by a system of special leave.*

The working conditions of the judiciary have considerably improved, but it seems they are still very difficult, particularly in Warsaw courts. The large number of non-judicial tasks judges have to perform, is said to be one of the major reasons for the overburdening of courts. The new profession of referendarzy has been created to deal with this, but this function is restricted to land and mortgage and commercial registration proceedings. The Constitution on Common Courts of Justice provides also for the profession of court 'assistants' to take over administrative tasks of judges, but in practice there are not any of these assistants so far.
An other reason for the overburdening of courts is the underdevelopment of systems of friendly settlements of cases by the judge and of out-of-court settlements.
Also computerization and training of court staff is insufficient.

» *It is recommended to invest more in the professions of referendarzy and court assistant, to increase their number and to expand the authorities of these functions. It is suggested that a specific central training programme be developed for these new categories of court-staff.*

» *To keep cases out of court, ways of alternative dispute resolution should be developed. Also, existing legislation could be reviewed to see whether it is possible to implement greater incentives for both parties to agree on arbitration or to reach an friendly settlement.*

» *Even more priority than is given already, should be given to the computerization of the courts.*

The system of training of judges and public prosecutors is decentralised. In 23 courts and 13 public prosecution offices training is provided for legal trainees. Continuous training for judges is conducted in all courts. This decentralised system can contribute to a lack of homogeneity of skills and knowledge. The creation of a central school for the training of judges, prosecutors and legal staff is considered, but it is expected that there will not be sufficient funds for creating such a school in the foreseeable future.

» *It is strongly recommended that a national, central training strategy policy and training scheme for judges, public prosecutors and legal staff is established. Ways should be found to create a national central training institute for the judiciary and the public prosecution service.*

The Minister of Justice performs the function of Prosecutor-General. In that capacity the Minister of Justice, a member of the executive power, – through the Office of the National Prosecutor – can give instructions to members of the public prosecution service in general and in individual cases. The procedural way, in which these – sometimes oral – instructions are given, is not transparent and there is also no judicial control. The possibility of politically influencing individual criminal cases is not hypothetical.

» *It is recommended – given the position of the Minister of Justice with regard to the public prosecution – to lay down clear and public regulations for the procedure of giving instructions by the Minister of Justice to the public prosecution.*

The strong hierarchy within the public prosecution service and the preponderant position of the Minister of Justice affect in particular the policy of appointment and promotion. Policies in these fields are no transparent. Vacancies, also with regard to promotion functions, are not publicly known within the public prosecution service and there exists no fair, open and transparent competition.

» *It is recommended to make the policy of appointment and promotion of the members of the public prosecution service more transparent and competitive.*

There exists no regulated system of providing security to public prosecutors, although in individual cases it is possible to provide security measures. In general, there are insufficient funds to have adequate protection. Personal physical protection of the public prosecutor is possible, but financing, for instance, the necessary protection of the family of the public prosecutor is not possible.

» *It is recommended to lay down a statutory regulation for the providing of security of public prosecutors.*

In general there are more computers in judges' offices than in prosecutors' offices. The problem for the public prosecution service is mainly that there are insufficient databases. There is a need for a central information system on current inquiries, linked to the information of the police.

» *It is recommended to give more priority to the computerization of the public prosecution service and the police, both the hardware and the software.*

The profession of lawyer plays an essential role in guaranteeing the Rule of Law. The Charter of Fundamental Rights underlines the importance of access to legal assistance. Although the profession of lawyer has not been harmonized, it contributes in all Member States of the European Union to the effectiveness of access to justice by its assistance not only to citizens who can afford to pay a lawyers' fees, but also to those who have only limited resources. This result is achieved by public funding, by the financial contribution of the profession itself or by a combination of both schemes. Thus in most law suits parties are assisted by a lawyer. For historical reasons the profession of lawyer in Poland is divided into two branches (the traditional profession of advocate and the new profession of legal advisor). There are 8000 advocates and 24000 legal advisors. Their scope of competence is nearly the same (the only difference is that legal advisors can not appear in criminal matters).

Procedural laws provide for the compulsory assistance by a lawyer for certain categories of parties (young age, particular health conditions, heavy crime in criminal matters). In other cases the court may adjunct a lawyer to the party. If neither the party nor the party's family can afford a lawyer, the lawyer is paid by the State. He/she is chosen by the court from the profession of advocates out of the official list. Budget constraints limit notably the adjunction of such ex officio lawyers.

Statements made by several judges in Warsaw and outside of Warsaw indicate that in at least one half of the lawsuits parties are not assisted by lawyers. Judges do not consider this to be a major problem, due to what they describe as the poor quality of the average contribution of lawyers and the delay, which the presence of lawyers often causes to the solution of the lawsuit.

The representative of the advocates did not express a substantial concern of the bar about the low percentage of law suits dealt with by lawyers. Financial reasons were indicated to be the major explanation of this situation. It was mentioned that court fees amounting to 8 to 12 percent of the value at stake render access to justice already expensive. It was also mentioned that often court fees exceed the fee which will be paid to the ex officio lawyer.

It appeared from contacts with the Warsaw Faculty of Law that legal clinics instituted there and within other faculties of law substitute to a certain extent free advice, which is given in the Member States by the bar to citizens who have limited resources.

It should be considered:
- whether the relatively high amount of fees to be paid to the court is an obstacle to the access to a lawyer;
- whether a larger legal aid scheme can be put into place;
- whether the bar can open free consultation offices in court houses, town halls or similar buildings, the lawyers to be remunerated by professional and public funding;
- whether the division of the legal profession into two separate branches does render legal assistance to the poor more difficult. If the financial charge of pro bono activities was shared by the entire number of 32000 lawyers, it would probably be easier to institute and render acceptable an obligation to collectively assume the burden.

» *It is recommended to consider possible solutions towards the increase of availability of legal aid.*

8. The Republic of Romania

The mission of experts took place from 25 February to 1 March 2002. The mission formulated certain gaps and needs, and proposed recommendations.
On 14 May, 2002, the Advisor for International Affairs of the Ministry of Justice of The Netherlands, and the leader of the mission of experts presented the report at hand to the State Secretary of the Ministry of Justice of Romania. She welcomed the report. All themes in the report were of interest for the judicial reform and the legislative program in Romania, but she considered the report to be the responsibility of the management of the Programme. The State Secretary gave some clarifications of the facts indicating new initiatives and new legislation. An open and fruitful discussion took place in which common thoughts, but also differences in appreciation of the facts and differences of opinion were exchanged. Attention was given to the difference between the legislation and its implementation for which rather often a change in the legal culture is needed.

Agreement was reached that the recommendations constitute – where appropriate – a valid basis for the further activities.

Regarding the overall situation concerning the implementation of Rule of Law standards in Romania it was found that important deficiencies in the existing legislation threaten the judiciary as an independent institution. Even more important than this, however, is the fact that the different actors in this field are perceived not always to be aware of all the implications of the concept of the Rule of Law, one of the most important of these being the absence of infringement on individual cases and control over the substance of the work of judges by the executive.

It is realised that a number of draft laws on subjects mentioned in the recommendations are currently being prepared or under discussion. It is quite possible that they will bring about considerable improvements. However, since it is not known in what form these laws will be adopted nor what their exact content will be, they have not always been taken into consideration.

Inspector-Judges from the Courts of Appeal and from the Inspection Corps at the Ministry of Justice exercise control over the work of judges, either ex officio or on the basis of a complaint from a party. Usually, a first inquiry is carried out by the Appeal Court inspectors who draw up a report, which is then forwarded to the Ministry. The Ministry orders and carries out an investigation, to be carried out by its Inspectors-General. If deemed necessary, the Ministry brings a disciplinary action before the Superior Council of the Magistracy and proposes a sanction. The findings of the inspectors may also be forwarded to the Prosecutor-General, who may use it as a basis for instituting an extraordinary appeal.
Although the inspectors should examine only the administrative issues concerning the way a judge handled a certain case, it happens that they enter into supervision over the procedural aspects of the case, and sometimes even over the substance of a judge's decision. Reportedly, this may even occur while proceedings are still pending. It is reported that judges are contacted by the Ministry for an explanation of their decision.

An even more direct form of influence by the Ministry over the judiciary is formed by the occasional letters in which the Minister 'recommends' a certain interpretation of the law. Examples that can be cited here include a letter of March 7th 2001, addressed to the Presidents of all Courts of Appeal, which required that judicial decisions aimed at enforcing judgements returning nationalised property take into account the housing problems of the current tenants. In addition, the letter placed judges under implicit threat of being inspected by judicial inspectors and officials in the Ministry of Justice for their compliance with its terms. In another letter of April 2001, addressed to all Courts of Appeal, the Minister of Justice recommended that proceedings relating to liquidation of bankrupt banks be suspended. Other letters do not concern the substance of judicial decisions, but do nevertheless influence the judiciary in an undue way. An example here would be a recent letter in which judges in the county court of Bucuresti were required to report all 'important cases' to the Ministry.

Court Presidents retain substantial influence over the work of individual judges. One point of concern is the discretionary transfer of judges to different sections of the court. This transfer often occurs from one day to the next, with no motivation given for the decision. Another point of concern would be the system of assignment of cases. Although there are some general criteria for this procedure (f.i. workload, experience and specialisation of the judges, type and complexicity of the case) these criteria leave a lot of room for interpretation and therefore a rather large, discretionary power to the presidents of courts in the distribution of cases. Although some courts use alphabetical or random systems, the absence of clear, uniform rules makes this system very vulnerable to abuse. Also, in the awarding of bonuses (variable additions to the judges' salary) the presidents have rather broad discretionary powers for their attribution within the general framework of rules.

Unlike judges at all other courts, Supreme Court Justices are appointed for a six-year term only, with the possibility of one reappointment. This limited term of office can have an indirect impact on voting behaviour. Supreme Court Justices referred to this as 'self-censorship'.Although by law the Supreme Court Justices who have not been reappointed or whose term of office has expired are entitled to return to their former position in their court of origin, in practice this rule is not always observed.

There are several concerns regarding the functioning of the Superior Council of the Magistracy. Because of its composition, which presently excludes judges from the lower courts, and the fact that the Minister of Justice presides, the Superior Council is not able to adequately represent the entire judiciary as an institution. Its work is moreover hampered by the absence of a separate budget and staff.

All members of the Military, which in Romania includes all police officers, are, in all criminal matters, tried before Military Courts. Although this institution may be explained by historical factors, there seems to be no rationale for maintaining this dual court-system today. The scope of jurisdiction of the Military Courts is already being reduced at present. However, a mere reduction will not be sufficient as aspects of the Military Court system seem to be in conflict with the requirements of the European Convention on Human Rights.

As in many other jurisdictions, Romanian judges are regularly assessed for their performance. However, some concerns exist as to the objectiveness of the criteria that are used for the evaluation and to the fact that judges may only object to the outcome of their evaluation to the Ministry of Justice.

Currently, a draft law proposes to bring inspections under the Superior Council of the Magistracy. This would be a step in the right direction. However, this would only do, if the Minister of Justice would have no role in the council. Moreover, a regulation should make absolutely clear that inspectors cannot look into, and judges cannot be called to answer for, procedural aspects of a case and the substance of a decision.
Distinct rules, leaving little room for interpretation, should be established for assignment of cases, transfer of judges within the courts, and attribution of bonuses to

judges and other personnel. Discretionary powers of Presidents in these matters should be limited as far as possible.
Judges of the Supreme Court should be appointed for life.
The Minister of Justice should have no role in the Superior Council of the Magistracy. This Council should, like the Public Prosecution Service, have a budget of its own, and should have an advisory role in elaboration of the budget for the entire judiciary. Also, it should be able to speak on behalf of the judiciary.

» *Transfer of the jurisdiction of the Military Courts to the normal court system for all matters not concerning strictly military personnel (Army, Navy, Airforce) is recommended.*

» *Rules should be established providing for review of assessments of judges by an impartial authority.*

The circumstances under which judges have to carry out their functions give rise to serious concern. Especially in Bucuresti, but also in other parts of the country, judges have to work in buildings that are totally inadequate and sometimes even on the verge of collapse. Many buildings which previously belonged to the judiciary have still not been returned to the courts. This obliges certain courts to rent space for offices and courtrooms. Courts often have only one or two computers for all their judges and support staff. A Court will receive only one copy of the official journal, which contains the frequently changing legislation that is essential to the judges' work. Libraries are not adequately stocked and often contain only one copy of important reference material for the entire court. There are not enough secretaries available for the judges, and there is no legally trained support staff that could, under supervision, take over some of the judges' semi-judicial tasks.

» *Although recommendations with budgetary consequences are not within the scope of this project, it is advisable that the budget of the courts is substantially increased in order to achieve improvement of the working conditions and the support facilities for judges, in terms of buildings, computers, assisting staff, libraries etc. In any case, all funds assigned to the judiciary in the national budget, should in fact be supplied. Also, funds generated by the courts ought to be spent on the court system.*

As a general remark, it might be said that it seems that the various well equiped training facilities in Romania are at present used in a sub-optimal way. Although there has been substantial improvement in the organisation of training programmes at the National Institute for the Magistracy, some specific concerns still remain. The Institute lacks funding for programmes for the continuous training of judges. Also, it seems that the curriculum for both initial and continuous training could be substantially enriched with more regular courses in ethics, human rights, 'independence' and specialised courses in areas of law that present problems to judges, such as bankruptcy law and laws on money-laundering.

» *Although, again, recommendations with budgetary consequences are not within the scope of this project, it must be mentioned that the budget for training purposes should*

be increased as external funding cannot be the main source of training and continuous training. Furthermore, more systematic attention should be given to a coherent and encompassing curriculum in the fields of ethics, human rights, 'independence' and specialised courses in areas of law that might present problems to judges and prosecutors, such as bankruptcy law and laws on money-laundering. The target group of this training should be more diverse, in order to achieve that a number as large as possible of judges (and prosecutors) receive training in these fields.

It is reported that the Ministry is at times actively engaged in degrading the image of the judiciary. The Minister is quoted affirming the 'incompetence' and the 'corruption' of the judiciary. Also, the Ministry issues press releases about what are deemed 'erroneous judgements', and this sometimes even while the case is still pending.
At present there are "press-judges" assigned at every court to answer questions of the media, but the selection criteria for these judges are unclear and they do not receive any training to be able to deal with enquiries of the press and other media.

It should be a rule of conduct that members of the executive, and especially those of the Ministry of Justice, refrain from commenting on decisions by judges and absolutely never target individual judges in public.
The relationship between the judiciary and the media can be improved.

» *It is recommended that training programmes be established to train and develop skills of judges appointed to be liaisons with the press. Also, a seminar might be organised with judges and representatives of the media to develop mutual understanding and assess the reasonable expectations of the one group towards the other.*

The status and the role of the Public Prosecutor are adequately embedded in Romanian Legislation. The Public Prosecution Service has, within the realm of the Ministry of Justice, a sufficiently ensured independence, which is partly demonstrated by the fact that they have their own, separate budget. The Public Ministry is organised in a hierarchical way, with the Prosecutor-General at its top.

Prosecutors exercise sufficient control over the police in preliminary investigations and, if need be, the police receive written instructions to this end.

In the current situation the prosecutor orders the pre-trial detention, which is reviewed by a judge at 30-day intervals. Pre-trial detention can be maintained until half of the length of the maximum sentence for the relevant crime has passed. This system does not seem to be in accordance with the requirements of the European Convention on Human Rights. Currently, the Romanian Ministry of Justice is working on a draft law on Criminal Procedure, in order to meet these requirements.
In general, there seems to be a lack of judicial control over the legitimacy of pre-trial, investigative measures which could potentially infringe on fundamental freedoms, such as search and wire tapping warrants.

» *It is recommended that the law with regard to arrest and pre-trial detention be made in accordance with the requirements of the European Convention on Human Rights. Also,*

regulations should be put into place instituting a form of judicial control over the legitimacy of pre-trial, investigative measures.

The court system does not seem to function very efficiently. Procedural rules appear to be rather cumbersome. With a lack of adequately trained (legal)staff and an almost non-existence of information technology, the workload of judges is very heavy, too heavy in fact to enable judges to come to well balanced and adequately reasoned decisions. Not only is the number of cases judges have to deal with in one session far too high, reportedly it also happens that judges in Courts of First Instance have to deal with cases they did not have the opportunity to study before the session. This situation is aggravated by the obligation for judges to perform a number of administrative tasks that might as well be performed by well-trained administrative staff, thus enabling judges to concentrate on their core duty of hearing cases and deciding them on their legal merits.

» *It is recommended that procedural rules be reviewed with the object of simplifying them. Also, adequately trained (legal) staff should be introduced at all court levels. A computerisation programme should be developed for both judges and support staff. The administrative capacity of the courts could be enhanced. Measures might be devised by which the judges are relieved of their administrative tasks. A study of what would be a balanced workload should be undertaken.*

The institution of extraordinary appeals by the Prosecutor-General, for which the time-limit recently has been lengthened to a period of up to one year, infringes upon the principle of legal certainty. Parties in a civil procedure ought to be certain that once a final decision has been reached by the court and this decision has become irrevocable, this decision can be enforced and executed.

» *It is recommended that the system of extraordinary appeals be reconsidered in view of what has been said before.*

Timely execution of judgements is an essential element in any judicial system. In earlier reports it was mentioned that court judgements often took a very long time to be enforced or were not enforced at all. In order to improve this issue the body entrusted with the enforcement of judgements has been reorganised into a private profession under the authority of the Minister of Justice. This system should bring improvements, but positive results in this respect are not known yet.

» *It is desirable that the Romanian authorities monitor the effectiveness of the execution of judgements under the new system.*

Access to justice is guaranteed. Free legal aid is also provided for. However, the remuneration of lawyers in this field is rather limited and not dependent on the time spent on the case, or for instance the number of court appearances. It is reported that for this reason, lawyers do not go into great. exertions in more complicated and lengthy proceedings.

» *Although recommendations with budgetary consequences are not within the scope of this project, it is suggested that remuneration of lawyers in the field of free legal aid be made dependent on objective criteria, such as the number of court appearances.*

9. The Slovak Republic

The mission of experts took place from 14 to 18 January 2002. The mission formulated certain gaps and needs, and proposed recommendations.
On February 11, 2002, the Advisor for International Affairs of the Ministry of Justice of The Netherlands, and the leader of the mission of experts presented the report at hand to the Minister of Justice of the Slovak Republic, the Prosecutor General of the Slovak Republic, and the President of the Association of Slovak Judges. They declared themselves in agreement with the gaps and needs, and the proposed recommendations.

The numerous recent and upcoming developments in respect of the implementation of Rule of Law standards in the Slovak Republic are considered very encouraging. A major amendment to the Constitution from February 2001 prepared Slovakia's judicial system for important changes, including the introduction of a National Judicial Council. New legislation, including a new Code of Civil Proceedings and upcoming amendments to the Code of Criminal Procedure and the Criminal Code are likely to strengthen the functioning of the legal system in other ways.
Despite these and other innovations, a number of gaps and needs still exists. One main concern is the implementation of the new measures and the monitoring of their effectiveness. It is suggested that expert assistance might be particularly valuable in this field.

The introduction of a National Judicial Council of the Slovak Republic, while not bringing true judicial self-administration, will mean a significant step in this direction. However, necessary legislation to implement this new representative body has not yet been finally adopted. According to the Ministry of Justice, the administrative support structures of the National Judicial Council can be provided by the Supreme Court of the Slovak Republic, of which the President is also the President of the National Judicial Council. Financially it can be covered from the budgetary chapter of the Supreme Court.

» *In view of the important role the new National Judicial Council is to play, it is recommended that no efforts be spared to ensure speedy adoption of the necessary legislation and adequate support to its practical functioning. After its installation, all actors involved should remain continuously attentive to the possibility of transferring broader competencies to the Council. To ensure the independent functioning of the Council, it is considered absolutely necessary that the Council disposes of its own administrative support structures, separate from those of the Ministry of Justice.*

Concerning the administration of the judiciary, the dual nature of the position of court presidents gives rise to concern. Currently, presidents have important administrative duties as well as judicial tasks. This duality may cause distortions in the relation a president has to the Ministry of Justice – subordination and dependence in the

administrative sphere and independence in the judicial sphere – and to the judges in his court. However, the reform of the position of the court presidents with the purpose to reduce their administrative responsibilities is under preparation by the Ministry of Justice. Most of the administrative responsibilities for the functioning of the court will be given to a special expert employee of the court. The basis of this reform takes due regard to the tradition of having a judge as the president of the court.

» *A separation of the administrative and judicial functions of court presidents is recommended. In this scenario, management-authority could be vested in specifically trained court-administrators. Naturally, precautions should be established to prevent undue influence of the Ministry of Justice over the judiciary through the court-managers. To support this solution financially, a return to a system of fewer and larger courts should be considered. Such a system would have the additional advantages of enabling a more efficient allocation of resources and making unity in judicial decision easier to achieve.*

At present, the judiciary does not have its own separate chapter in the national budget. Only the Supreme Court and the Prosecution Office are listed separately. In the near future, the abolition of these two chapters is envisaged in the framework of an initiative to reduce the overall number of budgetary chapters. All parts of the judiciary and the prosecution service will then be financed from the general budget of the Ministry of Justice.

» *The creation of separate budgetary chapters for the entire judiciary and for the prosecution service, or at least the maintenance of separate chapters for the Supreme Court and the Prosecution Office, is recommended. This would increase the transparency of the process of the allocation of resources. It is suggested that the National Judicial Council and the Prosecution Service become more involved in the process of drafting the budget.*

Several aspects of the system of case-management seem to function unsatisfactorily. The systems of allocation of cases, the tracking of case-files and the recording of audiences burden judges with time-consuming administrative tasks and are vulnerable to mistakes and even abuse. The Banska Bystrica pilot project has shown that important reductions in the length of proceedings can be attained through better technical and administrative support of judges. Judges lose a large amount of time not only on these purely administrative chores, but also on semi-judicial routine tasks that could be performed by legally trained judicial support-staff.

» *Further development and implementation of new systems of case-management, such as the ones resulting from the Banska Bystrica pilot project, should be supported. In the field of semi-judicial routine tasks, the introduction of the German-type "Rechtspfleger" is welcomed. It is suggested that a specific training programme be developed for this new category of court-staff.*

The fact that no comprehensive training structure for the judiciary or the prosecution service exists to date in the Slovak Republic gives rise to concern. Training is organised by many different actors and seems to lack an underlying general concept.

» *An Academy for the Judiciary, as favoured by the Ministry of Justice, should be introduced as soon as possible. Such an academy could provide a comprehensive programme for both initial and life-long training, which has been lacking so far. It is recommended that one academy be formed for the judiciary and the prosecution service together. Since many fundamental notions of the Rule of Law are the same for judges and prosecutors, trainees could follow certain basic courses together before specialising in their respective fields. Apart from increasing coherency in the training of magistrates, this approach could have significant efficiencies of scale. Apparently, the Prosecution Office is willing to open its facilities for the establishment of such an academy.*

In the field of prosecution, there is concern over the system of pre-trial detention. It is true that detainees are brought before a judge soon after their apprehension. After this initial review detainees may have their requests for release reviewed regularly by a judge, but only so at their own initiative and only via the prosecution service. At no subsequent point during the first six months after apprehension, a judge is obliged to review the detention or hear the detainee ex officio.

» *The possibility of regular, ex officio review of pre-trial detention by a judge should be considered. This judge could be the special pre-trial judge, the re-codification of the Code of Criminal Procedure envisages.*

While the judiciary has its ethical rules embodied in a special document, no code of conduct exists for the prosecution service. Adoption of such a code was envisaged, but has been abandoned.

» *In view of the important actual and symbolic influence of a code of conduct, the prosecution service is urged to reconsider adopting an ethical code of its own.*

The length of proceedings, in particular within civil and commercial cases, is alarming. Apparently, the Slovak Republic currently has the highest number of complaints before the European Court of Human Rights in this field, in proportion to the number of its inhabitants. One important aspect of this problem seems to be the low number of cases settled out of court.

» *A co-ordinated and comprehensive approach is recommended to tackle unnecessary delays in court procedures. At the basis of such an approach should be a thorough analysis of the real problems causing the current delays. The judgements of the Strasbourg Court could give meaningful insights into these reasons. New procedural legislation, like the draft Act on higher court officials, and the implementation of the "Case-management project", should be finely tailored to meet the existing gaps and should be constantly evaluated for effectiveness. To keep cases out of the courts, the new Arbitration Act should be adopted as soon as possible. Also, existing legislation could be*

reviewed to see whether it is possible to implement greater incentives for both parties to reach an out-of-court settlement.

The image of the judiciary in the public eye seems to be very negative. The media often report about corruption, and citizens and attorneys complain about the quality of justice and the length of proceedings.

» *The main actors in the field of the Rule of Law are encouraged to consider a common approach to enhance the image of the judiciary. The Ministry of Justice, the National Judicial Council, the Prosecution Office, the Association of Slovak Judges and the Bar Association, all can play an important role in this respect. The judiciary itself could try to improve the flow of information to the media and the public, preferably through specially trained court-staff for external relations. A return to fewer and larger courts, as mentioned earlier, could also be helpful in this area.*

10. The Republic of Slovenia

The mission of experts took place from 26 to 30 November 2001. The mission formulated some gaps and needs, and proposed recommendations.
On December 12, 2001, the Advisor for International Affairs of the Ministry of Justice of The Netherlands, and the leader of the mission of experts presented the report to the State Secretary of the Ministry of Justice of Slovenia, who declared himself in agreement with the gaps and needs, and the proposed recommendations.

It appeared that key problems regarding the functioning of the rule of law in Slovenia are backlogs and the execution of judgements. These problems are caused by several factors, of which some are perceived as gaps and needs.

The fact that Slovenia gained independence and had to deal with a period of transition, resulted in a lot of new laws, of which many were adopted and implemented very rapidly without a thorough analysis of its consequences. The fact that some laws contain detailed prescriptions or extensive procedures to protect individuals are now sometimes cause for long court procedures.
At the moment time is taken by various partners in the legal field separately to investigate and find a balance between efficiency and the rule of law.

» *It is recommended that all partners cooperate in an open dialogue to initiate a comprehensive study aiming at finding possibilities to shorten procedures and stimulate the use of Alternative Dispute Resolution.*

To become a judge in Slovenia, one needs to participate in a two years apprenticeship. After the first year, which consists of a general programme, the trainee receives his/her second year training at a court. Before entering the next stage, the trainee has to pass a state exam. After that one needs three years of professional experience.
This initial training system has shortcomings. Firstly, it does not appear to provide the trainees with a comprehensive education. Secondly, senior judges who are appointed to

supervise the trainees are confronted with such high workloads, that it often leaves them insufficient time to teach their trainees.
There exists a Judicial Training Centre. This centre, however, is only responsible for the further training of judges.

» *It is recommended that the Judicial Training Centre is made responsible for the initial training of judges. Ideally the target group of this training will include prosecutors.*

It appeared that judges have to spend a considerable amount of time on administrative matters, as they don't have enough legally trained staff. If a judge can rely on well-trained staff members to take over certain tasks, the efficiency of the court is likely to increase, which will have a positive spin-off to other areas (reducing the backlogs, shortening the lengthening of procedures, etc.). The Ministry of Justice has formed a working group to introduce the institution of the *Rechtspfleger*. With this institution both Germany and Austria have considerable positive experience. A better management of the courts will contribute also to its efficiency.
It will be more efficient if court assistants deal with administrative tasks.

» *It is recommended that the project concerning Rechtspfleger continues and that an effort is made to supply courts with more, well-trained legal staff. It seems also desirable that attention will be given to the way courts are managed.*

In Slovenia access to legal information is lacking. The public is not sufficiently aware of the various legal means to solve a conflict, as for instance out-of-court settlement. This ignorance among citizens regularly results in citizens fighting in court, since they don't realise that another option could present them with a better solution, both financially and in contents.

» *It is recommended that the Slovenian administration establishes agencies, which provide citizens with objective legal information. The access to legal information will result in a substantial decrease of the number of citizens going to court, since many cases can and should be solved before entering the court.*

In Slovenia not many cases are solved in an out-of-court settlement. One of the reasons is that lawyers often do not explore the possibilities to settle a case out of court. Since there are so few settlements most of the cases result in a court procedure.

» *The Bar Association, realizing that lawyers have a public function according to the Constitution of Slovenia, should stimulate its members to provide citizens with objective legal information and to encourage settlements whenever possible, to shorten procedures and reduce backlogs.*

The relation between the Public Prosecution and the police needs attention.
The General State Prosecutor's authority over the police is fairly weak; he has no sufficient sanctions against the police to enforce his demands. During the meeting with the General State Prosecutor it appeared that the Public Prosecution had concluded a

covenant with the police to improve the co-operation between these two institutions. This document was signed on the 10th of December 2001.
The measures taken by the Public Prosecution and the police to improve their co-operation are valuable.

» *Nevertheless it is recommended to pass speedily legal provisions with regard to the co-operation between the Public Prosecution and the police for procedures, in which the police is acting as an authority under the Public Prosecution.*

III. EXECUTIVE SUMMARY OF THE FOURTH MODULE

Ensuring protection for, and proper treatment of, victims and witnesses by improving public confidence in the Rule of Law, is a fundamental principle for each criminal law system. In some areas of criminality (particularly in cases of organised crimes and in those involving victims of sexual offences, child victims) there is an increasing risk that witnesses will be object of intimidation, especially when their evidence is crucial to secure the conviction of offenders. Concrete steps must be taken in order to secure the security, protection and proper treatment of all parties involved in the criminal law system against interference or individual risks by providing them with specific measures of protection and support, which effectively ensure their safety and form a guarantee of a free testimony for witnesses.

This summary will not reiterate all the detailed observations and recommendations made in the separate country reports by experts on the missions visiting the accession states. It will, instead, summarise their principal broad findings and recommendations, concentrating particularly on the states' present and likely future compliance with the provisions of the 2000 European Framework Decision on the Standing of Victims in Criminal Procedure. Its focus will be upon the treatment of victims and witnesses, but not upon those issues of witness protection which were the responsibility of the Italian partner.

The ten accession states have had similar political and social histories and, despite a measure of divergence, a number of clear themes were discernible:

Although figures on crime were rarely reported publicly before the transition, and crime itself was regarded as a discreditable phenomenon whose existence was denied or belittled, all the countries appeared to have had rapidly rising rates of criminal victimisation since 1989. The trajectories and composition of those rates differed, but there was a marked increase in crimes against property, sexual offences, and, in a number of the states, fraud and offences of corruption.

Within the comparatively short space of time that has elapsed since the transition, most of the accession states have acquired the beginnings of a lively and variegated third sector which promises to pioneer a number of important developments in the provision of services for victims and witnesses.

The provision of information to victims about the conduct of civil and criminal cases in which they were involved was generally conducted satisfactorily.

There are bodies of significant competence being developed in the areas of human rights, child protection and, in several countries, violence against women. In Lithuania, for

example, the training offered to police in matters affecting the treatment of rape victims was impressive. Again, in Slovenia, the police have made significant progress not only in informing victims about rights and the services that may assist them, but also in occasionally providing them with such support as transport to shelters.

Officials, practitioners and members of NGOs were able to discuss with candour and independence the strengths and weaknesses of their societies' provision for victims and witnesses.

In a number of countries there were the clear seeds of an awareness of good practice in service provision by the third sector, State and criminal justice agencies, and promising links were being forged between those bodies and their counterparts in the European Community and beyond.

However, the accession states' formal response to victims and witnesses is quite recent, and it was inevitable that it should contain at present some gaps and areas of fragility and unevenness.

Very few states had appointed named individuals or units within relevant Ministries, and most prominently the Ministries of Justice, the Interior and Welfare, to take charge of policies and actions affecting victims and witnesses. No one had formal responsibility for considering, generating, evaluating or consolidating such policies and actions. There was, moreover, no evidence of formalised interdepartmental and inter-agency collaboration and consultation. Again, with the possible exceptions of Poland and the Czech Republic, discussions within the criminal justice system and the state and between the criminal justice system and the state, on the one hand, and members of the third sector, on the other, tended neither to be nurtured nor organised. There were, in short, few institutional mechanisms to develop policies and programmes or ensure compliance with the Decision.

States had in the main, but not invariably, busied themselves with preparations for accession by incorporating or anticipating relevant legal instruments in their own domestic legislation, including the European Framework Decision. In many cases, but with exceptions of Poland and the Czech Republic, that process of preparation was often chiefly a matter of drafting law, of creating what might be called paper compliance, rather than of actively considering the strategic, financial and administrative implications of adherence. There was no firm instance of any state having purposefully devised properly costed budgets, plans, aims, objectives, targets and timetables for implementation, and it appeared that they had either radically underestimated what the Decision's application would entail, or had taken legislation to be an effective surrogate for action.

With the exception of Slovenia and Poland, states tended to define their responsibilities to victims and witnesses narrowly in terms of adherence to a few articles of relevant legislation and, most typically, to provisions touching on the victim's rights to protection; to join proceedings as a *parti civile* for purposes of claiming compensation; to act as auxiliary prosecutor; and associated rights to legal advice and representation

(usually privately financed), and of access to documentation. States differed in the extent to which they took upon themselves the duty of providing information to victims and witnesses. Poland's practice was exemplary, but other states, such as Bulgaria, were at best perfunctory in supplying information.

Criminal justice agencies were largely remiss in their recognition of formal and informal responsibilities for the care of the victims and witnesses with whom they had dealings. Again, with the exceptions of Poland and Slovenia, most took it that they had no duty at all to perform other than the very minimum tasks laid down in law. Most, moreover, were unable to identify areas of victim and witness care which could be ameliorated. They were unable to identify groups of vulnerable and intimidated witnesses in need of special measures other than the victims of domestic violence and children, who were often covered by specific legislation, and the very few witnesses who were in danger of severe threat to their lives and who were made the subject of extraordinary protection procedures.

There was a tendency in the official mind to confuse victim and witness support with measures of physical protection and legal advice. Emotional and practical support of a kind supplied by victims service organisations in the European Forum for Victim Services was neither well-known nor appreciated, although a number of the countries' NGOs have begun to include on their voluntary staff psychologists who offer counselling.

For the most part, there was a want of quite basic information about the prevalence and distribution of measures to support and compensate witnesses and victims, and officials and practitioners were usually unable to give a statistically-informed analysis of what they were doing, how it differed from the past or might be compared to in the future. Such a lack was a major impediment to the effectiveness of any planned policy intervention.

Courthouses and courtrooms tend to be deficient in the most basic provision for victims and witnesses: there are no segregated spaces set aside to separate victims and prosecution witnesses in waiting, on the one side, and defendants and defence witnesses, on the other. Courtrooms almost invariably lack technical facilities for video-conferencing and interrogation by means of closed circuit television. Screens are not in use. At best, judges may clear the courtroom, but could no country could state how often this was done. The impression given was that it was an exceptional procedure.

Resources are generally meagre and technical facilities are weak (although Slovenia was once more an exception). There were, for example, frequent complaints about a lack of cameras to photograph victims' injuries.

With the exception of offences against children, police and prosecutors States, other than Slovenia, lack specialist, trained and formally-organised units dedicated to the investigation and processing of crimes which occasion particular distress, such as domestic violence and rape and other sexual offences. They invariably do not appreciate the need to identify and extend special measures to vulnerable and intimidated victims

and witnesses, other than children and victims and witnesses involved in major crimes of drug trafficking and the like.

Almost all the work of providing wider services to victims and witnesses has become the responsibility of non-governmental organisations. The third sector in all the states is necessarily young. A number of its component organisations are, in effect, the off-shoots or siblings of established and relatively well-funded international bodies such as The Open Society Institute, the Helsinki Committees and La Strada, and they are clearly professional and well-connected, although their concern is not with the gender-neutral victims of volume crime but with the victims of human rights abuses or what are regarded as the specifically gendered victims of patriarchy. Some, and particularly those specialising in helping the victims of domestic violence, are members of widespread international networks. The rest tend to be small, inexperienced and badly-supported; concentrated in urban areas; focused in their activities; and insecure. Almost none can deliver services in any volume. At best, they can typically be described as pilot or exemplary projects. There are in consequence large functional and geographical gaps in their pattern of service provision, most particularly for adult males, the victims of property crime and other forms of violent crime, and rural victims. They lack cohesion and it is apparent that they are not wholly familiar with one another; that there is a need for a better-elaborated division of labour; and that they lack adequate provision for training, the setting of standards and accreditation.

What is critically lacking in almost all the states, with the exception perhaps of the Czech Republic and Slovenia, is a generalist victim support organisation that is capable of supplying services to all victims on a consequential scale. There are a few countries, including The Slovak Republic, Lithuania and Bulgaria, where such an organisation exists in embryo, but it has no capacity to satisfy potential demand and it may not survive.

Links between the NGOs and the state and criminal justice system in countries other than Poland the Czech Republic are inefficient and poorly-organised. In The Slovak Republic and Bulgaria, particularly, there is very little appreciation of the role which NGOs might play in complementing the work of the state and agencies. Referrals are not routinely made, members of NGOs do not contribute significantly to the training of practitioners, and there is an absence of adequate consultation in policy-making and development. NGOs are often the only repositories of expertise about matters affecting the welfare of victims and witnesses, and their neglect is a matter of concern.

Funding arrangements for the maintenance of NGOs are almost invariably precarious in the accession states. With the exception of Rumania, Slovenia and the Czech Republic, financial support tends to stem from foreign donors who wish to stimulate areas of activity, and it is necessarily temporary. Traditions of charitable giving have only rarely survived, although the church is a major support of victim services in Estonia. Phare funds are not intended to subsidise the core costs of the third sector. And it is not evident where future funding will be found. One stratagem, again practised in the Czech Republic, is to pay NGOs for services provided to the criminal justice system, but other countries, such as Bulgaria, receive such service without any recompense. The third

sector is the only significant present and future provider of services, and its financial viability is at risk.

RECOMMENDATIONS

Much still needs to be done. It is recommended that:

» In every state, named senior officials in the relevant ministries and criminal justice agencies be charged with express responsibility for the identification and promotion of policies and programmes for the victims and witnesses of crime, being guided always by the need to implement efficiently and effectively the provisions of the European Framework Decision.

» Those officials should establish interdepartmental committees to take their work forward, and that those committees should have as members representatives of the key NGOs.

» As part of that work, criminal justice agencies should conduct a comprehensive review of their policies and practices towards victims and witnesses within the context set by the European Framework Decision, and that recommendations be made to implement its provisions within their area of competence.

» Codes of conduct on the proper treatment of victims and witnesses be produced for use by the judiciary, prosecutors, bar and police; that members of those agencies be trained in how to treat victims and witnesses; and that they should be accountable for such treatment to their disciplinary authorities.

» Part of any such work be the communication on request of information to victims and witnesses about the progress of their cases and that, in all instances, steps should be taken to ensure that victims and witnesses are appraised of their rights and responsibilities, and of the services of NGOs.

» Any service provided by an NGO to a criminal justice agency should be adequately compensated and regulated by an appropriate service level agreement.

» In all states, strenuous efforts should be made either to aid the development of an existing generalist victims organisation or to create and aid the development of such an organisation where none exists. That work should be undertaken in partnership with the European Forum for Victim Services, and it should concentrate in part on training and the setting of enforceable standards. Any such tasks undertaken by the European Forum for Victim Services should be adequately compensated by the European Community. One useful component of such work in need of funding by the Community would be the completion, expansion and continual servicing of the new website constructed by the European Forum.

» As a necessary first step towards the implementation of recommendation VII, and in order to convey and consider properly the recommendations as a whole, there should be a workshop held in autumn 2002 and sponsored jointly by the Home

Office and the European Forum for Victim Services in support of this section of the Phare Rule of Law Project, consisting of a government representative from each accession country and one NGO/practitioner representative; the Module 4 experts, other experts and CILC representatives.

» The accession states guarantee the viability of properly accredited victim service organisations by apportioning 1% of their criminal justice budgets to the third sector, having regard for the need for a comprehensive pattern of service delivery.

» Countries will need to agree a plan and realistic timetable for achieving these recommendations.

» In order to gauge the nature of current practice and monitor progress in future, data should be collected methodically and at regular intervals to measure key aspects of victims' and witnesses' experiences of the criminal justice system: including the provision of legal advice in civil and criminal proceedings; the use of video-conferencing and other measures of witness protection; the number of referrals by the police to NGOs; and the making of compensation orders and rates of compliance with orders so made.

Annexes

Bulgaria

This report is based on information gathered up to April 12th, 2002

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MODULE I

AN INDEPENDENT JUDICIARY

CHAPTER I

Overview of the Judicial System

CONSTITUTIONAL BASIS OF THE JUDICIARY

The Constitution of the Republic of Bulgaria, established by the Grand National Assembly on 12 July 1991[1], explicitly proclaims the principle of separation of powers in article 8, pointing out that the judicial power will be independent from the Legislative and Executive power. The principle of independence is enshrined in article 117 of the Constitution which states that the judicial branch should be independent, have its own budget and in the performance of their functions the judges, court assessors, prosecutors and investigating magistrates are subservient only to the law. It is important to remind that the former Constitution of 1971 assigned to the courts only the function of serving the totalitarian government by "protecting the established social and state order, socialist property and strengthening the socialist legality as well".

Statutory basis of the judiciary

Clause 4 of the Transitional and Concluding Provisions of the Constitution (1991) provides that the judicial system shall start its functioning after the adoption of the corresponding structural and procedural laws. The Constitution fixed a term of one year. With a delay of two years, the parliament passed the Judicial System Act, which came into force on 22 July, 1994[2]. This Law establishes a detailed regulation of the structure of the constitutionally determined agencies of the judicial power and status of its members. Thus it complements the more general provisions of the Constitution.

Organisation of the judicial system

According to the Constitution and the Judicial System Act, the courts in the Republic of Bulgaria are divided in county courts (also called regional courts or courts of first instance), district courts, military courts, courts of appeal, the Supreme Court of

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1 Promulgated State Gazette no.56/13.07.1991.

2 Promulgated State Gazette no.59/22.07.1994; amended SG nos. 78 & 87/19964; 64, 96, 104&110/1996; 58, 122&124/1997; 11&133/1998.

Cassation and the Supreme Administrative Court. The structure of the Public Prosecution corresponds to the system of the courts. The Public Prosecutors and the members of the Investigation Service are part of the judiciary and consequently their members have the same status as judges[3]. The courts try civil, criminal and administrative cases. In Chapter 4[4] of the Judicial System Act the basic functions of the various courts are described. These are as follows:

- county courts (112): these courts are first instance courts. All cases are under its jurisdiction with the exception of those, which are entrusted by the law to another court. The county court examines cases in panels of one judge and two lay-judges[5], unless the law provides that the judge acts as unus.

- district courts (28): these courts examine, as first instance courts, cases explicitly determined by law and as courts of appeal, in cases of the county courts in its judicial region. In the district courts exist in principle civil, commercial, criminal and administrative sections.

- military courts (5): these courts examine in first instance crimes committed by servicemen. The courts act in panels of one judge and two lay-judges, unless provided otherwise by law. The Supreme Judicial Council determines its regions after hearing the opinion of the Minister of Defence. By virtue of law these courts are on the same level as the district courts.

- courts of appeal (5 + 1 military court of appeal): these courts have been formed on the first of April 1998. As a rule the courts of appeal are second instance courts and review appeals on first instance decisions of the district courts. As a second instance court, the court of appeal hears the case de novo (there are three sections within the court of appeal: civil, commercial and criminal).

Supreme Court of Cassation and Supreme Administrative Court

The Supreme Administrative Court and the Supreme Court of Cassation have been instituted in respectively 1996 and 1997. The respective procedure acts for these courts are adopted in 1997, including the (Act on the Supreme administrative Court). The Laws on Amendments of the Civil Procedure Code and the Penal Code are in force since 1 April 1998. They introduced three instance regular proceedings and made drastic changes in the civil and criminal proceedings. The judicial review as a means of extraordinary control on judgements and sentences entered into force, taken from the Soviet legal system, was repealed.

According to the Judicial System Act, the Supreme Court of Cassation is the highest instance in civil and criminal cases and it performs supreme judicial supervision for the

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3 JSA, Chapter 7, 8 and 9.
4 If the new amendments to the JSA will be adopted, this will be chapter 5 of the new JSA.
5 In Art. 54 of the English translation of the JSA these persons are called jurors.

correct and uniform enforcement of the laws by all courts in the country. Its jurisdiction covers the whole territory of the Republic of Bulgaria. It is seated in Sofia. The Supreme Court of Cassation is the cassation instance for judicial acts, enumerated in the procedural laws. This means that it examines only legal issues, not the substance of the cases. The Supreme Court of Cassation shall consist of a civil and a criminal college. In the Judicial System Act is said that there will be departments in the colleges[6]. It acts in a panel of three judges, when it deals with cases as a cassational instance and arguments on jurisdiction, unless the law provides otherwise. The general assembly of the respective colleges renders interpretative decisions on enforcement of the law in cases of incorrect and/or contradictory judicial practice.

The Supreme Administrative Court is the highest court instance with administrative jurisdiction. The Supreme Administrative Court is the cassation instance regarding judicial acts of all courts with respect to conformity of administrative acts with the law. It is the only instance which rules on conformity with the law of acts of the Council of Ministers and the Ministers, as well as of other acts of high administration, explicitly specified by law. In administrative cases, the district court is the only court that is dealing with facts.

The Constitutional Court

The Constitutional Court comprises 12 judges, who are appointed for a period of nine years, which may not be renewed. One third of the members is elected by the National Assembly, one third is appointed by the President and one third is elected by the General Meeting of the justices of the Supreme Court of Cassation and the Supreme Administrative Court. It verifies the constitutionality of law and treaties, presidential and parliamentary elections, settles conflicts which arise between the various public authorities regarding their respective sphere of responsibility, and can give legally binding interpretations of the Constitution. Matters may be referred to it by 1/5 of the members of the National Assembly, the President of the Republic, the Government, the Supreme Administrative Court, the Supreme Court of Cassation, the Chief Prosecutor and, under certain circumstances, by town councils. There exists no procedure where citizens can refer matters directly to the Constitutional Court. This is possible only where a dispute has already been brought before the Supreme Court and then only at the latter's initiative[7].
The new Constitution dates from 13 July 1991. Laws still exist from before the new Constitution. Judges are allowed to check directly if a law/statute complies with the Constitution, also these old laws, and to interpret the Constitution.

Supreme Judicial Council (SJC)

According to the Constitution and the Judicial System Act, the Supreme Judicial Council is an independent body that consists of 25 members who must have no less than 15 years

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6 JSA, Art. 82.
7 Constitution, Art. 150.

of legal experience and have served at least 5 of them as judge, public prosecutor, investigator or as academic of law. Eleven of the members are elected by the National Assembly, and the Judiciary designates eleven. The President of the Supreme Court of Cassation, the President of the Supreme Administrative Court, and the Chief Prosecutor General are ex officio members of the Council. The Minister of Justice presides the sessions of the Council, but he has no right to vote[8]. The Supreme Judicial Council appoints, promotes, demotes, moves and dismisses the judges, prosecutors and investigators[9]. The Council recruits and proposes candidates to the President of the Republic, for appointing and dismissing the President of the Supreme Court of Cassation, the President of the Supreme Administrative Court, the Prosecutor General. The President of the Republic is bound to the proposal of the Supreme Judicial Council, because he cannot refuse the appointment of the suggested person in case the proposal has been repeated. The Supreme Judicial Council determines upon the proposal of the Minister of Justice the number and the location of the judicial regions, except those of the Supreme Court of Cassation and the Supreme Administrative Court. It determines the number of judges, public prosecutors and investigators in the respective institutions. Upon the request of the Prosecutor General it decides on divesting of the immunity of judges, public prosecutors and investigators in cases provided by the law.
The SJC imposes the disciplinary measures over all magistrates. Its decisions are appealed before the Supreme Court of Cassation.
The SJC submits a draft budget for the judiciary to the Council of Ministers and has the responsibility for managing the judiciary's budget and dividing it among the different courts[10]. The various courts are responsible for the daily government of the courts, especially the judges.

The Supreme Council of the Judiciary plays the same role in respect of prosecutors as it does vis-à-vis the judges. The Prosecutor General is appointed for a seven-year period, which may not be renewed, by the President of the Republic acting on a proposal from the Supreme Council of the Judiciary. The Prosecutor General is the guardian of legality and gives 'procedural guidelines' to the procuracy as a whole[11].
Independence of the SJC has been demonstrated with its refusal to follow the ministerial proposal of dismissing the Head of the Special Investigation Service. However, the governing parties in the parliament can infringe independence of the judiciary through amendments of the SJC law. The SJC, created in 1991, should in theory now be in its second term, as members are appointed for 5 years. However, the SJC is in its fourth term already, simply because the successive majorities in Parliament have amended the law and then claimed that, with this new law, a new SJC should be nominated.

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8 Formally regulated in new amendments of the JSA, art. 34a.
9 JSA, art. 27.
10 JSA, art 27.
11 Constitution, Art. 126.

CHAPTER II

State of the Legislation

International conventions on criminal law

Bulgaria has signed and ratified a number of conventions, like the European Convention on Extradition and two Protocols, The European Convention on Mutual Assistance in Criminal Matters (with reservations) and its Additional Protocol. Bulgaria has signed and ratified the Rome Statute of the International Criminal Court. Several conventions have not been signed, like the European Convention on the International Validity of Criminal Judgements; the European Convention on the Transfer of Proceedings in Criminal Matters nor the Additional Protocol to the Convention on the Transfer of Sentenced Persons. The adoption of international conventions continues.

In 1997, a Law on Amendments to the Criminal Procedure Code was adopted because of the need to create a clearly formulated legal basis for the practical application of the provisions on extradition. International judicial co-operation is performed by a special organ at the Chief Prosecutor's office and by the International Department of the Ministry of Justice for the courts. For the purpose of facilitating judicial co-operation, the Ministry of Justice is the central authority for cases of extradition, MLA in civil and criminal matters and transfer of sentenced persons. Bulgarian liaison prosecutors in foreign states do not exist yet. The Investigator's office, the courts and the Prosecutor's office may host foreign liaison officers on an ad-hoc basis in concrete cases, and they may participate in proceedings under specific circumstances.
The proposed amendments to the Code of Criminal Procedure are in conformity with EU standards as far as judicial assistance in criminal matters and extradition is concerned. In the field of judicial co-operation and human rights, as far as the joint action on legal assistance in criminal matters is concerned, Bulgaria is encountering difficulties in handling incoming requests. Regarding judicial co-operation in criminal matters, Bulgaria is to a large extent aligned with the acquis.

International conventions on civil law and procedure

Bulgaria has ratified the Civil Law Convention on Corruption and is a contracting party to the European Convention on Information on Foreign Law. In September 1999, Bulgaria ratified the three The Hague Conventions on private International Law. It is a member of the Hague Conference on International Private Law as of April 1999.

International conventions on human rights

Within the framework of the rule of law and human rights, practically all the main instruments have been ratified. Bulgaria is a member of the Council of Europe and has ratified the ECHR and its Protocols 1-8 and 11 as well as the European Convention of Torture and Inhuman or Degrading Treatment or Punishment and its two Protocols.

Bulgaria ratified the Second Optional Protocol to the International Covenant on Civil and Political Rights (abolition of the death penalty) in august 1999. Those who had been sentenced to death had their sentences commuted to prison terms. The Framework Convention of the Council of Europe on the Protection of National Minorities was ratified in May 1999.
Bulgaria is about to adopt a new Penalty Execution Act, which should be compliant with the European Prison Rules and the UN Minimum Prison Standards.

Substantive Laws

Bringing this legislation in line with the requirements of the new social and economic relations and with European standards does not form part of the judicial reform as such, but the quality of substantive laws affects indirectly the quality of the administration of justice, thereby shaping the public confidence in the system.

Procedural Laws

Before the above-mentioned amendments of the Civil Procedure code and the Criminal Procedure Code, prompted by the Constitutional requirements to introduce three-instance proceedings, the judicial reform existed only on paper. The genuine reform only started after the passing of the procedural rules on three-instance proceedings. The Code of Criminal Procedure was among the first instruments amended as early as the beginning of 1990. Later on, numerous new amendments were made in order to better guarantee respect for human rights. Taken as a whole, the amendments during that period were sporadic and often contradictory. The fundamental amendments to the Code of Criminal Procedure, in force since January 1, 2000 are an important step towards harmonising Bulgarian criminal procedure legislation with the European standards.

With the 1998 amendments to the Code of Civil Procedure, the adversarial principle in civil procedure was reinforced and an articulate emphasis was put on the role of the court as an impartial arbiter. The very core of second-instance proceedings was modified. The parties to all civil disputes thus have better opportunities to invoke any necessary evidence. As the courts of second instance already decide each case on the merits, the cases can be finalised more quickly.
Finally, the Supreme Administrative Court was restored and a Law on the Supreme Administrative Court was passed.

STATE OF AFFAIRS IN PRACTICE

On 1 October 2001, the new government adopted the Strategy for the Reform of the Judicial System in Bulgaria. Its aim is to develop European standards in justice to contribute to preparation for EU membership. Objectives include improvement of human resources, administration and physical infrastructure of the judiciary. The capacity of the Supreme Judicial Council to fulfil its role is to be enhanced and co-ordination between the Supreme Judicial Council and the Ministry of Justice on the management of the judiciary is to be improved. The Magistrates Training Center is to be

transformed into a public institution. Steps are to be taken to promote equal access to justice (improving free legal aid provisions) and to improve the execution of judgements to ensure more effective protection of citizen's rights. A detailed implementation plan has also been developed.
This means that many issues addressed in this report are already subject to fundamental changes[12]. Whilst the adoption of the strategy is a clear step forward, it does not yet address issues that require constitutional change, such as changes to the immunity of magistrates.

CHAPTER I

The Creation of a true balance of Power

I.1 De iure and de facto division of competencies between judiciary, executive power and parliament

Relation between the SJC and the Ministry of Justice

As has been said before, the Supreme Judicial Council (SJC) has the task to secure the independence and the self-governance of the judiciary. However, there is a structural problem in the Bulgarian judicial system, due to a mixed division of tasks and responsibilities between the SJC and the Ministry of Justice, which creates confusion, lack of initiative and which subsequently undermines the independence of the judiciary. In the distribution of tasks and responsibilities there is no differentiation made between being responsible for the judiciary, i.e. for the magistrates, their selection, career, performance, on the one hand and being responsible for the service to the judiciary, i.e. for administrative support, premises and procurement of equipment on the other hand. The Ministry of Justice is, through its Inspectorate, responsible for the procedural issues of the work of the courts and judges[13]. The Inspectorate does not gather data on the way the law is implemented nor gives an opinion on the way cases are solved. The information gathered is submitted to the SJC, which can decide whether disciplinary measures are to be taken.

The SJC is responsible for procurement of equipment to the judicial institutions, a responsibility for which SJC is not fit neither in terms of its organisation and decision-making nor in terms of its resources. The MoJ performs some tasks of the SJC because of this lack of resources and staff. This lack of administrative capacity is one of the reasons for the tension between the MoJ and the SJC.
According to one of the deputy Ministers of Justice and one of the justices of the Constitutional Court and former member of the SJC, another reason for the tension

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[12] Strategy for Reform of the Judicial System in Bulgaria, 2001.
[13] JSA, Art. 35.

between the MoJ and the SJC is the number of members and the procedure of the set up of the SJC. The SJC is partly appointed by members of parliament. This politicises the Council. If the Council has a majority of another political party than the Minister of Justice, this causes tension[14].

The third issue within the Strategy for Reform of the Judicial System in Bulgaria programme is strengthening the SJC capacity. The fourth issue within the Strategy for Reform of the Judicial System in Bulgaria is the strengthening of the co-ordination between the SJC and the Ministry of Justice in the management of the judiciary. Therefore two sub priorities are given: strengthening the capacity of the Ministry of Justice through the establishment of a unit responsible for the implementation of projects in the judiciary. Besides that, a unit for co-ordination between the SJC and the Ministry of Justice in relation to project management in the area of the judiciary will be established[15].

In the proposed amendments to the Judicial System Act, also some amendments are proposed regarding the operation of the Supreme Judicial Council. In the articles 20, 27 and 28 of the proposed amendments its powers are refined and developed.
If the amendments to the Judicial System Act will be adopted, the Supreme Judicial Council will publish an annual report on the activities of the courts, prosecution offices and the investigation services compiled on the basis of the annual reports and statistical data submitted by the courts, prosecution offices and the investigation services, drafted by the Ministry of Justice[16].

The Budget for the Judiciary

An issue that can be compromising the independence of the judiciary is the budget. The Supreme Judicial Council submits the draft budget of the judiciary to the Council of Ministers and controls its execution. The Council of Ministers has the right to change the budget proposal before it in its turn presents it to the National Assembly. Until now the Council of Ministers drafted an alternative bill and both drafts are submitted to Parliament. Until now the budget of the Council of Ministers has always been adopted[17]. Amendments are envisaged to the Judicial System Act so that the budget will go directly from the SJC to Parliament[18].

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14 Information received by Deputy Minister during mission 8 4 2002 – 12 4 2002.
15 Strategy for Reform of the Judicial System in Bulgaria, p. 17.
16 See Art. 27 lid 10 in the new draft of the JSA.
17 Appeared during Conversation with Supreme Court of Cassation during mission 8 4 2002 – 12 4 2002.
18 Appeared during Conversation with Supreme Court of Cassation during mission 8 4 2002 – 12 4 2002.

I.2 De iure and de facto division of competencies within the judiciary

Judges in lower courts are free to decide on cases. There is no interference besides the normal process of appellate review.

CHAPTER II

The Independent Functioning of the Judiciary

II.1 Incompatibilities

Article 12 of the Judicial System Act stipulates that judges, as long as they practice their profession shall not be members of political parties or organisations, movements or coalitions having political ends, and shall not carry out political activities. Furthermore, in the same article it is stated that judges shall be free to form and join organizations, which defend their independence and professional interests and promote their professional qualities. These professional organizations of judges shall not associate with trade union organizations from another branch or sector, at a national or regional level. At the moment, members of the two supreme courts are obliged to make a public disclosure concerning their income and assets. Lower judges have no such obligation.

Moreover the Supreme Court judges are only required to make a declaration, but there are no provisions for any legal consequences based upon their declarations[19]. In the proposed amendments to the JSA, in article 12 is a requirement for judges, prosecutors and investigators to declare their income and property upon their appointment and then annually, by 31 May the latest, before the Court of Auditors, in accordance with the Disclosure of the Property Status of Persons in Senior Government Positions Act.

II.2 A judge should not be subject to any authority

The Judicial System Act includes many provisions designed to foster the judicial independence. In deciding matters, the magistrates obey only the law and their own conscience. The composition of the SJC should be a guarantee for the independence of the judiciary because it is composed in plurality by members of the judiciary itself. Justices, prosecutors and investigating magistrates enjoy the same immunity as members of the National Assembly. This immunity shall be lifted by the Supreme Judicial Council only in circumstances established by law[20].
The county court shall hear the firsts instance criminal cases with the participation of jurors[21]. The jurors are appointed upon the proposal of municipal councils, for the

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[19] OSI report, p. 87.
[20] Constitution, Art. 130.
[21] JSA, Artt. 43 – 51.

county or regional courts by general meetings of the judges of the respective district courts, and for district courts by the general meetings of the judges in the respective courts of appeal.

II.3 Supporting facilities

In Bulgaria there are unsatisfactory working conditions. There is a shortage of premises and equipment. Besides, security arrangements and administrative procedures in courts are far from efficient. The court administration is in many courts based primarily on manual methods. The technical equipment of the courts is often inadequate. On the other hand there are some modern, well-functioning computerised systems. For example in the county court Varna, not only the case administration, but also the public registers are computerised and externally accessible. The company registers seem to be computerised in several courts, the criminal record registers in many courts. In Varna as in other courts where automation is in use, systems have been developed and implemented as local initiatives. Systems may therefore differ between courts, that are computerised and the software is not always compatible.

Judges themselves are forced to spend time on numerous clerical duties, that could be done by or delegated to other staff to enable judges to concentrate on their main duty. These clerical duties, despite the provisions of Regulation no 28, include in practice typing and proper formatting of judgements, bearing responsibility for the appearance of parties and witnesses at scheduled hearings and doing legal research. There is no training in place on the national level to develop the skills of the administrative staff, despite the fact that according to the regulation, court staff, in order to fulfil their duties, is required to assimilate up-to-date scientific and technological methods with a view to raising their qualifications. The result is that the administrative staff is underqualified and does not handle a lot of work.

The training of court staff is one of the priorities of the Magistrates Training Center. The second issue within the Strategy for Reform of the Judicial System in Bulgaria programme is the improvement of the administrative operations of the judiciary. Under the short term priorities of this goal the training and education of administrative staff are mentioned. Introduction of information technologies in the work of the judiciary is goal 1.3 of the Action Plan for the reform of the judiciary. This will include the development of standards for exchange of information between the different sub-branches of the judiciary; preparation of an overall program for the development of a compatible automated case-tracking system for the courts, the investigation services and the prosecution offices and gradual computerization of the judiciary; including the development of standard software for the public registers within the courts. Also the creation of a uniform system for data collection and statistics, that will be used as a management tool for the judiciary, belongs to the goals.

II.4 Independence vis-à-vis the parties

The belief that bribery and corruption are everyday occurrences in the courts and public prosecution service is widespread in the public opinion. Spectacular cases of corruption within the judiciary have not been revealed in the recent past, but there are some incomprehensible decisions and numerous cases where notorious criminals with several pending sentences were released on bail or their trials suspended for procedural reasons[22].
Independence of judges and prosecutors poses more problems in the country side, than in the cities, as courts of 1st instance are not sufficiently resistant against pressure from outside or against the temptation not to serve the supposed interests of the public authorities.

If the latest amendment of the Judicial System Act will be adopted a new clause will be taken up in article 12 that prescribes that judges, the prosecutors, and the investigators shall declare their income and property at assuming their posts and annually up to May 31, 2001 at the latest to the National Audit Office. This might help to reveal and thus diminish corruption.
There are no specific rules regarding the assignment of cases. The presidents of courts and chambers are free to choose their own method for this[23].

CHAPTER III

The Status of Judges

III.1 General

The consequence of the relatively low payment of judges is that few competent lawyers are attracted to this work. Many of the competent judicial branch professionals sample for some years experiences in the judicial system and then leave the judiciary for higher paid jobs. In this way, a very small cadre of competent professionals remains. The number of judges (approx. 1400) seems not to be sufficient; many of them have difficulties to keep up with all the new information inter alia for lack of (inter)national legal literature, seminars, computers etc. Some of them are moreover not used to interpreting laws, but only to their strict application.

In July 1998, a Code of Ethics for judges was adopted by the Bulgarian Association of Judges. These rules are voluntary and apply only to the members of the BAJ. Only 40 % of the judges are organised in the Bulgarian Association of Judges.

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[22] Information received from journalsits during mission 8 04 2002 – 12 04 2002.
[23] Appeared during Conversation with court presidents of regional, district and appelate courts in Plovdiv during mission 8 4 2002 – 12 4 2002.

The existing professional association of judges is particularly important in raising the level of integrity and responsibility of judges. The Bulgarian Association of Judges is also one of the Magistrates Training Center founders and has been the most active player so far. After its formation in 1997, it organised a number of conferences followed by the above mentioned adoption of a Code of Ethics for Judges. In order to raise the reputation of the judiciary, it is essential to create among the magistrates an atmosphere of intolerance to any conduct damaging the reputation of the profession.

III.2 Recruitment, selection and appointment

The quality of the people entering the judiciary is dependent on the number of applicants to the position being filed. In certain regions of the country, where the number of applicants for a post is low, less suitable persons can be recruited for the judiciary.
The only criteria for initial recruitment are the Bulgarian citizenship, a law degree from a nationally approved law school and having undergone the one-year internship, passing the State exam that follows it, not to have been convicted to imprisonment for a premeditated crime and to have the required moral and professional qualities. Most graduates go through the one year internship after graduation.
For tenured positions, the Judicial System Act in addition defines requirements of length of legal experience for a judge, prosecutor or investigator to become tenured, even if the law does not specify the kind of legal experience they should have[24]. At the county court level, judges and prosecutors must have two years of legal experience and at the district court level five years. At the appellate court level, judges and prosecutors must have eight years of legal or judicial experience. The justices and prosecutors of the two supreme courts must have twelve years of experience. Exceptions from these requirements are possible for appointments to positions at the county court level. Since there is a trial period of three years of service before members of the judiciary are granted life tenure there is, however, some guarantee that unsuitable persons will not continue to hold office indefinitely once they are appointed.

Candidates for appointment are selected and proposed by senior officials of the courts in accordance with rules set down in the Judicial System Act. In general, sections 27 and 30 of the Judicial System Act provide that judges, prosecutors and investigators shall be appointed, promoted, demoted and removed from office by the Supreme Judicial Council on a proposal from competent administrative superiors. However, the Supreme Judicial Council is actually unable to judge on the professional qualities of all newly appointed and promoted magistrates. Thus it relies mainly on the assessment made by the proposing officials. Due to a lack of candidates for some units in the judicial system, sometimes the persons appointed meet only the formal requirements for a given position. In addition, the Minister of Justice can also make proposals before the Supreme Judicial Council concerning appointments for all positions.

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[24] JSA, Art. 27.

The candidate is appointed if he is elected by a majority consisting of over half the total number of members of the Supreme Judicial Council. Election is by secret ballot. The Chairman of the Supreme Court of Cassation thus proposes who should be appointed to the Supreme Court of Cassation and as president or vice-president of the district courts, the military courts and the courts of appeal. The Chairman of the Supreme Administrative Court proposes who should be appointed to that court. The presidents of the military courts and the court of appeal propose who should be appointed judge in their respective courts. Judges in the district and county courts and the (vice) presidents of the county courts within the jurisdiction of the district court are proposed by the president of the district court.
The very decentralised selection process for recruitment and promotion poses problems. Candidates to a judicial office apply for local positions and the selection is made locally, although the formal appointment is made by the SJC. The lack of national criteria and co-ordinated procedures for recruitment means that there is a real risk for the selection process to become arbitrary. The fact that the actual appointments are made centrally by the SJC does not help, since it lacks sufficient capacity to judge the qualities of the selected candidates and depends therefore on the assessment of the person proposing the candidate. In courts, where competitions are being held, the likelihood that the most suitable person will be recommended for appointment is higher, but there is no guarantee for objective criteria since the outcome of the competition is advisory and it is finally the proposing official, who decides, who will be recommended for appointment. With the proposed amendments to the Judicial Service Act, also part of this system is subject to change. In the proposed new article 127a, it is provided that the junior judges, prosecutors and investigators shall be appointed after a contest. Besides, the applicants must have a level of theoretical knowledge corresponding to a total score of 9 points composed of the total score at the semester exams and the score at the final exams.

III.3 Promotion

There is no set policy for promotion of members of the judiciary. Neither is there a structured system of evaluation of performances. Some court presidents follow up on the judges' performances and their caseloads but this is done on their own initiative. Selection for promotion is done without any predetermined criteria, with the exception of seniority. The required time period before promotion can occur, is at least three years of service in the office the candidate presently holds; for the highest judges five years. Promotion can be granted if the person has proved his high qualifications and an exemplary performance of his duties. Promotion can be requested by the interested party through the same persons who recommend candidates for appointment to the judiciary or directly through the Supreme Judicial Council[25].

The Presidents of the Supreme Court of Cassation and of the Supreme Administrative Court are appointed for a seven-year term, which cannot be renewed, by the President of the Republic acting on the proposal of the Supreme Council of the Judiciary.

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[25] JSA, Art. 142.

In the suggested amendments to the JSA in article 142, regarding promotion, paragraph 3 is introduced which says that judges prosecutors and investigators shall be promoted with regard to rank and salary after a performance evaluation based on the criteria and terms set by the SJC. These criteria are provided for in the new law in article 129.

III.4 Professional security

Irremovability

The independence of magistrates is protected by the Constitution and by the Judicial System Act. Judges become unsubstitutable upon completing a third year in the respective office. They shall be dismissed only upon retirement, resignation, upon the enforcement of a prison sentence for a deliberate crime, or upon lasting actual disability to perform functions for over more than a year[26]. Article 131a prescribes the procedure that needs to be followed if a judge, prosecutor or investigator is to be fired when he does not possess the necessary professional qualities to fulfill his or her professional duties. As has been said, if the new amendments to the JSA will be adopted, a formal, obligated evaluation will be introduced in the procedure.

In the absence of a mandatory retirement age especially established for judges or other magistrates, the generally established statutory retirement age is supposed to serve as a neutral limit on judges tenure and thus a guarantee for judicial independence. In practice, retirement is not mandatory and judges serve past that age. However, the president of the judge's court or the Ministry of Justice may propose to the SJC – for any reason or no reason at all – that the judge be dismissed at any time after reaching retirement age. The Council has discretion in the matter[27].

Transfer

There are no provisions governing permanent, non-disciplinary transfer of judges. Transfer to another jurisdiction for up to three years, referred to as reassignment, may be imposed by the Supreme Judicial Council as a disciplinary action[28].
In the amendments to the JSA, it is proposed that judges, prosecutors, and investigators may not be transferred for a period exceeding three months during the same calendar year without their written consent[29].

III.5 Remuneration and social welfare

The Supreme Judicial Council fixes the remuneration for the judiciary within the framework of the budget. Almost any lawyer can make more money than judges, prosecutors and investigators.

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[26] JSA, Art. 129.
[27] OSI report, p. 101.
[28] OSI report, p. 101.
[29] See Art. 130 in the new draft of the JSA.

The new amendments to the JSA will, if adopted, improve the conditions for judges, prosecutors and investigators.

III.6 Disciplinary proceedings

The disciplinary liability of magistrates and the grounds for lifting their criminal immunity are governed by the Judicial System Act, articles 168 –185. In April 2000 the Judicial System Act was changed[30], however, so that the Supreme Judicial Council no longer has the competence to initiate disciplinary proceedings.

Article 171 JSA states who can give the advice to initiate a disciplinary procedure. This advice can be given by members of the SJC. The Minister of Justice has the right to initiate disciplinary procedures. His request is introduced in the SJC. Upon this request a panel of 5 randomly chosen members of the SJC is appointed to investigate the accusation. The president of each court is responsible for reporting disciplinary matters to the SJC, where the president has determined that specific disciplinary measures are warranted, but without standards or administrative support for this function, this step is rarely taken[31].
Article 179 of the JSA reads: "the ruling of the disciplinary panel of the Supreme Judicial Council for the imposition of a disciplinary sanction, and the rulings of the Supreme Judicial Council on disciplinary cases may be appealed before the Supreme Administrative Court by the disciplinary defendant." Articles 173, 174, 176 and 177 give guarantees for the accused. Article 173 reads: "Before submitting the proposals under article 171, an explanation in writing of the person who is charged shall be required and attached."

CHAPTER IV

The Training and Retraining of Judges

IV.1 Initial Training

At present, ten faculties at different higher education institutions in the country offer higher education in law and issue diplomas for the qualification of a lawyer. It is generally being said that the quality of the legal education varies considerably between universities. It is also being said, that the education is too theoretical, based on lectures and literature only and does not include training in the application of law in practical cases. There is a state standard for legal education, laid down in the Ordinance on Single

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[30] JSA, Art. 171.
[31] Information received during meeting with the president of the Supreme Administrative Court, during mission 8 04 2002 – 12 04 2002.

State Requirements for Obtaining Higher Education in Law in the Speciality of Law and the professional Qualification of Lawyer.

Every graduate of a law faculty has to follow a one-year traineeship program at the courts and to pass a capacity examination if he wants to exercise a judicial profession (magistrate, advocate, notary etc.). During that period the Ministry of Justice has to pay the "judicial candidates" a salary. That system worked in the past with 300-400 graduates per year, but now, with several thousands of graduates per year, it fails. This system is considered as unfair both to the graduates, who in the majority of cases get very little out of this year, and to the supervisors, who are expected to take the time to act as teachers for a large number of law school graduates, although they are already overburdened with their normal caseload.
Upon successful completion of the theoretical and practical examination, the MoJ shall issue the judicial candidates a certificate for the right to practise the legal profession or to serve as a judge, prosecutor, and investigator in the judiciary bodies respectively. This way theoretically every "judicial candidate" may become a magistrate. There are no formal rules for further selection of the candidates. To be appointed, one must have the required moral and professional responsibilities[32].
If the proposed amendments to the Judicial System Act are adopted, this system will also be changed. The duration of the apprenticeship will then be reduced to three months and it will take place before the final exams at university. The qualification to practise as a judge, prosecutor or investigator shall be obtained upon successful completion of the training at the National Institute of Justice. The duration of the training course at the Institute will be one year.

IV.2 Training and retraining for sitting judges

The only institute providing training for magistrates at the moment is the Magistrate Training Institute (MTC) in Sofia. The Center was founded on April 16th 1999 by the Ministry of Justice, the Union of Judges in Bulgaria and the Alliance for Legal Interaction. The Center is funded only by international sources. Its main donor is the US Agency for International Development. The USAID grant covers a period of three years and is designated to ensure both the institutional building of the Center and the development of a training program for judges.
The MTC was created to improve the professionalism of magistrates by providing training to judges, prosecutors and judicial investigators. The long-term objective of the Center is to create a qualification system for magistrates, provide training to magistrates and court personnel, promote and disseminate legal information in the areas of international, European and comparative law, publications in law and other activities relating to improved professionalism.

The Center has a Board of Directors of seven members, where the three founding institutions are represented. The President of the Supreme Court of Cassation chairs it. The Program Council, comprising five superior magistrates and a Deputy Minister of

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[32] JSA, Art. 126.

Justice, is responsible for the elaboration of the curriculum. The Executive Director is running the current affairs of the Center and managing the staff of seven members – three Program Coordinators, three Program/Administrative Assistants and an Accountant.
The MTC invites as trainers acting magistrates mainly from the Supreme Courts and the courts of appeal, but also university professors, lawyers and other legal experts. Foreign experts also take part in the training sessions. The MTC organises initial training for new appointed judges, which is not mandatory, but in reality they cover 100% of the newly appointed judges. They also organise courses for judges who have a longer experience and have specialised courses in EU law.
The Center resides in two offices, provided by the Ministry of Justice in its own building. Unfortunately the Center does not dispose of any training facilities.

The fifth issue within the Strategy for Reform of the Judicial System in Bulgaria aims at the transition of the magistrates training Center into a public institution, residing under the Ministry of Justice. In the proposed amendments to the Judicial System Act this issue is also integrated. The eventual new article 146a states that a National Institute of Justice with the Ministry of Justice shall carry out the training of judges, prosecutors and investigators. The curricula shall be approved by the Managing board of the National Institute of Justice. This Managing board shall be composed of four representatives of the Supreme Judicial Council and three representatives of the Ministry of Justice.

MODULE 2

STATUS AND ROLE OF THE PUBLIC PROSECUTOR

CHAPTER I

Position of the Public Prosecutor

I.1 Relationship with the executive power

As has been said in module 1, the Prosecution Service is part of the judicial branch in Bulgaria[33]. The Prosecution Service therefore resides not under the Minister of Justice, but under the Supreme Judicial Council. It enjoys a great deal of independence vis-à-vis the executive. Its budget is part of the independent budget for the judiciary.
The key responsibilities of the public prosecution service are indicting persons who have committed crimes, exercising supervision of punitive measures, taking action to rescind illegal acts and participating in civil and administrative cases[34].

The responsibilities of the Ministry of Justice are exercised via the Supreme Judicial Council. The Minister of Justice chairs the Supreme Judicial Council but does not participate in voting. The Chief Prosecutor shall prepare an annual report on the activity of the Public Prosecution and submit it to the MoJ for incorporation into the annual report[35]. There are no powers which the government exercises in respect of the public prosecutor that are not the subject of legislation. There are no general government instructions for the Prosecution Service. The executive does not have power to give specific instructions in criminal cases.

I.2 Relationship with the legislative power

In the Judicial System Act and in the Constitution, legislative guarantees and measures are in place to ensure that public prosecutors can perform their duties without unjustified interference by the legislative power[36]. Public prosecutors do not have legislative competence because prosecutors are not entitled to be members of political

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33 Constitution, Art. 117, and JSA chapters 7, 8 and 9.
34 Under Art. 118 JSA and Art. 127 of the Constitution.
35 JSA, Art. 114.
36 Especially Artt. 1(2), 10, 11(1), 13, 14.

parties or to carry out political activities. They may not be members of parliament or ministers[37].

I.3 Relationship with the judicial power

Public prosecutors can perform their duties without unjustified interference from judges. They have the same status as judges and shall be equal to judges. In carrying out their activities, prosecutors are independent of the court[38].
Public prosecutors do not have judicial competence, their role is laid down in articles 118 and 119 of the JSA. Article 116 of the JSA states that all acts and measures of the prosecutor may be appealed before the immediate superior prosecutor's office, unless they are subject to judicial review.

I.4 Relationship with the police

Preliminary proceedings are instituted by the prosecutor. In Bulgaria there is no criminal police conform the EU standard. The Public Prosecutor is assisted by two organs: the Investigation Service and the Dosnateli. Dosnateli are the members of the police who are designated for investigation tasks and custom officers who are designated to investigate[39]. The Investigation Service is competent to handle preliminary proceedings for crimes that will be dealt with in first instance by the district court[40] and cases determined by the law – art 171 of PPC. The Investigation Service is a member of the Judicial Branch. They are all lawyers with the same education as judges and prosecutors, and are subordinated to the SJC and not to the MoJ. Moreover, they enjoy the same immunity as judges and public prosecutors.

The Investigation Service is under control of the Prosecution Service. They are obliged to follow the instructions of the Public Prosecution[41] and a Prosecutor can decide to take over the investigation of a case himself. However if the prosecution asks the investigation to do something and the investigation refuses there is no remedy for the Prosecutor. There are 28 independent Investigation Agencies in the country. There is a Special Investigation Service in Sofia that is occupied with some specific severe crimes. There is no central co-ordinating body, this makes it hard to deal with organised crime or economic crime.
If for a crime preliminary proceedings are not mandatory, the Dosnatel shall investigate the case.

About 11.000 of the members of the Police have the status of Dosnatel. They deal with small and medium types of criminal cases. In the severe crimes, the Police does have an

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37 JSA, Art. 132.
38 JSA, Art. 117.
39 Quarterly Report of the Twinning Program with Germany.
40 Penal Procedure Code, Art. 172a.
41 The Quarterly Report of the Twinning Program with Germany states that the Investigators are "weisungsgebunden".

investigating role. If a severe crime is committed, the police is usually the first on the scene, so they start investigations. In most cases this concerns the taking down of circumstances regarding the crime. However, there are indications that the quality of police investigation is low and that evidence obtained by the police is mostly not usable[42]. Within the framework of his competence, the prosecutor may give compulsory instructions to the police[43]. However, the co-operation between the Police and the Public Prosecutor is not very good. The law enforcement bodies seem to consider each other as rivals[44]. The Police does not inform the Prosecutor about the criminal offences they encounter, they decide which information they keep for themselves and which information they pass on. The consequence of this bad cooperation is that the police conducts their own investigation actions and therewith commits criminal procedural errors; this leads to evidence which can not be used in a criminal process and often leads to acquittal[45].

There is a special unit for combatting organised crime in Bulgaria. This unit deals with terrorism, trafficking of people, weapons, corruption, money laundering and money falsification. This body has to provide the public prosecutor with evidence to allow the public prosecutor to make an accusation against the offenders. The only problem is that in the Code of Criminal Procedure the Investigation Service has an investigation monopoly in severe crimes. The special Unit can take part in the first investigations for which also the police is competent, but information gathered at this moment is not usable as evidence. This problem could be solved if the Unit co-operated closely with the Investigation Service and the Public Prosecution Service, but this does not happen, they operate mostly without informing the Prosecution Service.

CHAPTER II

The Office of the Public Prosecutor

II.1 In criminal law

The tasks, responsibilities and competence of the public prosecutor in the criminal process are established by law. In Bulgaria the principle of legality is applicable. This is not applied very strictly, since in small cases, as defined in article 237 of the Penal Procedure Code, the prosecutor can decide whether to prosecute or not. All acts and

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42 Quarterly Report of the Twinning Program with Germany.
43 JSA, Art. 119(4).
44 Remark of the German PAA, during meeting with the Prosecution Service, during mission 08 04 2002 – 12 04 2002.
45 Information received during meeting with the Investigation Service and The General Prosecutor, during mission 08 04 2002 – 12 04 2002.

measures of the prosecutor may be appealed before the immediately superior prosecutor's office, unless the act is subject to judicial review by a court[46].

II.2 In administrative and civil law

The tasks and competence of the public prosecutor in civil procedures are established by law in the articles 27-30 of the Code of Civil Procedure. In article 118.4 of the JSA there are limitations on the responsibilities and tasks of the public prosecutor in administrative and civil procedures. Also on these acts there is judicial control, because all acts and measures of the prosecutor may be appealed before the immediate superior prosecutor's office, unless subject to judicial review by a court[47].

II.3 Secondary tasks and supervisory functions

The prosecution Service supervises the carrying out of punitive measures and other measures of compulsion and takes action to rescind illegal acts and to restore rights arbitrarily violated[48].
Also on these actions of the public prosecutor, there is judicial control because all acts and measures of the prosecutor may be appealed before the immediately superior prosecutor's office, unless subject to judicial review by a court[49].

II.4 International tasks

Bulgaria has ratified the European conventions on mutual assistance, but there are problems caused by delays and the lack of reasons given for refusals of assistance. Translation is a cause of delay. International judicial co-operation is performed by a special unit at the Chief Prosecutor's office. There are, however, no liaisons with prosecutors in foreign states. The external perception is that, while there are no particular problems with requests for assistance, they take longer in Bulgaria than in other Central/Eastern European countries.

Requests for extradition pass to the Chief Prosecutor where a person is suspected of having committed a crime. Where the enforcement of a sentence is involved, the case goes to the Minister of Justice. Again translation causes delay. Bulgaria is considering removing the "political offence" exception for extradition. There is no fast-track procedure where the suspect agrees to be extradited. However, there are plans to introduce this possibility. At the moment there is a working group in the MoJ that prepares and develops a national law on extradition. A quick procedure for extradition is supposed to be in force by the end of 2002. The new law should be ready in the middle of 2003.

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46 JSA, Art. 116.
47 JSA, Art. 116.
48 JSA, Art. 118.
49 JSA, Art. 116.

Bulgaria participated in the OCTOPUS II programme. In the OCTOPUS II programme one of the themes is international Co-operation. To improve international co-operation the co-operation between and exchange of information among agencies within Bulgaria will be improved as precondition for improved international co-operation[50].
Theme 3 of the OCTOPUS II programme is Interagency co-operation and specialised units. Interim inter-agency operational teams are set up on the initiative of and under the leadership of the National Service for Fighting Organised Crime for the complex detection of highly organised and many sided criminal activities[51]. Theme 7 of the OCTOPUS II programme is International Co-operation. Bulgaria has 37 bilateral agreements on judicial co-operation. It is also signing multilateral agreements with its neighbours on combating transnational, organised crime.
Six Bulgarian prosecutors are members of the International Association of Prosecutors (IAP).

There are public prosecutors who specialise in the field of international co-operation.

II.5 Ethical Code

An Ethical code/statute for prosecutors has not been adopted yet. Some matters are covered in Articles 6,7,8 of the Judicial System Act. The Bulgarian prosecutors recently asked the Central and East European Law Initiative (CEELI) to provide a seminar on the IAP Standards of Professional Responsibility and Statement of the Essential Duties and Rights of Prosecutors. This is an element of the Strategy for reform of the Bulgarian Judiciary.

Prosecutors are obliged to respect and to strive to defend human rights and freedoms, which is their duty as entities of the judiciary. Prosecutors are obliged to be impartial when they collect information as public prosecutors, as well as when they collect proof for the defence, to clarify the aggravating, as well as the extenuating of the guilt circumstances. A typical example in this regard is given in article 291 of the Penal Procedure Code, which considers the prosecutor's power to state before the court that the penal procedure must be terminated, or a not guilty verdict must be ruled[52].

When the pre-court investigation shows that a charge is ill based, the prosecutor as a head of the pre-court investigation not only may, but also is obliged to terminate the proceedings[53].
With the changes and amendment to the Penal Procedure Code from 1999, large court controls have been introduced over the operation and measures for bail, arrest, and home arrest, as well as other measures of procedure enforcement (removal from position, back-up measures, placement for treatment in a psychiatric institution)[54].

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50 OCTOPUS II report, p.25.
51 OCTOPUS II report, p. 10 and 11.
52 This is information was given as comment on the inception report.
53 PPC, Art. 237.
54 This is information was given as comment on the inception report.

In view of assuring the protection of witnesses in the pre-court investigation the prosecutors are competent to take protective measures by (article 97a PPC), keeping secret the identity of witnesses and assuring protection of witnesses, their relatives or spouse[55].

Concerning the affected persons/victims in the pre-court investigation, the prosecutor is obliged, in compliance with article 14 PPC, to clarify their rights to them and to assure the possibility for their effective exercise. Explicitly, article 156 (1) of the Penal Procedure Code obliges the prosecutor to clarify to the affected person/victim, that he/she has the right, by a civil claim to claim damages, resulting from the crime[56].

The prosecutor's rulings to refuse to constitute penal proceedings and to terminate these proceedings are mandatory for the victims, who have the right to appeal with a claim before a prosecutor of a higher rank, or in court[57]. The prosecutors may question the impartiality of the judges, as well as challenge the members of the court by reason of their impartiality, or interest[58].

CHAPTER III

The Legal Status of the Public Prosecutor

III.1 Working conditions

For prosecutors, the same provisions are valid as for judges. So, prosecutors, like judges are elected, promoted, demoted, reassigned and dismissed by the SJC[59] and they are like judges irremovable after 3 years. The SJC also sets the remuneration for prosecutors[60].

III.2 Independence and impartiality within the organisation of the public prosecution service, centralised and decentralised

There does not appear to be a mechanism to ensure the independence and the impartiality within the organisation of the public prosecution service. The Prosecutor General is head of the service. He is supported by regional and functional deputies and their offices are organised to mirror the court structure. The Bulgarian prosecution Service is single a centralised body[61]. Each prosecutor is subjected to his or her superiors

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55 This is information was given as comment on the inception report.
56 This is information was given as comment on the inception report.
57 PPC, Art.194, and Art.237.
58 PPC, Art.25.
59 Constitution Art. 129.
60 JSA, Art. 27.
61 Roumen Georgiev, Prosecution's problems are systematic, not only personnel-related, Capital Newspaper, April 6-12, 2002.

and they are all subjected to the chief prosecutor[62]. The prosecutor who is superior in office may take actions included in the competencies of the prosecutors subordinated to him, and stay and rescind their injunctions in writing in the cases provided by law. The orders in writing of the prosecutor, who is superior in office, shall be binding on the prosecutors subordinated to him.
Regarding promotion, there is no system for dissemination of information on vacancies within the prosecutor's offices. People can however ask for information at the office of the chief prosecutor. With the amendments of the Judicial System Act, the obligation for dissemination of information through State Gazette art.127a is provided for. In general, people do not easily move from one office to the other[63].
Prosecutors may be commissioned to another office for not more than three months in one year[64].

III.3 Promotion or downgrading of prosecutors

This is organised in the same way as for judges in the articles 129-146 of the Judicial System Act.

III.4 Possibility of dismissal

As has been said before, public prosecutors can only be fired by the SJC. The grounds for dismissal are set out in article 131 JSA.

III.5 Possibility of exercising fundamental freedoms and rights

Public Prosecutors are not allowed to join political parties. They are allowed to join or form local, national or international organisations.

III.6 Safety

To ensure the personal safety or the safety of prosecutors' families if these are threatened, prosecutors enjoy immunity from arrest and detention.

III.7 Disciplinary proceedings

The Judicial System Act governs disciplinary proceedings against prosecutors in articles 168-186. To ensure the fair and proper evaluation of disciplinary cases, accusations must be made in writing[65] and there is an opportunity to respond[66]. The decisions in

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62 JSA, Art. 112.
63 Information received during meeting with the Prosecution Service in Plovdiv, during mission 8 04 2002 – 12 04 2002.
64 JSA, Art. 130.
65 JSA, Art. 173.
66 JSA, Art. 176.

disciplinary cases are subject to judicial review[67]. Removal from one part of the service to another, with or without consent, is not among the sanctions that can be imposed as a disciplinary penalty[68].

CHAPTER IV

Recruitment and Education

IV.1 Selection of public prosecutors

The selection of public prosecutors is equal to the selection of judges[69].

IV.2 Training

The initial training for prosecutors is the same as for judges. Bulgarian citizens who have completed a university degree program in law and have passed a state examination shall acquire the right to practise law after completing a year of apprentice ship program as a judicial candidate in a court or prosecution office and after the practical state exam.
There is a training center for prosecutors in Batak in the Rodophes[70].
The MTC also gives further training for prosecutors, although not as many as for judges.

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67 JSA, Artt. 179-182.
68 JSA, Art. 169.
69 JSA, Art. 163 and further.
70 Quarterly Report of the Twinning Program with Germany.

MODULE 3

COURT PROCEDURES AND EXECUTION OF JUDGEMENTS

CHAPTER I

Access to Courts

I.1 Efficiency of the court system and regional accessibility

Efficiency of the court system lacks because of deficiencies on the personal side (judges and staff) and incompetent court administration. The geographical location of courts seems to be no problem for access to justice, since by law a regional court must be established in any community or region with more than 10 000 inhabitants. The number of district courts corresponds to the number of administrative regions. Attached to the district courts is the company register. The district court in Sofia has the following additional functions: registration of all political parties in Bulgaria, accreditation of foreign judgements to be executed in Bulgaria, appeal against arbitration decisions, issuing of execution orders for arbitration decisions. The (non-military) courts of appeal are located in Sofia, Plovdiv, Burgas, Veliko Tornovo and Varna. The Supreme courts are located in Sofia.

I.2 Provision of free legal aid

In theory there is no obstacle to access to courts with regard to court-fees. In civil cases, where a monetary amount is specified, the court fee is 4% of the amount in dispute and must be paid up front. In all cases, court fees are set by the Law on Local Taxes and Fees under which a common tariff is published intermittently. Tariffs are approved by a decree of the Council of Ministers. It has been a stated priority of the Government, to lower the fees to make courts accessible to the public.
Free legal aid is supposed to be given by the courts. Although in the Constitution it is stated that everybody shall have the right to legal counsel at all stages of the trial, in practise there does not seem to be very much free legal aid.

In civil cases, individuals appear to be using the court system with or without legal representation. It has been estimated, that only in 20 - 50% of the civil cases before the court, the parties were represented by lawyers. At the district level, this percentage was stated to be closer to 90%. In civil cases the socially disadvantaged plaintiffs could be tax

exempted.[71] The Civil Procedure Code does provide, that the successful party in any case can be awarded an amount for costs incurred and nothing prohibits lawyers from accepting cases on a contingency basis. This happens in practice.
Regarding criminal procedures, free legal aid and interpretation are provided for by articles 70 and 11 §2 of the Criminal Procedure Code. In practice, it hardly exists because of the scarcity of financial means. The quality of the lawyers and their enthusiasm for the cases they have been assigned to, is occasionally called into question by the defendants. Cases have occurred, where free interpretation was not available during pre-trial investigation

The Bulgarian Bar, regulated by the Law on the Bar Association, consists of 6000 lawyers, 3000 of them in Sofia. In parallel to the reform of the judicial system, the Bar has also been substantially reformed. The restriction on the number of practising barristers was removed, and free access was introduced to the Bar for all persons having a law degree.

The Penal Procedural Code provides for the cases when legal aid is obligatory.[72] If this is the case, the court sends a request to the chamber of lawyers belonging to that court and the chamber appoints a lawyer for the person. The barristers are paid by court. The court however only has a very limited budget for this. There is a problem if a person needs urgent legal aid. In practice, it is now the case that a lawyer or Investigator call somebody they know, if a lawyer is needed urgently because they will not get one so quickly. The new law provides for lawyers who are 24 hours available[73].

Aim 10 of the program for the implementation of the Strategy for reform of the Bulgarian judiciary is equal access to justice. Short term priorities are: drafting legal amendments aiming at the improvement of free legal aid in civil and criminal cases. A medium term priority is to create a national legal aid office.

I.3 Interference with access to court on the ground of state security consideration

Article 120 sub 2 of the Bulgarian Constitution provides, that citizens and judicial persons shall be free to contest any administrative act, which affects them, except those listed expressly by the laws. Criteria, as to which administration acts should be excluded from judicial review are laid down in several decisions of the Constitutional Court[74].

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71 Comment on the adjusted desk research by the Bulgarian Ministry of Justice, July 2002.
72 Comment on the adjusted desk research by the Bulgarian Ministry of Justice, July 2002.
73 Information received during meeting with the Bulgarian Bar Association, during mission 8 04 2002 – 12 04 2002.
74 Remark of Alexander Arabadjiev, local expert and MP in Bulgaria.

I.4. Possibilities to victims to bring civil and criminal charges against those alleged to have harmed them

Ill treatment and torture by police during police custody is reported. There were also reports, that people, who complained about torture and ill treatment by law enforcement officials, were subjected to intimidation or further ill treatment. Roma were frequently the target of such reported abuses and often felt unable, to pursue complaints, fearing retribution from law enforcement officials.

The UN Committee against Torture, who evaluated the situation in Bulgaria in 1999, found that the Bulgarian law lacked a definition of torture. However, the law ensures protection against torture under chapter "Crimes against individuals" in the Penal Code.[75] It also expressed concern about continuing reports of ill-treatment by public officials, particularly the police, and about deficiencies in the system of investigation of alleged cases of torture and the failure to bring those allegations before a judge or another appropriate judicial authority.
The act amending the Ministry of the Interior Act creates new institutes, that align domestic legislation to the acquis and that emphasise basic principles adopted with UN Resolution No 43/173 for protection of all individuals subject to any form of detention or imprisonment and in view of the application of compulsory police measures – "use of physical force and means of support" and "use of arms". Concerns about the abuse of power by law enforcement bodies, especially the police, remain.

CHAPTER II

Fair Trial and Due Process in Civil and in Criminal Matters

II.1. Compliance with art. 6 §1 ECHR

The existing legal structures comply with article 6 EHCR in theory, but in practice this is not always the case. Court hearings are generally open to the public. Criminal procedures urgently need to speed up.
Under article 5 § 4 of the Bulgarian Constitution all international human rights instruments have been ratified by Bulgaria. They form part of the internal Bulgarian legislation and take precedence over conflicting national laws. Bulgaria is making efforts, to align its legislation with the EU-acquis.
The principle, that court hearings should generally be open to the public is enshrined in article 101 JSA. Although new criminal codes and laws are being drafted, out-dated ones still exist. Proceedings and pre-trial investigations can be very lengthy. The pre-trial period can be as long as three years, even after investigations have long been completed. Moreover it can take up to four years for a case to go to trial. There is no awareness of

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[75] Comment on the adjusted desk research by the Bulgarian Ministry of Justice, July 2002.

the possibility offered by the Convention on Human Rights, to refuse a case because it is outdated: judges see it as their duty to handle all the cases, also very old ones.

II.2 Specific rules of procedure in civil matters

With the 1998 amendments to the Code of Civil Procedure the adversarial principle in civil procedure was reinforced and a stronger emphasis was put on the role of the courts as an impartial arbiter. The very core of second-instance proceedings was modified from mere review and reversal of 1st instance judgements to 2nd instance proceedings with examination on the merits. This now provides the parties to all civil disputes with better opportunities to invoke any necessary evidence. All courts of second instance would now decide each case on the merits, rather than remit it for re-examination by the first instance. This means that cases can be finalised more quickly.

In July 1999 the National Assembly adopted the last amendments of the Civil procedure Code aiming at speeding-up and improving the court proceedings by introduction of procedure institutions. Speedy proceedings as well as a series of changes in the first instance proceedings, in the cassation appellation, in some special claim proceedings, e.g. proceedings on financial deficits were the result. With these amendments of the Civil Procedure Code the quick legal procedure was implemented which aligned the legislation to the European Human Rights Convention.
The main problems in Bulgaria concern the sheer number of civil cases on return of property and commercial and banking law, long delays for dealing with cases and long duration of cases.
Furthermore a citizen cannot go to a civil court whilst criminal proceedings are taking place, which in practice can take extremely long. But there is a possibility of submitting civil claims during criminal proceedings.[76]

II.3 Compliance with article 6 § 2 and 3 ECHR in criminal matters; principles of decision making

The legal system in criminal matters complies with article 6 paragraph 2 and 3 of the ECHR. In practice this is not always the case.
Ordinance 2 of the Ministry of Justice regulates that the situation of the defendant is in conformity with the right to defend himself through legal assistance, the presumption of innocence, and the aims of article 147 of the Code of Criminal Procedure.
Article 51 Penal Procedure Code regulates, that the accused has the right to learn of what he is being accused of and on the basis of what evidence, that he has the right, to give explanations connected with the accusation, to familiarise himself with the case file and make necessary excerpts, to produce proofs, to take part in the penal proceedings, to make requests, notes and objections and he is entitled to be given the last plea.

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[76] Comment on the adjusted desk research by the Bulgarian Ministry of Justice, July 2002.

II.4 Compliance with article 5 ECHR in case of pre-trial detention

On 28 October 1998, in the case of "Assenov and others v. Bulgaria", the European Court of Human Rights delivered a judgement in which it found inter alia that the applicants rights to a "trial within reasonable time"[77] had been violated. The pre-trial detention of the applicant had lasted approximately two years. This judgement of the court – although it dealt with an individual case – highlighted a specific weakness of the Bulgarian criminal system.

The EU regular report 2001 on Bulgaria's progress towards accession reports regarding pre-trial detention, that there has been some improvement. There has been a trend towards shorter preliminary proceedings, which means few defendants are detained for more than 6 months. 14 out of the total of 29 pre-trial detention centres housed underground have been closed[78].
However, it appears that there is only judicial control at the start of the detention, but there is no periodical judicial control on pre trial detention.

II.5 Compliance with article 12 § 1 (ex article 6) EC Treaty (non-discrimination)

The capacity of the Bulgarian administration and judicial system to ensure application of the acquis is still limited. Efforts are focused on preparation and adoption of legislation with less attention on how this will be implemented and enforced. This means, that in areas, where an adequate legal framework has been adopted, implementation and enforcement of laws remain poor because of weak administration and judicial capacity and lack of preparation for implementation.

CHAPTER III

System and Procedures for Administrative Justice

Bulgaria has started administrative reform with the aim to establish a functioning and effective state administration with a culture open to citizens (more transparency and better access), the necessary administrative capacity and compliance with EU Member States administrations. The directorate "State Administration" within the Council of Ministers was established as well as a State Administrative Commission, which will observe the adherence to the status of the civil servants and the procedure of obtaining it. One of the Phare programmes that will take place in 2002 aims to reinforce the administrative justice system.

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[77] ECHR, Art. 5, paragraph 3.
[78] EU regular Report 2001.

As part of the administrative reform, the establishment of an independent ombudsman (the People Defender for the Republic of Bulgaria) is foreseen. Its aim is to provide effective assistance to citizens in cases of maladministration and to exercise a civil control upon the administrative activity and quality of the services and the demeanour of servants. The institution does not yet exist, but pilot projects are being run by a number of NGO's to examine the possibility of introducing the institution.
In the EU regular report 2001 on Bulgaria's progress towards accession it is indicated that in December 2000 the Prime Minister approved a Code of Ethics for Civil Servants in his capacity as Minister of State Administration. This offers guidance on ethical conduct in relations with the public on duty and in public and private life.

III.1 Court procedures

The principle of comprehensive judicial control over acts of administration exists, but there is no coherent administrative procedural framework. On the level of the county courts there is no specialisation for administrative justice. On the level of the district courts administrative divisions could be created.[79]
The Constitution of 1991 contains a general clause allowing appeal against any administrative acts and a legal basis for the establishment of the Supreme Administrative Court[80]. This court exercises supreme judicial supervision as to precise and equal application of the law in administrative justice. The court rules on all challenges to the legality of acts of the Council of Ministers and the individual ministers and of the other acts, established by the law. The principal of overall judicial control over the acts of administration was established also in the new procedural laws – Law on the Judiciary, Law on the Supreme Administrative Court and with the last amendments to the Law on Administrative Procedures.

The rules on administrative procedure are laid down in several legislative instruments, like the Administrative Procedure Act, Supreme Administrative Court Act and some provisions in the Law on Tax Procedure. These instruments also contain some references to the Code of Civil Procedure. The above listed pieces of legislation were adopted at different times, in a different social and economic environment and there is no synchrony among them, at times even serious contradictions are encountered.
There is a compelling need to adopt a Code of Administrative Procedure, which should lay down a coherent set of rules and systematise the different types of procedure. In particular, legal guarantees must be introduced to ensure the compliance of the administrative authorities with court decisions.
The number of administrative procedures is growing. There are 50 judges working at the court, but the workload is high. They hope the installation of the National Ombudsman will reduce their workload by solving conflicts before they end up in court. There are provisional remedies, injunction procedures, in the Administrative Procedure Act[81].

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79 Comment on the adjusted desk research by the Bulgarian Ministry of Justice, July 2002.
80 Constitution, Artt. 91 - 100.
81 Information gathered during meeting 10 04 2002 with Mr. Vladislav Slavov, chairman of the Supreme Administrative Court and president of the Union of Bulgarian Jurists.

CHAPTER IV

Execution of Judgements

IV.1 The compliance with rules covering all execution procedures

In general non-executed judgements are rare, although the penalty for non-compliance is not high. Even though the Supreme Administrative Court repealed several acts of the Council of Ministers their rulings were complied with[82].
There is at least one case, in which supreme government authorities have refused to effectively carry out a judgement of the Supreme Administrative Court. The execution of the judgement was immediately followed by a contradictory act that annulled the effects of the execution.

IV.2 Execution in civil and commercial matters

The execution of court decisions in civil cases in Bulgaria is codified in the Code of Civil Procedure. Execution judges or bailiffs are responsible for the execution of judicial decisions. They are civil servants appointed by the Minister of Justice on proposal of the presidents of the respective district courts. They may be promoted – in case of exemplary performance – in rank and salary up to judge in district court[83]. Each regional court has its own bailiffs office.

Execution judges have the right to order that a debtor's home be opened and property searched. There is no special court ruling over the execution of court decisions. The first instance courts issue a writ of execution upon a written request of the claimant. A decision of a Bulgarian judge becomes enforceable at the moment when there is no further right to appeal. On the contrary, the court can rule on a preliminary execution of a decision, for instance in cases of alimony, deduction for remuneration, or a delay in the execution if, as a result of the execution, the respondent may suffer irreparable damages or such damages that can not be fiscally adjusted[84].
Once a party has obtained an order for judgement before the courts, an application to the office of the execution judge is made. He then serves a summons for voluntary execution giving the losing party seven days to pay the judgement order. At this time bank accounts of the debtor are frozen, a notice is placed at the entry office for land and the tax administration office is contacted for information of the location of real property.
An execution judge interviewed, put the average time to execute a judgement, which is not appealed, at six months. The true average execution time was estimated to be much

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[82] Information gathered during meeting 10 04 2002 with Mr. Vladislav Slavov, chairman of the Supreme Administrative Court and president of the Union of Bulgarian Jurists.
[83] JSA, Art. 156.
[84] Summarised analysis of the state of the judicial execution under the effective legislation, document received during mission 8 04 2002 - 12 04 2002.

longer, as an order by the execution judge can be appealed before the originating court and the appeals process through the courts can then be exhausted. If an execution order is not appealed within the appropriate time period, the execution judge can proceed to sell the assets of the debtor by auction.

IV.3 Execution in criminal matters

The public prosecutor protects the legitimacy of the imprisonment and a special prosecutor looks after this protection. Bulgaria is about to adopt a new Penalty Execution Act, which should be compliant with the European Prison Rules and the UN Minimum Prison Standards. The amendments of the Penal Code introducing the new "penalty probation" are being developed.[85] There are 12 prisons, 2 correctional houses for young offenders and 23 residences, attached to the prisons. Transitional centres for good-conduct-prisoners are being prepared. Different regimes exist, depending on the circumstances, the prisoner and the type of crime committed. The court decides on the necessary regime when sentencing. General prison conditions are outdated. Prison guards are mostly civilians. Detainees have the right to bring problems to the attention of the authorities. Lack of funding, poor infrastructure and sanitary conditions as well as overcrowding are only some of the problems. Currently, the only help comes from NGOs. The rights to representation and prompt challenge of the lawfulness of detention are regulated by the Law on Execution of Sanctions /or Penalty Execution Act, art. 37.[86] However, they are violated routinely.

In view of the binding provisions of the UN Convention for the Protection of Children Rights (1989), a draft Children Protection Act has been adopted recently. Furthermore the Ministry of Justice has elaborated a draft Act on the Prevention of Offences by Infants and Minors, which has received principal approval by the Council of Ministers. Its adoption should abolish the currently operational Act against the Antisocial Behaviour of Infants and Minors and create alternative measures for social and disciplinary impact without resorting to the initialisation of court proceedings.

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[85] Comment on the adjusted desk research by the Bulgarian Ministry of Justice, July 2002.
[86] Idem.

The Czech Republic

This report is based on information gathered up to February 8th, 2002

Table of Contents

MODULE I

AN INDEPENDENT JUDICIARY

CHAPTER I

Overview of the Judicial System [1]

I.1 General

At present, there are four levels within the Czech judiciary: District Courts, Regional Courts, Superior or High Courts and the Supreme Court. These four levels should be maintained in the future.[2] Alongside the system of ordinary courts, there is the Constitutional Court, which may be addressed directly in some cases. Current proposals for Judiciary Reform provide for the establishment of a Supreme Administrative Court, which should assume its functions in 2003.[3] Currently, there are 2.585 judges in the Czech Republic, on a planned total of 2.893.[4] The budget of the judiciary system (without the prison service) for 2001 was 7,7 billion Czech crowns.[5]

I.2 Court system

District Courts

The District Courts issue judgements as first instance courts unless the first instance competence pertains by law to higher degree courts. As a rule, decisions are taken by a single judge. In certain criminal cases, in labour law cases and in certain other cases, decisions are taken by a panel of one professional judge and two lay judges. There are 75 district courts, the City Court of Brno and the 10 Prague District Courts.

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1 See "Judicial Organisation in Europe", Council of Europe Publishing 2000, pp. 83-88 and the Preliminary country report on the Czech Republic by the Council of the European Union of 21 December 1999 (9765/6/99 REV 6), p. 28.

2 Comments on Desk Research, p. 1. See also: Study B, Phare project CZ 9801-03-01-02-01, p. 63.

3 Background Information of the Ministry of Justice for the EC 2001 Regular Report, p. 2.

4 Background Information of the Ministry of Justice, p. 8.

5 Background Information of the Ministry of Justice, p. 6. The budget for 2000 was 7,5 billion crowns, and for 1999 6,5 billion crowns.

Regional Courts

Regional Courts act as second instance courts in cases that have been decided in the first instance by district courts. In some civil matters they act as first instance courts (for example: industrial property rights, social insurance claims, etc.). With respect to criminal proceedings, regional courts act as first instance courts in cases of offenses for which the imprisonment sentence is five years or more. Regional courts represent the main degree of justice in commercial matters, in which they act as first instance courts. Regional courts take decisions in panels of judges. These panels are composed of one presiding judge and two professional judges (except if the Regional Court acts as first instance court in criminal matters, or when otherwise specified in Procedural Codes[6]). There are 7 Regional Courts. The regional court's competence in Prague is exercised by the City Court. Previously existing regional commercial courts have been abolished as of January 2001.[7] Cases for these courts have been transferred partly to corresponding regional courts and partly to district courts.[8]

High Courts

High courts act as second instance courts in case of appeals against the first instance decisions of the Regional Courts. The High Courts also review the legality of decisions of other bodies, if this is stipulated by the law. Decisions are taken in panels composed of one presiding judge and two professional judges. There are two High Courts, one in Prague and one in Olomouc.

Supreme Court

The Supreme Court supervises the legality of court decisions, mainly through the system of extraordinary remedies. These are the 'appeal for review' in civil cases and the 'appeal for review' and 'complaint for violation of the law' in criminal cases. The Supreme Court also monitors final judgements and ensures uniformity through its opinions. Such opinions are taken in plenary sessions or by the criminal, civil or commercial chambers of the Supreme Court. Decisions in specified cases are taken in panels composed of one presiding judge and two professional judges. All decisions are taken by panels composed of three professional judges. According to a recent Amendment to the (old) Act on Courts and Judges, the Supreme Court decides in a 'Grand Senate' of at least 9 judges from the same Collegium if a Supreme Court Senate has pronounced a legal opinion different from a previous legal opinion of the Supreme Court.[9]

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6 Comments on Desk Research, p. 1.
7 Comments on Desk Research, p. 1.
8 OSI 2001 report, p. 122.
9 Art. 27a Act on Courts and Judges, Act. 335/1991 Coll. as amended by Act. 30/2000 Sb.

Supreme Administrative Court

In 2000, the Minister of Justice presented three alternative systems of administrative justice to Parliament.[10] On the basis of one of these alternatives, a draft text of a new Act on the Administrative Judiciary was presented to parliament in October 2001. The chosen alternative incorporates administrative justice in the ordinary court system, but places a separate Supreme Administrative Court at its top. Currently, the tasks of this future court are being performed by the Constitutional Court.

Constitutional Court

The Constitutional Court is an autonomous body and thus does not form an instance of the system of ordinary courts of law. The Constitutional Court decides on the annulment of laws contrary to the Constitution or international human rights treaties, on the annulment of other legal regulations contrary to the Constitution, an Act of Parliament or international treaties or on other constitutional complaints. The Constitutional Court is composed of 15 judges who take decisions in plenary sessions or in three-member panels.

Specialisation takes place within the general court system, in the form of different chambers for civil law, criminal law and administrative law within the courts. For specific areas of law, such as bankruptcy law and industrial property law, separate specialised commercial law departments have been established in all regional courts.[11] Existing separate military and commercial courts have been abolished in 1992.

CHAPTER II

International Standards and Domestic Legislation

II.1 International standards

International human rights treaties which have been duly ratified and promulgated are directly applicable, according to article 10 of the Czech Constitution. These treaties take precedence over domestic statutes. Relevant international standards with regard to an independent judiciary are the following:

a) The European Convention of Human Rights has been ratified by the Czech Republic on 18 March 1992 (published in the Official Journal No. 209/1992).
b) International Covenant on Civil and Political Rights, including the first Optional Protocol (right of individual communication)

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[10] 'First theses for the Administrative Justice Concept and alternatives of its organisational structure', Chamber of Deputies, 2000.

[11] Background information of the Ministry of Justice, p. 5.

c) United Nations Principles on the Independence of the Judiciary, endorsed by the UN General Assembly in November 1985
d) Recommendation R (94) 12 of the Council of Europe Committee of Ministers on the independence, efficiency and role of judges
e) European Charter on the statute for judges, 8-10 July 1998, Strasbourg, France (not legally binding)
f) Conference "Rule of Law", 23-24 June 1997, Noordwijk, The Netherlands (not legally binding, but Czech participation)

II.2 Domestic legislation

The independence of the judicial system in the Czech Republic is expressed in several national legal acts. Relevant domestic legislation:

a) The Constitution of the Czech Republic of 16 December 1992, especially chapter 4 (articles 81-96)
b) Act on Courts and Judges, published on January 11th 2002, under number 6/2002 (enters into force on April 1st 2002)
c) Courts State Administration Act 436/1991, amended by 580/1991, 23/1993, 171/1993, 284/1993, 240/1995, 33/1996
d) Law 82/1998 on the Recoup of damage caused by an illegal act of state by a public servant
e) Act on Disciplinary Proceedings against Judges and Prosecutors, published on January 11th 2002 under number 7/2002 (enters into force on April 1st 2002)
f) Law 236/1995, as amended by 138/1996, on remuneration
g) Criminal Code, artt. 169a and 169b
h) Labour Code

II.3 The 'Judiciary Reform Concept'

The Czech legal system is currently subject to major changes, in the framework of the comprehensive *'Judiciary Reform Concept'*. On 14 April 1999, the Government took note of the Principles of Judicial Reform. Thereafter, on 7 July 1999 the Government took note of the Judicial Reform Concept.[12] Draft texts of the Concept were rejected by Parliament several times. The new proposals have been divided into three pillars; civil (procedural) law, criminal (procedural) law and the court system. Important legislative changes within the first and the second pillar have been adopted by Parliament in August 2001, including essential changes to the Criminal Proceedings Code.[13] These amendments will be elaborated in the second module of the present study.

Concerning the third pillar, the OSI 2001 report and information from the Ministry of Justice name the following legislative projects as parts of the Reform Concept:

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[12] Comments on Adjusted Desk Research, Ministry of Justice of the Czech Republic (27 May 2002), p. 1.

[13] Comments on Desk Research, p. 2; Background Information of the Ministry of Justice, p. 3; OSI 2001 Report, p. 120.

1. A government Proposal for a Law on Courts, Judges, Lay Judges, and State Administration of Courts (Chamber of Deputies, no. 878). This proposal has been embodied in the new Act on Courts and Judges which was adopted by Parliament on November 30th 2001. The Act has been published on January 11th 2002.[14]
2. A government Proposal for a Law on State Prosecution (Chamber of Deputies, no. 879), resulting in de adoption of the act on December 18th 2001.[15]
3. A government Proposal for a Law on Disciplinary Proceedings for Judges and State Prosecutors (Chamber of Deputies, no. 877). This proposal has been embodied in the new Act on Disciplinary Proceedings against Judges and Prosecutors, which was published on January 11th 2002, and which takes effect from April 1st 2002.[16]

CHAPTER III

The Status of Judges

III.1 General[17]

Article 74 of the Court and Judges Act provides that a judge is a public servant, whose legal position (as far as labour law orientated aspects are concerned) is determined by the ordinary Labour Law Code, unless the Court and Judges Act explicitly differs.[18] Furthermore, the Act prohibits members of the judiciary to go on strike.

III.2 Selection and appointment

Article 93 (2) Constitution states that 'Any citizen who has a character beyond reproach and a university legal education may be appointed a judge. Further qualifications and procedures shall be provided for by statute'.

In Article 34 of the 1991, Court and Judges Act several conditions are laid down. Candidates should
- have the Czech nationality
- be honest (which means that the candidate has never been condemned for a criminal act)
- have the age of 25 years minimum at the date of the nomination

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[14] Act No. 2002/6 Coll.
[15] Act No. 2002/14 Coll.
[16] Act No. 2002/7 Coll.
[17] Detailed provisions are laid down in the Court and Judges Act 1991 (335/1991, amended by 264/1992, 17/1993, 292/1993, 239/1995).
[18] Art. 88 § 4.

- have the moral qualities and the professional expertise that guarantees a good execution of judge's functions
- consent to being appointed a judge
- consent to being appointed judge in a corresponding court
- hold an academic diploma in law
- pass a special exam for the judiciary

It seems difficult to fill the numerous vacancies (currently 308 vacancies exist on a planned total of 2.893 judges) because qualified lawyers are attracted by better salaries in the commercial sector. 374 trainee judges are currently undergoing training, but some of these (the most recently appointed ones) will not be fully qualified for another three years.[19]

Justice trainees are appointed for a training period of three years. The same admission criteria apply for judge-trainees as for judges, except for the age requirement. The selection process consists of four rounds. The first two consist of a review of the application and a psychological examination. The third round consists of evaluating the capabilities of the applicant by a commission composed of representatives from the Ministry of Justice, the courts, the State Prosecution, the Czech Union of Judges and the Association of State Prosecutors. In the fourth round, candidates are offered positions based on planned vacancies. Candidates who received the highest number of points from the selection committee are selected first. The selected candidates are employed by the Ministry of Justice and assigned to a district court (of the candidates' choice) to complete an apprenticeship. After the apprenticeship follows the judicial examination.[20] A judicial trainee presents his request for judicial examination through the competent Regional Court at the end of his apprenticeship and the Ministry of Justice has to enable him to take the examination (Act No. 6/2002 Coll., Art. 115). An advisory board, the so called "jury", consisting of 3 to 5 judges nominated by the President of the Regional Court, controls and evaluates the training of justice trainees within the jurisdiction of the Regional Court. They make a final assessment, which is enclosed at the request of the justice trainee for judicial examination. (Instruction of Minister of Justice No. 314/1997-pers.)[21]

Upon completion of the training period, the trainee shall pass the judicial examination to be appointed as a judge.[22] The exam is passed before a committee composed of judges, prosecutors, academics and Ministry officials. Judges always form a majority in these committees. The exam consists of a written and an oral part. In the written exam, candidates have to write a civil and a criminal judgement.[23] The result of this exam and of the evaluation of the candidates' work during the apprenticeship, as evaluated by the

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19 Comments on the Desk Research, p. 3.
20 OSI 2001 Report, p. 135.
21 Comments on Adjusted Desk Research, Ministry of Justice of the Czech Republic (27 May 2002), p.1.
22 Act on Courts and Judges, art. 63.
23 Phare Expert Mission, February 2002, meeting with judges.

relevant court president, are the grounds for the decision whether or not to appoint the candidate as a judge. Judges are appointed by the President of the Republic for an unlimited term, on the proposal of the Minister of Justice.[24]

III.3 Training and re-training of judges

Training institute

The training of judges is the responsibility of the Ministry of Justice and is currently mainly provided by the Higher Institute of Training for Judges and State Prosecutors. According to the European Commission this training is still not systematic, and lacks long term concepts and planning. This area is considered by the Commission as a 'key area requiring improvement'.[25]

On April 1st 2002 the Judicial Academy will be established. It is expected that the Academy will be fully operational as of September 1st 2002.[26] The Director of the Academy is appointed by the Minister of Justice and the composition of the Board is subject to the Minister's approval. Board candidates are proposed by the Czech Union of Judges and the Union of Prosecutors. Teachers at the Academy will be appointed and removed by the minister, on the proposal of the director.[27] The Ministry has indicated that it is not hostile to the transfer of powers in this field to organs of judicial self-administration in the future.[28] Training will continue to be organised as well by individual courts, as is presently the case. However, funding for these separate training activities is subject to the approval of the Ministry.

Initial training of judges

The initial training period for a judge-trainee is 36 months. Of this time, 11 months are spent in the civil section and 9 months in the criminal section of a District Court. Shorter periods are spent in the other sections of the District Court, at a Regional Court and at prosecution offices.[29] During the training period at the courts, the trainee does not have the opportunity to gain practical experience in conducting trials.[30] The training period may be shortened if the trainee has relevant previous practical experience. The minimum training period is two years.[31] According to the new Act on Courts and Judges, trainees

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[24] Art. 93(1) of the Constitution of the Czech Republic.
[25] European Commission, 2000 Regular report, p. 20.
[26] Phare Expert Mission, February 2002, meeting with representatives of the Ministry of Justice.
[27] Art. 126 of the new Act on Courts and Judges.
[28] Phare Expert Mission, February 2002, meeting with representatives of the Ministry of Justice.
[29] Phare Expert Mission, February 2002, meetings with judges.
[30] Phare Expert Mission, February 2002, meetings with judges.
[31] Act on Courts and Judges, art. 61.

will no longer be employees of the Ministry but will be employed by the Regional Courts.[32] Trainees receive ca. 50% of a judge's salary.[33]

Continuous training of judges

The new Judicial Academy will develop and carry out programmes of continuous training for the judiciary. The new Councils for the evaluation of professional competence will take into account the judge's attendance of training activities organised by the Academy. Judges have indicated a concern that participation in other training events, such as those organised by the Supreme Court, will not be adequately weighed in the evaluations.[34]
However, the Act on Courts and Judges in Art. 136 sets criteria for the evaluation of professional competence and pursuant to paragraph 2 "reports on results of professional trainings drawn up by the Judicial Academy, eventually reports (certificates) on other professional trainings" are taken into account. Art. 129(3) provides, that training organised by the Supreme Court has the same effect as the one conducted by the Judicial Academy. Therefore the value of both above-mentioned forms of professional training is the same and will be weighed adequately and equally in the evaluations.[35]

Training of judges in international and EU law is mandatory, but currently provided for exclusively through bilateral or multilateral projects (such as through the French *Ecole Nationale de la Magistrature*). Only a small percentage of all Czech judges (approximately 4%) have participated in such projects. However, these judges are trainers who perform further training for their colleagues at their courts.[36] The new Judicial Academy will pay special attention to international and EU law. At this moment, the Czech Union of Judges is also active in this field by way of co-organising specialised seminars on European law.

III.4 Promotion

The OSI 2001 report states: 'No official criteria have been set out for the promotion of judges to courts of higher level, which is properly understood as a form of transfer. Transfer to a higher court depends solely on the decision of the Minister of Justice and the consent of the judge. This situation has been criticised in the Commissions' Regular Reports ever since 1997 as an undesirable political influence on the judiciary. On the other hand, the customary practice has developed that the recommendation of the president of the court where the judge is serving as well as the consent of the president of

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[32] Comments on the Desk Research, p. 5.
[33] Phare Expert Mission, February 2002, meetings with judges.
[34] Phare Expert Mission, February 2002, meetings with judges.
[35] Comments on Adjusted Desk Research, Ministry of Justice of the Czech Republi (27 May 2002), p.1.
[36] Comments on Adjusted Desk Research, Ministry of Justice of the Czech Republic (27 May 2002), p.2.

the court where the judge shall be promoted is solicited.'[37] The new Act on Courts and Judges formally obliges the Minister to consult the respective court presidents in matters of transfer.[38] Although it is the Minister of Justice who takes a final decision, he has to consider previous evaluation on the judge's professional competence (criteria provided by Art. 71(4) of Act on Court and Judges) and opinions of Judicial Councils (Art. 50(1)(b), 51(1)(b), 52(1)(b), 53(1)(b) of Act on Court and Judges).[39]
Some Regional Court presidents ask judges from the appeal panels to monitor the work of some judges to see whether they are eligible for promotion. The judges concerned are informed about this monitoring process.[40]

The Minister appoints the presidents and vice-presidents of the High Courts, the Regional Courts and the District Courts from amongst the judges appointed to the courts in the Czech Republic.[41] Presidents of the High Court panels (senates) are appointed by the president of the relevant court from amongst the judges of that court. Presidents of the Regional Court panels and District Court panels are appointed by the president of the relevant Regional Court from amongst the judges at those Courts.[42] A judge may be released from the functions of court president or vice-president by the authority that appointed him. No guidelines or criteria for this decision are mentioned in the law, apart from art. 106 (2), stating "if [a judge] does not fulfil his [/her] duties in a regular manner".[43] If a court president or a vice-president properly fulfils his duties given by the Act on Courts and Judges or other rules of law, he cannot be released from the function at anyone's discretion.[44] Presidents of panels may only be released by a final decision of the disciplinary court.

The new Judicial Councils will advise on the promotion of judges to the positions of president or vice-president and the promotion of judges to a court of a higher level. The new law also stipulates that presidents of the High Court panels and the Regional Court panels will give their advice concerning the judges to be assigned to or transferred to the High- or Regional Court.[45]

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37 OSI 2001 Report, p. 140.
38 Chapter III, Division 3 of the new Act on Courts and Judges. ('Assignment of Judges').
39 Comments on Adjusted Desk Research, Ministry of Justice of the Czech Republic (27 May 2002), p.2.
40 Phare Expert Mission, February 2002, meeting with court presidents.
41 Chapter IV, Division I of the new Act on Courts and Judges. ('Appointment').
42 Chapter IV, Division I of the new Act on Courts and Judges ('Appointment').
43 Chapter IV, Division 2 of the new Act on Courts and Judges ('Function disposal').
44 Comments on Adjusted Desk Research, Ministry of Justice of the Czech Republic (27 May 2002), p.2.
45 Chapter II, Division 2 of the new Act on Courts and Judges ('Competence of Judicial Councils').

III.5 Professional security

Irremovability

Article 82 (2) Constitution: "Judges may not be removed or transferred to another court against their will; exceptions resulting especially from disciplinary responsibility shall be laid down in a statute".

Transfer

With his consent, a judge may temporarily be assigned to another court, in the interest of the 'orderly performance of the judiciary', for a maximum period of 3 years, or to the Ministry of Justice for a maximum period of 1 year.[46] At the Ministry, judges usually work as 'consultants', and in that capacity, they are assigned any task regularly executed by the Ministry. Presently, several active judges are assigned to the Ministry and two actually serve as Deputy Ministers of Justice. These judges maintain their judicial status and salary.[47] A judge may also be assigned to the Judicial Academy, for educational purposes.

Without his consent, the Minister of Justice may temporarily transfer a judge to a court in a neighbouring district for a maximum period of one year. This is only possible with the consent of the presidents of both courts.[48] The Minister should take into account the personal and family situation of the judge concerned.

When a law changes the court system and if, in that case, the proper functioning of the system cannot be assured otherwise, a judge may be transferred to another court without his consent. This transfer is only possible to a court of the same or one level lower or higher, within the jurisdiction where the judge was originally assigned. The transfer should be carried out no later than six months after the law changing the judicial system has come into effect. A judge cannot be transferred repeatedly for the same reason.[49] The judge may appeal against the Minister's decision to the Supreme Court. The Minister has announced the abolition of the provision concerning transfer without consent, by the end of 2009.[50]

Whenever the transfer of a judge is made without his consent (such a measure is exceptional), it has no effect on his remunerations – the salary cannot be lower than it was before the transfer.[51]

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46 Chapter III, division 3 of the new Act on Courts and Judges ('Assignment of Judges').
47 Phare Expert Mission, February 2002, meeting with Ministry officials. See also: OSI 2001 Report, p. 125.
48 Chapter II, Division 3 of the new Act on Courts and Judges. ('Assignment of Judges').
49 Chapter II, Division 3 of the new Act on Courts and Judges. ('Assignment of Judges').
50 OSI 2001 Report, p. 137.
51 Comments on Adjusted Desk Research, Ministry of Justice of the Czech Republic (27 May 2002), p.2.

A judge temporarily transferred to another court, to the Ministry or to the Academy has the right to adequate accommodation in the new location and compensation for travel costs.[52] The new Act states that the relevant Judicial Council should be consulted on matters of transfer of judges.

Removal

Chapter III, Division I of the new Act on Courts and Judges gives the possible reasons for the termination of functions of a judge. A judge may be removed from office:
- at the mandatory retirement age of 70;
- upon a decision finding the incapability to perform the functions of a judge, due to a long-term adverse health condition;
- upon a decision sentencing the judge for an intentional offense, or to unconditional imprisonment for a negligence offense;
- upon a decision of the Minister, following a legitimate decision finding the judge's professional incompetence;
- upon a decision finding the judge guilty of a serious disciplinary fault;
- upon the loss of the qualification to perform legal acts
- upon the loss of Czech citizenship;
- upon the death of the judge.

In fact, 12 judges are reported to have been dismissed by the Minister for Justice in 1998. And in March 1999, Minister of Justice Motejl announced the exchange of five Presidents of Regional Courts, because there was a need for a new generation to take over.

III.6 Remuneration and social welfare

Remuneration of judges is fixed by Law 236/1995, as amended by 138/1996. A disciplinary court can lower a judge's salary by up to 25% for a maximum of 6 months in case of a repeated disciplinary fault which occurs while the previous disciplinary fault has not yet been annulled, with a maximum of one year.[53]

Even though the average wage of a district-court judge is relatively high (about 1.350 EUR per month), it seems difficult to find qualified applicants, who are attracted by high free market wages. Trainees often resign straight after special training. The rights for holidays, pensions, social security, etc. are derived from those enjoyed by civil servants in general.

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[52] Chapter II, Division 3 of the new Act on Courts and Judges. ('Assignment of Judges').
[53] Art. 88 of the new Act on Courts and Judges.

III.7 Disciplinary proceedings

A new Act on Disciplinary Proceedings against Judges and Public Prosecutors was published on January 11th 2002 and will take effect on April 1st 2002.[54] The new Act introduces the following system.[55]

The competence for hearing disciplinary cases will be shifted to the two High Courts, abolishing the disciplinary panels at the Regional Courts. The Judicial Councils will have the final say in the appointment of the members of the Disciplinary Senates.

In so called 'petty offenses' (such as neglecting a red traffic light while driving), the judge concerned will have a choice of being tried before a disciplinary panel or like any other citizen before an ordinary judge in an 'administrative' procedure.

Disciplinary complaints may be filed by the organs of the State Administration of Courts, which means all court presidents and the Minister of Justice. The Disciplinary Senates are not obliged to act upon such a complaint. In case of a refusal to take up the case, the Minister or the court president may appeal to the Supreme Court.

The new Act on Courts and Judges defines a disciplinary fault as a conscious violation by the judge of his duties or conscious behaviour or conduct which violates the dignity of the judicial profession or threatens the confidence in the independent, unbiased and just rulings of the courts.[56]

The above mentioned acts may constitute a 'serious disciplinary fault' considering the seriousness of the violation of the professional obligation and other aggravating circumstances. A 'serious disciplinary fault' may form the basis for a decision to remove the judge from office. [57]

Article 88 of the new Act on Courts and Judges sets out the possible sanctions:
- a reprimand;
- a reduction in salary by up to 25% for a maximum of 6 months;
- removal from the position of presiding judge of a panel;
- removal from the position of judge.[58]

The judge's disciplinary responsibility ceases after one year as of the day on which his responsibility is engaged, or as of the day on which the condemnation is enforceable. The

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54 The old system was based on the Act 412/1991, as amended by the Act 22/1993.
55 This section is based on information from the Phare Expert Mission, February 2002, meeting with judges.
56 Art. 87 of the new Act on Courts and Judges.
57 Chapter III, Division 1 of the new Act on Courts and Judges. ('Termination of function of a judge').
58 These sanctions can also be inflicted upon the judge condemned for a criminal infringement.

disciplinary proceedings are open to the public. An appeal against the decision can be lodged with the disciplinary chamber of the Supreme Court.

The Act 82/1998 provides for the possibility for state authorities to recoup damages caused by an illegal act or incorrect procedure from a judge if his liability was found in a disciplinary proceedings.[59]

III.8 Evaluation of Professional Competence[60]

The new Act on Courts and Judges provides for a system of evaluation of 'professional competence' to be set up alongside the disciplinary channels.[61] There is to be a separate Council for each branch of law: Civil law, Criminal law and Administrative law. Each Council will consist of 9 members, all appointed for three years. All Councils will count a majority of judges among its members: 1 judge elected by the Judicial Council of the Supreme Court, 2 judges elected by the two Judicial Councils of the High Courts and 2 judges chosen by draw from judges proposed by the Judicial Councils of the Regional Courts. The composition of the rest of the Council varies per field of law. The other four members of the Criminal law Council are a state attorney (proposed by the supreme state attorney), a lawyer (proposed by the Czech Chamber of Lawyers) and two experts in criminal law (proposed by the Senates of the different Faculties of Law). The Civil law Council includes a lawyer (proposed by the Czech Chamber of Lawyers), a notary (proposed by the Chamber of Notaries) and two experts in civil law (proposed by the Law Faculties). The Administrative law Council includes a lawyer (proposed by the Chamber) and three experts in administrative law (proposed by the Law Faculties).
All judges are to be evaluated 36 months after their nomination and then every 60 months after their previous evaluation.

The evaluation procedure comprises different stages. In the first stage, the court president elaborates an 'evaluation of the decision-making and other activities of the judge'. Factors that are taken into account are 'the level of knowledge of laws and case law of superior courts' and 'the ability of the judge to apply his theoretical knowledge'. The report is based on other evaluations by the president, the opinion of the Judicial Council, reports about participation in training activities and a report on the 'decision-making activity', elaborated by the higher instance court. The outcome of the president's evaluation may be 'excellent', 'satisfactory' or 'unsatisfactory'.
The second stage of the evaluation procedure is initiated if the result of the president's evaluation is 'unsatisfactory'. In this case, the president orders an evaluation of the 'decision-making practice' of the judge by a panel composed of a presiding judge and two judges nominated by the court president. The decisions taken by the judge concerned in

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59 Comments on the Desk Research, p. 4.

60 This section is based in part on information from a report submitted by the Local Expert to the Phare Expert Mission of February 2002, Judge Duchon of the Supreme Court of the Czech Republic.

61 Articles 127 and onwards of the new Act on Courts and Judges.

the period previous to the evaluation are evaluated and a report is submitted to the court president, the Judicial Council and the judge concerned.

If the panel evaluates the judge's work as 'unsatisfactory', the court president files a petition with the relevant abovementioned Council for the Evaluation of Professional Competence (third stage). The president may do so as well in case the panel found the judge's work to be satisfactory but the president disagrees.
The court president, the individual judge and the Ministry of Justice participate in this third stage. The Council hearing is not open to the public. The judge has the right to representation and the right to have the final word. The session cannot be held without the judge, unless he refuses to appear or has no relevant excuse for his absence. The judge cannot be questioned about any other facts than those that were presented before the Council; the judge has the right to refuse to testify.[62]

In evaluating the professional competence of a judge, the Council examines his theoretical knowledge, knowledge of laws and other legislation, knowledge of jurisprudence in the Collections of Court Decisions, his ability to apply his expertise in his decision-making, his publications and other scientific and pedagogical activities and other relevant factors.[63] The Council bases itself on reports by the relevant Judicial Council, the relevant court president and results from the professional education provided by the Academy of Justice. If necessary, the Council or one of its members will conduct an investigation.

The Council decides in a closed session to which the parties (including representatives from the Ministry of Justice) may not be present. The decision declares the judge to be professionally competent or incompetent. All parties to the procedure before the Council have a right to appeal to the Supreme Court. The Supreme Court decides in a panel composed of a presiding judge and four other judges, all nominated by the president of the Supreme Court. The Court's decision is final. The judge looses his office from the day the decision declaring him incompetent attains legal effect.

CHAPTER IV

Specific Areas of Attention

IV.1 The creation of a true balance of power

Vis-à-vis the executive

The Minister of Justice can direct the management of the courts via the discretionary appointment and removal of court presidents of the courts, who have substantial

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[62] Art. 148-149 of the new Act on Courts and Judges.
[63] Art. 136 of the new Act on Courts and Judges.

influence over the working circumstances and career possibilities for individual judges.[64] The OSI Report notes with respect to the budgetary powers of the Ministry, that the Ministry is free to change the allocation of funds within the overall funding scheme adopted by Parliament, during the course of the budgetary year. This way, the division of resources to courts on the one side and the Ministry itself on the other side, can be altered without parliamentary control.[65]

Self-administration of courts

Self-administration of courts is politically the most sensitive issue of the whole Judiciary Reform Concept.[66] After rejection in Parliament of the initial proposals, the current draft amendments to the Act on Courts and Judges, only provide for a consultative role for the future Judicial Councils.[67] This way, 'self-administration' in a strict sense is not introduced.[68] The Ministry states that 'The Act will constitute an important step on the path towards setting up judges' self-government. It offers a possibility to judges to convince the Parliament and the public of the necessity and usefulness of judge's self-government, thus creating conditions for its possible extension in the future.'[69]

Judicial councils should be established at the Supreme Court, the High Courts, the Regional Courts and the larger District Courts.[70] The councils normally exist of 5 members, membership being incompatible with the position of president or vice-president of the court.[71] The president or vice-president of the court may, however, take part in the sessions of the council.[72] The tasks of the councils vary somewhat according to the court level they are attached to, but generally consist of the following:[73]

- recommending candidates for the position of president and vice-president of the relevant court
- taking opinions on judges to be assigned to or transferred to carry out their functions at the relevant court
- taking opinions on principal issues of state-administration of the relevant court
- discussing the draft work plan of the relevant court
- electing (in the case of the judicial council at the Supreme Court) or proposing (in the case of the other courts) members for the Council of Professional Competence
- recommending candidates for the senate which examines judges' decisions to the president of the court

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64 See JHA Expert Mission November 1997, p. 41.
65 OSI 2001 Report, p. 129.
66 Cf. OSI 2001 Report, p. 120.
67 Chapter II of the new Act on Courts and Judges. ('Judicial Councils').
68 The new Act on Courts and Judges does not cite the Judicial Councils as 'bodies of state administration of courts'. The Act only names the Ministry of Justice (art. 116) and the court presidents (art. 120).
69 Background Information of the Ministry of Justice, p. 3.
70 Chapter II of the new Act on Courts and Judges. ('Judicial Councils').
71 Ibid.
72 Ibid.
73 See Art. 50,51, 52, 53.

The new Act on Disciplinary Proceedings for Judges and Public Prosecutors assigns the Judicial Councils at the High Courts with the task of nominating representatives to disciplinary panels.[74]

In small District Courts, an assembly of all the judges will perform the tasks of the judicial council.[75] In this case, the president of the District Court chairs the sessions of the assembly. His double position could give rise to conflicts of interest. Concerning the task of taking opinions on candidates for the position of court president, possible conflicts have been avoided by not granting this competence to District Court assemblies. The assemblies at these small courts will discuss the 'work plan', which is the schedule for the day-to-day management of the court, while being chaired by the court president, who is responsible for the elaboration of the plan.

Execution of court judgements

Another relevant issue in the relationship of the judiciary with the executive is the execution of judicial decisions. Information is available concerning the execution of judgements of the Constitutional Court.[76] There are legal provisions (the Constitution and the Act on the Constitutional Court) that deal with the enforceability of judgements, but there is no legal mechanism for the actual execution of Constitutional Court judgements. According to the report by Judge Güttler there has not yet been any state authority that has refused to respect a judgement annulling a statute or other legal regulation. However, the execution of judgements in which ordinary court decisions are annulled on the basis of a constitutional complaint by a natural or legal person is more problematic. First of all, because it is unclear whether these judgements are binding *erga omnes*. Secondly, because it is unclear whether the legal reasoning contained in the opinion is also binding. The effect of Constitutional Court decisions depends upon whether ordinary courts are willing to obey them voluntarily and this has not always been the case. The Ministry has stated that current case law stipulates that Constitutional Court decisions annulling ordinary court rulings on the basis of a constitutional complaint are binding *inter partes*. The Ministry has furthermore indicated that the obedience of Constitutional Court opinions by ordinary courts has radically improved in recent times.[77]

Information concerning execution of court judgements in general can be found in the third Module of this study.

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74 See further the section on Disciplinary Proceedings.
75 Chapter II of the new Act on Courts and Judges. ('Judicial Councils').
76 Seminar on "the efficiency of constitutional justice in a society in transition", Yerevan, Armenia, 6-7 October 2000. Report by Mr Vojen Güttler, judge of the Czech Constitutional Court.
77 Comments on the revised report (December 2001), Annex I.

Vis-à-vis the legislature

The continuous load of new legislation and amendments renders the creation of useful jurisprudence extremely difficult. Judges hardly have any experience in applying the new legislation and as a consequence, there is not a lot of jurisprudence yet that can be referred to. This increases the tendency not to look at jurisprudence but rather to uphold the letter of the law[78].

Vis-à-vis superior courts

The budgetary relations between the Regional Courts and the District Courts are very complex. According to the OSI Report 'the division of budgetary resources between individual courts is not transparent, and can act as an indirect threat to the judiciary's independence'.[79] The Ministry allocates funds to the Supreme Court, the High Courts, the Regional Courts and the corresponding State Prosecution Offices. The presidents of the Regional Courts and the state prosecutors at that level, determine the division of funds between the District Courts and prosecutors within their territory. Since the Ministry considers the whole the budget for a given region as one package, the Regional Court president has the freedom to balance inequalities in funding between the different District Courts.[80]

Division of competencies within the judiciary[81]

The president of a court elaborates a 'work plan' according to which the work is distributed among the judges in the court. Although this system is not unusual compared to other countries, it may pose problems in practice. Some judges indicated that the allocation of elaborate and complex case files might have a detrimental effect on whether a judge is able to reach a certain 'quotum'.[82] In the future, the Judicial Councils will be consulted about the work plan.[83]

IV.2 The independent functioning of the judiciary

Article 81 of the Constitution emphasises the principle of judicial independence. On the basis of articles 85 (2) and 93 (1) of the Constitution, a judge is under the obligation to take an oath of office to that effect. Article 54 of the Court and Judges Act 1991 further

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78 See the report by Hank Geerts, p. 20.

79 OSI 2001 Report, p. 129.

80 Phare Expert Mission, February 2002, meeting with court presidents.

81 See the Courts State Administration Act 436/1991, amended by 580/1991, 23/1993, 171/1993, 284/1993, 240/1995, 33/1996.

82 In 1997 the Ministry accused the judges of poor functioning and wanted to prescribe how many cases a month a judge should handle (this proposal was officially withdrawn according to the IHC Annual report 1998, but it seems that in practice Presidents of courts still use a "quotum" as guideline).

83 Chapter II, Division 2 of the new Act on Courts and Judges. ('Competence of the Judicial Councils').

states that judges should refrain from any actions that might affect the dignity and authority of the judiciary or damage the confidence in the independence, impartiality and equity of judicial decisions. That obligation is equally applicable to acts in their private life. Reference can also be made to article 73 of the Labour Law Code that lays down a prohibition of abusing information and a prohibition of taking gifts.

Incompatibilities

'The office of a judge is incompatible with that of the President of the Republic, a Member of Parliament, as well as with any other function in public administration; a statute shall specify which further activities are incompatible with the discharge of judicial duties'.[84]
It is forbidden for a judge:
- to fulfil other remunerative functions
- to exercise any other lucrative activity, except if the activity concerns the administration of his own possessions, scientific research, education, artistic activities, or publication, subject to the two following conditions: (a) these activities do not prejudice the dignity of the judicial function; (b) these activities do not put in danger the confidence in the independence and the impartiality of the judges
- to accept the function of member of a board of directors or any other institution of commercial activity control
- to fulfil any other function in public office.

A judge should not be subject to any authority

Article 82 (1) Constitution states that 'Judges shall be independent in the performance of their duties. Nobody may threaten their impartiality'.

As far as the relationship with the political arena is concerned, it is sometimes argued that there is a real temptation for the political majority to use its powers instrumentally in the administration of the judicial system. The risk is considered to be even more acute considering the relative novelty in Czech society of the principle of judicial independence and the present tension among the various groups, also with regard to possible cases of corruption in the political sphere.[85]

Support facilities, including staff

Easy (computer-) access to jurisprudence and legislation is not provided in all courts. The decisions of the Constitutional Court are regularly published, as well as a general collection of ordinary courts' judgements and opinions. The decisions of the Supreme Court are published on the internet.[86] Problems in this field are confirmed in the 2000 report of the European Commission on the Progress towards Accession: 'Many courts

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[84] Art. 82 paragraph 3 of the Constitution.
[85] JHA Expert Mission November 1997, p. 41.
[86] Comments on the revised report (December 2001), Annex I.

still suffer from a lack of modern equipment and information technology. […] Judges also continue to lack adequate administrative support staff'.[87] This is seen by the Commission as a 'key area requiring improvement'.

Several new developments are to be mentioned here. Firstly, through PHARE assistance and national funds, significant investments were made to enhance technical support to judges.[88] Secondly, the new Act on Courts and Judges contains new rules on the publication of court judgements.[89] Thirdly, a draft 'Act on Judges' Clerks and Assistants, Higher Court Officials and Court Bailiffs, on Public Prosecutors' Clerks and on the Scope of Activities of Judge Trainees' is aimed at increasing the number and quality of court staffing.

Independence vis-à-vis the parties

According to representatives of the Czech Bar Association, the independence of the judiciary is well ensured, both in law and in practice. A large part of the judiciary is relatively young, and especially these younger judges tend to take very good care of their professional integrity and their independence. This has been particularly obvious since the time judicial salaries were raised. The prevailing opinion among lawyers is that they do not dare to try to bribe or otherwise influence judges.[90]

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87 European Commission 2000 regular report, p. 21.
88 Background Information of the Ministry of Justice, p. 5.
89 Background Information of the Ministry of Justice, p. 5.
90 Phare Expert Mission, February 2002, meeting with the Czech Bar Association.

MODULE 2

STATUS AND ROLE OF THE PUBLIC PROSECUTOR

CHAPTER I

Overview of the Prosecution Service

The public prosecution service in the Czech Republic is based on article 80 of the Constitution and has the task to represent the state in criminal proceedings, to supervise preliminary investigations and to carry out specific interventions in the non-criminal sphere. The service has a territorial organisation in accordance with the system of courts. The competence of a prosecutor is tied to that of the court where he operates, unless otherwise stipulated in a special law. The Supreme State Prosecutor has his office in Brno, the High State Prosecutors in Prague and Olomouc and the Regional and District State Prosecutors in all towns where Regional and District Courts are established. Currently there are 936 prosecutors active in the Czech Republic, out of a planned total of 1054; 100 trainees presently participate in the three-year training programme.[91]

CHAPTER II

Legislation

In the course of 2001, a draft amendment to the Act on the Office of State Prosecution was introduced into Parliament, together with a draft new Act on Courts and Judges.[92] The amendment entered into force on January 1st 2002. In June 2001, important legislative changes to the position of the Public prosecutor closely related to those proposed in the amendment to the Act on Prosecution were adopted through amendments to the Code of Criminal Procedure and several other Acts.[93] These changes entered into force on January 1st 2002.

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91 Information from the Czech Ministry of Justice.

92 Amendment to Act No. 283/1993 Coll. on the Office of State Prosecution. The new Act on Courts and Judges is discussed in Module I of this study.

93 Act No. 265/2001 Coll.

The amendment to the Code of Criminal Procedure, the Act on the Police of the Czech Republic and several other acts, as adopted by Parliament in June 2001, will merge the police and 'investigators' into the new 'Service of the Criminal Police and Investigation' (SCPI) and strengthen the role of the prosecutor, especially in the course of the preparatory proceedings. More information on these changes can be found below in chapter five.

CHAPTER III

The Status of Public Prosecutors

III.1 Introduction

Contrary to the situation in many other countries, in the Czech Republic, the positions of judges and prosecutors are, as of yet, not truly comparable.[94] Several differences exist between the two, concerning for example salaries and professional obligations.[95] Six years ago, salaries of prosecutors were less than 50% of those of judges. Currently, salaries are at 90% of those of judges. A government proposal aims at equalising these salaries, but a similar proposal has already been rejected once by Parliament.[96] As will be seen below, current reform programs intend to enhance the powers and the role of public prosecutors in criminal proceedings. This increased role might provide an additional reason for salaries equal to those of judges.

III.2 Selection, appointment, promotion and training

Appointment and promotion of public prosecutors are carried out on the basis of suggestions of a superior prosecutor. The amendment to the Act on the Office of State Prosecution determines more clearly the general relationship between the Ministry and the prosecution offices in this respect.[97]

Criteria for appointment are: Czech citizenship, legal capacity, absence of a criminal record, a minimum age of 25 years, a University degree in law and consent to the assignment to a particular prosecution office. Trainees are selected on the basis of a psychological test and an interview before a commission composed of prosecutors and representatives from the Ministry of Justice. Those selected serve a training period of 3

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94 See on this point: PHARE program 'Strengthening the independence and functioning of the Czech Judiciary – support to the associations of state attorneys and judges', (PHARE CZ98/IB/JH03) Inception report July 2000, § 1.2.

95 Prosecutors are, for example, subject to special screening provisions concerning secret information. Phare Expert Mission, February 2002, meetings with prosecutors.

96 Phare Expert Mission, February 2002, meetings with prosecutors.

97 Comments on the Desk Research, p. 6.

years which is concluded by a fnal exam. Passing this exam is a criterion for appointment as a prosecutor.[98]

As far as promotion is concerned, a distinction should be made between ordinary prosecutors and the heads of prosecution offices. For prosecutors, the old law did not give any criteria for the promotion of prosecutors. The amendment to the Act on the Office of State Prosecution describes the circumstances in which a prosecutor may be promoted, and thus indirectly the criteria for promotion.[99] The system of Evaluation of Professional Competence, which the new Act on Courts and Judges introduces for judges, will apply also to prosecutors.[100]
Article 23 of the amendment formulates criteria for a regular assessment of the prosecutor's functioning, such as participation in educational activities at the Academy of Justice, professional experience and day-to-day performance. The fulfillment of these criteria will serve as a basis for decisions concerning promotion.[101]

III.3 Dismissal and transfer

Formerly, the Minister of Justice could recall a prosecutor at any given time, without stating any reasons. The amendment now stipulates that prosecutors may be recalled only in case of a 'serious breach of professional duties'.[102] Other grounds for the termination of the service-relationship are: abdication, surrender of citizenship, loss of legal capacity, death and having completed the calendar year of the 65th birthday.

This new provision does, however, not apply to the Supreme State Prosecutor. The Supreme Prosecutor is appointed and recalled by the Government at the proposal of the Minister of Justice. There are no guidelines for the appointment or recall of the Supreme Prosecutor. The Chamber of Deputies did not approve initial changes to this procedure.[103]

Concerning the temporary transfer of prosecutors, article 20 of the Act on the Office of State Prosecution stipulates that any state prosecutor may be temporarily seconded to another office (or to the Ministry) with his consent, to ensure the proper functioning of that office.

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98 Comments on the Desk Research, p. 9.
99 Phare Expert Mission, February 2002, meeting with representatives of the Supreme State Prosecutor's Office.
100 Phare Expert Mission, February 2002, meeting with representatives of the Supreme State Prosecutor's Office. See Module I for more information.
101 Comments on the Desk Research, p. 9.
102 Phare Expert Mission, February 2002, meeting with representatives of the Supreme State Prosecutor's Office.
103 Idem.

III.4 Hierarchy

The Supreme Prosecutor is only entitled to give general directions with the aim of unifying and orientating the activities of all state prosecution departments. These instructions are binding upon inferior prosecutors. New legislation introduces more detailed and stronger provisions concerning centralisation in the service as of March 1st 2002.[104] With regard to this new legislation, some prosecutors consider the hierarchical relations to be too strict at the moment, for example as far as the review of the decisions of lower prosecutors by the Supreme Prosecutor is concerned.[105]

As far as instructions in specific cases are concerned, hierarchical relations within the Prosecution Service exist only between consecutive levels of office and between heads of offices and their subordinate prosecutors. Inferior prosecutors may refuse to obey instructions 'that violate the law'. In that case, the superior prosecutor may take the case away from him and take action himself.[106] Article 3 of the amendment to the Act on the Office of State Prosecution stipulates that a superior prosecutor may only influence the treatment of particular cases under the responsibility of a lower prosecutor in the manner, and to the extent specified by the act.[107]

III.5 Ethical guidelines

Article 24 of the Act on the Office of State Prosecution includes a general description of the duties of prosecutors in this field, including the respect for human rights and the principle of objectivity.[108] The articles 2 and 24 of the Code of Criminal Procedure oblige prosecutors to use only means that are available under the law, in accordance with the law and in an effective and speedy manner. The Ministry has stated that the new amendment to the Act on the Office of State Prosecution will regulate this obligation in more detail.[109] A more detailed application of the principle of objectivity can be found in article 164 of the Code of Criminal Procedure, which stipulates that investigators, under supervision of a prosecutor, should seek evidence both to the advantage and to the disadvantage of the defendant.[110]

III.6 Fundamental rights for prosecutors

Article 44 of the Charter of Basic Rights and Freedoms, which forms part of the constitutional order of the Czech Republic, states that some rights of prosecutors to engage in business activities may be restricted. Article 24 paragraph 2 of the Act on the

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[104] Phare Expert Mission, February 2002, meeting with representatives of the Supreme State Prosecutor's Office.
[105] Phare Expert Mission, February 2002, meetings with prosecutors.
[106] Art. 12 of the amendment to the Act on the Office of State Prosecution.
[107] Comments on the Desk Research, p. 6.
[108] Comments on the Desk Research, p. 7.
[109] Comments on the Desk Research, p. 8.
[110] Comments on the Desk Research, p. 7.

Office of State Prosecution builds on this provision, stipulating the incompatibility of serving as a prosecutor with any profitable activity, with the exception of pedagogical and literary activities. In relation to the right to freedom of expression, article 25 of the Act on the Office of State Prosecution states that prosecutors have a duty of discretion which they should respect while exercising their freedom of speech.

Prosecutors are allowed to join political parties. However, the amendment makes it explicit that prosecutors may not let themselves be influenced by the interests of political parties when exercising their functions.[111]

Prosecutors are also allowed to establish and join professional organisations. In 1995, the Union of Public Prosecutors was created to promote the interests of prosecutors and the prosecution service in general. More than 50% of the prosecutors is currently a member of this Union.

III.7 Disciplinary liability and disciplinary procedures

Disciplinary proceedings are regulated by the new Act on Disciplinary Proceedings against Judges and State Prosecutors.[112] The procedure will be identical as for judges.

CHAPTER IV

Competencies of the Prosecution Service

IV.1 Competencies in criminal law

General

The legality principle governs the actions of the Czech prosecution service. The prosecution will only take a decision not to prosecute in certain cases defined by law.[113] In 1993 and 1995, amendments introduced a somewhat greater degree of flexibility by allowing a halt to prosecution subject to conditions being imposed on the defendant and by making possible settlement under judicial supervision.

The new amendment to the Code of Criminal Procedure gives more powers and responsibilities to the prosecutor in the field of supervision and control over the investigation of crimes. Prosecutors will have more powers to decide about the

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[111] Comments on the Desk Research, p. 9.
[112] See for more information on this act Module I of the present study.
[113] Art. 4 of the Act on the Office of State Prosecution.

termination of prosecution and on the classification of a given offense as a 'petty' offense, to be handled by administrative authorities.[114]

The new legislation also differentiates between less and more serious crimes. In the case of less serious crimes (which carry a maximum penalty of 3 years of imprisonment), when the defendant has been caught during or immediately after the crime, the pre-trial procedure may be shortened and the trial may be simplified. In these cases, the prosecutor does not file an ordinary indictment, but a so called 'proposal for a judicial decision'.[115]

Victims and witnessess

As far as respect for victims is concerned, article 163a of the Code of Criminal Procedure states that for certain offenses, prosecution may only be initiated with the consent of the victim. The articles 43 and onwards of this Code set out other rights for the damaged party in criminal proceedings, including a right to be informed about the trial and a right to claim damages. The articles 172 and 174 stipulate the right for interested parties to file a complaint against a decision to terminate prosecution.

A new Act on the Special Protection of Witnesses And Other Persons In Connection With Criminal Proceedings entered into force as of July 1st 2001.[116]

IV.2 Competencies in administrative and civil law

Article 80 of the Constitution provides that the Prosecution Service only fulfills non-criminal tasks if the statute so provides. The principle of opportunity applies to the prosecution's interventions in civil proceedings.[117] It is reported that, due to a lack of budgetary means, the prosecution service is, in practice, not very active in the non-criminal field.[118]

IV.3 International tasks

Prosecutors are allowed to contact their counterparts in foreign countries directly on the basis of international agreements or bilateral established practices. It appears that in the majority of cases, international contacts are being handled by the office of the Supreme State Prosecutor. A special department for 'international legal aid' is established at the Supreme Prosecutor's office. In the field of mutual assistance in criminal matters,

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[114] Phare Expert Mission, February 2002, meeting with representatives from the Ministry of Justice.
[115] Phare Expert Mission, February 2002, meeting with representatives from the Ministry of Justice.
[116] Act. No. 137/2001 Coll. Other relevant provisions are contained in the Artt. 97 and onwards of the CCP.
[117] Comments on the Desk Research, p. 7.
[118] Phare Expert Mission, February 2002, meetings with prosecutors.

competencies are divided between this unit and the International Department of the Ministry of Justice.[119] As a general remark, it should be stated that the topic of international co-operation in criminal matters forms the subject of the OCTOPUS-II joint programme of the European Commission and the Council of Europe.[120] Several training programmes have been conducted in this field, including workshops on organised crime, workshops on the fight against drugs, a workshop for selected prosecutors on serious economic crime and intensive language courses.[121]

CHAPTER V

The Prosecution Service and the other State Powers

V.1 Relationship with the Ministry of Justice

The following division of competencies and tasks exists between the Ministry and the Prosecution Service.

The Public prosecutor

- brings indictments in criminal proceedings;
- instructs the 'Service of the Criminal Police and Investigation' during pre-trial proceedings;
- is involved in civil proceedings in cases of legal capacity, validation of death and cases of registration in the Commercial register. The Supreme Prosecutor also handles actions for denial of paternity in specific cases;
- participates in preventive activities;
- supervises the observance of legal rules in places where custody, imprisonment or protective treatment are practised and in other places where according to a law, the personal freedom is limited.[122]

The Ministry of Justice

- develops a criminal law policy for the entire country;
- supervises the Supreme State Prosecution's Office;
- administrates the whole of the state prosecution (staffing, economic and financial requirements, advancement etc.).

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[119] Comments on the updated inception report, Annex I, p. 7.
[120] See for more information: Country Report on the Czech Republic, Octopus-II programme, Strasbourg, December 20th 2000, pp. 25-29.
[121] Background Information of the Ministry of Justice for the EC 2001 Regular Report, Annex 1, sub d.
[122] Comments on the Desk Research, p. 6.

Officially, the Ministry only has supervisory powers over the State Prosecutor and cannot give instructions of a general or specific nature to other prosecutors. However, because of the hierarchical organisation of the prosecution service, the opinions and decisions of the Ministry towards the State Prosecutor can influence the entire organisation.[123] According to the Ministry, the new draft Amendment to the Act on the Office of State Prosecution lays down more detailed rules for the supervision over state prosecutors and for the internal organisation of public prosecution.

It seems that, as is the case with judges, public prosecutors may be assigned temporarily to the Ministry of Justice as 'consultants'.[124]

V.2 Relationship with the legislative power

A public prosecutor may not be a member of parliament. His service is terminated upon taking the parliamentary pledge.[125]

V.3 Relationship with the Judicial power

In the Constitution of the Czech Republic, the judiciary has its own chapter, the fourth. The Public Prosecution Service finds its place in Chapter 3, as part of the executive power. Other provisions give more specific effect to the separation of these two powers. Art. 21, sub c of the Act on the Office of State Prosecution states the incompatibility of judicial functions and the position of public prosecutor. Art. 90 of the Constitution determines that only a court may decide on guilt and determine the punishment for a criminal offence. Also, the Code of Criminal Procedure mentions that court approval is always necessary in case of a settlement.

In criminal matters, the division of competencies between judges and prosecutors may be illustrated by the following legal provisions:
- judges may not take up a case, unless the prosecutor has made an indictment;
- judges are not involved in the decision whether or not to prosecute. There is, however a possibility to ask for judicial review of a decision not to prosecute;
- judges may not give instructions to the prosecutor in the course of the preliminary procedure, unless when a court sentence is given in which e.g. the case is returned to the prosecutor to find more relevant facts;
- judges are only actively involved in preparatory proceedings when it comes to infringements of basic rights and freedoms of citizens, such as custody, the opening of mail, the recording of telecommunications, etc.[126]

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[123] More information on the hierarchical structure of the Prosecution Offices can be found in chapter III.4.
[124] Comments on the Desk Research, p. 9.
[125] Art. 21 Act on the Office of State Prosecution, see also Comments on the Desk Research, p. 6.
[126] For more information on pre-trial custody, see Module 3of the present study.

V.4 Relationship with the police and the investigation service

As mentioned above, new legislation brings considerable change to the relationship between prosecutors and the police forces. The prosecutor has a supervisory role over the police, above all in the course of preparatory proceedings. This role is limited to particular cases in which the police, the investigator, or in the future the SCPI-agent, is in charge of these preliminary investigations. Prosecutors may give instructions saying how to proceed in specific cases. These instructions are of a binding nature. In case of different opinions about consistency with the law, an officer may refuse to obey the instructions from the prosecutor. A higher prosecutor will then arbitrate the case.

The police have the duty to inform the prosecutor of all serious crimes and the prosecutor must in principle prosecute these cases, due to the legality principle. The police are also obliged to provide the prosecutor with so-called 'conducting information', such as summaries of selected criminal offences.

In its report on the Czech Republic, the NGO 'Freedom House' criticises the above mentioned reforms with regard to co-ordination with other proposed amendments. Another issue regarding these reforms could be the fact that prosecutors, due to their increased competencies and tasks in investigative matters, will have a substantially higher workload than in the past. Also, some prosecutors are reportedly of the opinion that the reforms in fact re-introduce old, inefficient procedures.
The Ministry has not provided supplemental personnel or funds to match this increased workload.[127]

[127] Phare Expert Mission, February 2002, meetings with prosecutors.

MODULE 3

COURT PROCEDURES AND THE EXECUTION OF JUDGEMENTS

CHAPTER I

Legislation

Apart from the acts already mentioned in Modules I and II of this study, the following laws are relevant for the topic of court procedures and the execution of judgements.

Substantial amendments to the Code of Civil Procedure and the Commercial Code came into force on January 1st 2001.[128] The Code of Civil Procedure also governs commercial and industrial law procedures, as well as administrative procedures, for the time being. The amendments are intended to simplify and accelerate civil and commercial proceedings by modifying existing rules regarding interim measures (imposing a seven days deadline for courts to decide on such measures), the taking and the admissibility of evidence (imposing stricter deadlines for the presentation of evidence), rules governing appeals (the introduction of a system of limited appeals) and the Commercial Register. Also, new and more effective means for the enforcement of judgments were introduced, such as the forced sale of an enterprise and the execution on shares in a company.[129]

Draft amendments to both the Criminal Code and the Criminal Procedure Code, were initially rejected by the Parliament in 1999 as insufficiently prepared.[130] In the summer of 2001, major amendments to the Code of Criminal Procedure were adopted by Parliament.[131] (Act No. 265/2001 Coll.). The amended provisions entered into force on January 1st 2002. They are discussed in more detail in Module 2.

The amendments described above function as a prelude to complete recodification of the procedural codes (as well as the substantive codes). A draft new Code of Civil Procedure should be submitted by the government by June 2003, as well as a draft new Code of

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[128] Background Information of the Ministry of Justice, p. 1. Comments on the Desk Research, p. 12.
[129] Background Information of the Ministry of Justice,p. 1; Comments on the Desk Research, p. 12.
[130] 2000 Regular report from the Commission on the Czech Republic, p. 19-20.
[131] Act No. 265/2001 Coll.

Criminal Procedure. The Ministry expects these codes to enter into force by January 2005. The drafting process is conducted in close cooperation with foreign experts.[132]

A new Act on the Probation and Mediation Service entered into force on January 1st 2001.[133] This act provides for a new institution to be established, which should exercise surveillance over all offenders and care for their re-socialization. The institution should also exercise a role in the area of alternatives to criminal prosecution, mainly through the new procedure of settlement between offender and victim.[134]

Finally, on May 1st 2001, a new Act on Judicial Executors entered into force.[135] The system introduced by this act will be discussed in more detail in chapter four of this Module.

CHAPTER II

Access to Justice

II.1 Efficiency of the court system

Access to justice is constitutionally guaranteed in the articles 3, 4, and 90 and onwards of the Constitution. It is also mentioned in Chapter 5, article 36 and onwards of the Charter of Fundamental Rights and Basic Freedoms. In practice, access to justice may be difficult due to the length of judicial proceedings, the lack of qualification of law professionals, and restricted possibilities to obtain (free) legal aid. These issues are described below.

The average length of court cases in the Czech Republic has increased in recent years, as far as civil cases in the District Courts are concerned. The Ministry has provided the following statistical data on the average length of proceedings in District and Regional Courts.[136]

Average length of proceedings in number of days

Criminal cases	**1998**	**1999**	**2000**	**2001**
District Courts	292	263	251	265
Regional Courts	517	542	506	627

[132] Background Information of the Ministry of Justice, p. 4.
[133] Act. No. 257/2000 Coll.
[134] Comments on the Desk Research, p. 14.
[135] Act No. 120/2001 Coll.
[136] Comments on the Desk Research, p. 12 and Phare Expert Mission, February 2002.

Civil cases	1998	1999	2000	2001
District Courts	458	483	555	560
Regional Courts	333	305	308	296

About 25 to 50 % of the criminal law proceedings take more than two years. In civil law cases the proceeding can take more than three years (in 1999, 10% of civil cases took longer than three years. 3,25% of all civil cases took longer than five years).[137]

In 1999, the Supreme Court decided on 2,874 cases out of 3,002 cases filed, and at the end of 1999 it had a backlog of 2,048 undecided cases. In 1999, 18 disciplinary proceedings were initiated against judges in the case of delays, and 7 have been brought to court since 2000.

Information on vacancies in the judiciary and the prosecution service can be found in Modules 1 and 2. Judges and prosecutors continue to lack adequate administrative support staff, which contributes to the length and inefficiency of court proceedings. The budget for the judiciary has however been significantly increased in recent years and material conditions are also being improved through PHARE assistance.
Moreover, the draft Act on Judges' Clerks and Assistants, Higher Court Officials and Court Bailiffs, on Public Prosecutors' Clerks and on the Scope of Activities of Judge Trainees is being prepared and is planned to be introduced to the government for approval in the first half of 2002. This Act will provide new legal grounds for administrative agenda of courts reflecting new needs set in by judicial reform.[138]

II.2 Legal representation and legal aid

The Lawyer's profession

The lawyer's profession is regulated by the Act on Advocacy.[139] The profession is organised in the Czech Bar Association, membership of which is obligatory for advocates. The Association can issue directives, which are binding upon its members. One such directive is the Code of Ethics for Lawyers.[140]

Attorneys must have a university law degree. They must further have accomplished an apprenticeship of three years as 'concipient' in an attorney's office. The apprenticeship ends with a final law examination. Training and examination are organised and

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137 Report Geerts/Blankenburg, p. 20.
138 Comments on Adjusted Desk Research, Ministry of Justice of the Czech Republic (27 May 2002), p.3.
139 Act No. 85/1996 Coll.
140 Phare Expert Mission, February 2002, meeting with representatives from the Czech Bar Association.

supervised by the Czech Bar Association; the members of the examination commission are nominated by the Minister of Justice. Other examinations or qualifications may be recognised by the Bar.

In 1998 there were 6.542 advocates (1990: 762) and 1.548 (1990:117) candidates registered at the Chamber of Advocates.[141] The Chamber is also the disciplinary organ; in disciplinary cases the Ministry of Justice may act as disciplinary prosecutor. Against disciplinary penalties, remedies are admitted.

Free legal representation and free legal aid

In criminal law, until the end of 2001, a defendant had the right to a lawyer free of charge if he could not afford to pay and if legal defense was obligatory. The state would pay for the services of the lawyer at a rate of 90% of standard attorney fees. The court would decide whether the defendant would have to reimburse these fees. Since January 1st 2002, every defendant and every victim have the right to a lawyer free of charge, if awarded by a judge. Specific conditions are required, i.e. a defendant or a victim has to give his approval and, he must fulfil the condition of not having enough assets to cover expenditures of counselling.[142] For victims, one condition is that they file for damages. In their case, legal assistance may be provided also by others than attorneys.[143]

In civil law, indigent persons may file for a lawyer to be awarded to them. The judge's decision is subject to revision by the Court of Appeal. The judge takes into consideration the personal, financial, familial etc. conditions of a person.[144] Representation may also be provided by other persons than attorneys, except in so called 'obligatory defense' cases, where the judge appoints a lawyer. The lawyer's fees are paid by the state according to the normal rate.[145]

Until this moment, this regime has also been applied to administrative law cases, since these are governed by the Code of Civil Procedure. The new Administrative Judiciary Act will regulate this issue in the same way as the Civil Procedure Code.

In practice, courts are very reluctant to award free legal representation, often judging that defendants will be able to pay for themselves. The Code of Civil Procedure provides however in Art. 138 conditions on deliberation from court fees and if they are met, there

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[141] Geerts/Blankenburg, pp. 7-8; Information from the Czech Bar Association.
[142] Comments on Adjusted Desk Research, Ministry of Justice of the Czech Republic (27 May 2002), p.3.
[143] Phare Expert Mission, February 2002, meeting with representatives from the Czech Bar Association.
[144] Articles 30 and 138 of the Civil Procedure Code.
[145] Phare Expert Mission, February 2002, meeting with representatives from the Czech Bar Association.

is a possibility of awarding legal aid free of charge. Decisions on refusal are subject to revision by the Court of Appeal.[146]

The Czech Bar Association (CBA) has its own rules on legal aid. These rules stipulate that indigent individuals may ask the CBA for a pro bono lawyer to be appointed to them if they have approached two different lawyers and have been rejected by both. The average number of free legal aid cases provided by the Bar Association is 600 per year.[147] Lawyers from the Bar Association provide free basic legal advice once a week for half a day at the courts in Prague, Ostrava, Brno,Usti n.L., Ceske Budejovice and Plzen.

Among the NGO's, the Citizens Advice Bureaux offer free and impartial advice. The capacity however is limited. The Czech Helsinki Committee (CHC) has been providing free legal counseling to citizens since 1990 in the Center for Free Legal Assistance (CFLA). The CLFA provides social-legal counseling in issues of violations of human rights. The Center provides free legal assistance to individuals whose human rights have been violated, and who are unable to afford or retain the services of private attorneys. The CHC lawyers do not represent clients before the court.

Court fees

Art. 138 of the Civil Procedure Code sets the rules for awarding court fees. However, these rules are rather general and allow the judge a broad margin of appreciation.[148] According to the CBA there is a trend towards a general idea that 'legal persons cannot be poor'. Judges are reported to sometimes use the threat of not awarding court fees to induce settlement.[149]

II.3 Access to justice for victims

As mentioned in Module 2, Art. 43 and onward of the Code of Criminal Procedure state the rights of damaged persons in criminal proceedings. These rights include the possibility to claim damages. The recent amendments to the Code of Criminal Procedure have introduced the right for the injured party to object against the termination of criminal prosecution or against the referral of the case to a body for petty offenses.

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[146] Comments on Adjusted Desk Research, Ministry of Justice of the Czech Republic (27 May 2002), p.4.
[147] Comments on the Desk Research, p. 13.
[148] Phare Expert Mission, February 2002, information from the mission's local expert.
[149] Phare Expert Mission, February 2002, meeting with representatives of the Czech Bar Association.

CHAPTER III

Fair Trial and Due Process in Civil and Criminal Matters

III.1 The requirements of article 6 ECHR and the national constitutional order[150]

At the constitutional level, the right to a fair trial is regulated by the Charter of Fundamental Rights and Freedoms, by the Constitution, and, as implied by Article 10 of the Constitution, by international treaties on human rights and fundamental freedoms. The right to a fair trial forms part of the fundamental right to judicial and other legal protection specified in Chapter 5 of the Charter.[151] The basis for defining the scope and contents of those rights, which form part of the right to a fair trial in its entirety, should be found in the body of judicial findings of the European Court of Human Rights related to Article 6 of the Convention on the Protection of Human Rights and Fundamental Freedoms. Article 10 of the Constitution stipulates that ratified and promulgated international treaties on human rights and fundamental freedoms, which are of a binding nature upon the Czech Republic, are immediately binding and take precedence over national law. From this viewpoint, the Charter explicitly contains the following fundamental rights forming part of the right to a fair trial:

- parity between the parties to the proceedings (Article 37, paragraph 3);
- the open and verbal nature of the judicial proceedings (Article 38, paragraph 2);
- the right to submit evidence and to express opinions on all the evidence submitted (Article 38, paragraph 2);
- the right to have the case considered and resolved without undue delay (Article 38, paragraph 2);
- the right to the services of an interpreter (Article 37, paragraph 4);
- the right to legal assistance (Article 37, paragraph 2) and to defence in criminal proceedings (Article 40, paragraph 3);
- the right to refuse to make a statement in general (Article 37, paragraph 1) and in particular – the right to refuse to make a statement pertaining to the accused in the criminal proceedings (Article 40, paragraph 4).

Some of the components of the right to a fair trial are explicitly regulated by the Constitution. These are:

- parity between the parties to the proceedings (Article 96, paragraph 1), and
- the open and verbal nature of the judicial proceedings (Article 96, paragraph 2).

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[150] This section is partly quoted from: Report by the Justice of the Czech Constitutional Court; Pavel Holländer 'The Right to a fair Trial in the Czech Republic', Collection Science and technique of democracy, Nr. 28, CoE Publishing, July 2000, p. 24 and onwards.

[151] The Charter of Fundamental Rights forms part of the Constitutional Order of the Czech Republic pursuant to the Artt. 3 and 112 of the Constitution.

The explicit right to a fair trial is regulated neither in the Charter of Fundamental Rights and Freedoms nor in the Constitution, but its existence is regularly derived by the Constitutional Court from the right to judicial protection (Article 36, § 1 of the Charter of Fundamental Rights and Freedoms). In its own judicial findings, the Constitutional Court regularly applies such a right as an interpretation base for elementary law, in particular from the viewpoint of the meaning and purpose of a fair trial. In other words, the Constitutional Court applies the fundamental right to a fair trial as a principle. Public hearings in civil and public trials in criminal matters are guaranteed and are in practice managed by the courts. The judgements are publicly pronounced.

III.2 Specific rules of procedure in civil matters

As far as civil proceedings are concerned, particular measures, which are aimed at speeding up the proceedings and making it impossible for the proceedings to be protracted by the participants themselves, are in force from January 2001.[152]
Council of Europe documentation and the Ministry of Justice state that the following measures have been adopted:[153]

- A seven days deadline for courts to decide on interim measures.
- The possibility for the court to call on the accused party to express its position. If the accused party fails to provide adequate information in a timely manner, the court can deem the claim justified and grant judgement to the plaintiff.
- The possibility for the court to concentrate proceedings in a shorter timespan. After such an order, evidence may only be submitted within a certain time limit.
- The introduction of a system of incomplete appeals, which entertains a limitation of the possible grounds for appeal. Appeals may only be directed against issues raised in the first instance proceedings. The system is designed to stimulate parties to present all relevant issues as quickly as possible. The law contains exceptions for certain types of 'new evidence'. Also, in the case of substantial new evidence, a party may file for a 'renewal of the hearing'. In this case, the file will be sent back to the first instance court, which could have adverse effects on the duration of the proceedings.[154]
- The possibility for a court to decide on a monetary claim in the shortened proceedings of the so called 'order to pay'. This action is available regardless of the monetary sum involved.
- The obligation for the court to fix a new date for a new session when hearings are postponed.
- The possibility of 'summary motivation' for judgements against which appeal is not allowed, or when the parties have indicated not to wish to file an appeal.[155]

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[152] Amendment to the Code of Civil Procedure, (No. 30/3000 Coll.).
[153] Council of Europe, European Committee on Legal co-operation and Committee of Experts on the Efficiency of Justice, 'Recent or proposed legislative and other measures in states to increase the efficiency of Justice', CoE July 1999; Background information of the Ministry of Justice, p. 1-4.
[154] Phare Expert Mission, February 2002, meeting with representatives from the Ministry of Justice.
[155] Article 157 § 4 of the Code of Civil Procedure.

The new Act on Courts and Judges introduces the possibility of transferring a case to another judge if the judge to whom the case has initially been assigned, has been inactive for a period of three months. This transfer is made to a judge, who is designated in a court work scheme as a "deputy" judge for this purpose, so there is no discretion in that case.[156]
This new provision should help prevent excessive delays.[157]

III.3 Specific rules of procedure in criminal matters

The Ministry of Justice and Council of Europe publications name the following changes to the Code of Criminal Procedure with regard to procedural rules in criminal matters:[158]

- So called 'departures from official procedure' in which a judge can order a probationary halt to the criminal prosecution or allow 'judicial settlement'.
- Efficiency during the pre-trial procedure has been increased through the abolition of certain repetitions, mainly in the presentation of evidence. (see also Module 2) Also, this amendment allows differentiation between less and more serious crimes in the conduct of the pre-trial proceedings. For the least serious crimes (crimes that carry a maximum sentence of 3 years of imprisonment), the articles 179a and onwards of the Code of Criminal Procedure (CCP) state that in case the defendant has been caught during or immediately after the act, informal summary pre-trial proceedings may be held. (N.B. according to article 179b (4) this is also possible if 'during the verification of the criminal notification or another impulse to the criminal prosecution, facts were discovered otherwise justifying the initiation of a criminal prosecution and it can be expected that the suspect may be standing before a court within two weeks'). For the most serious crimes (crimes that carry 5 years of imprisonment or more and some enumerated other crimes) the articles 168 to 170 of the amended CCP regulate the more extensive pre-trial procedure. According to the Ministry, the criteria for establishing the necessary extent of the proceedings, are to examine 'whether the evidence has to be executed already at this stage, or whether it is sufficient to research it and leave the execution of evidence only for the court proceedings'.
- The prosecutor is given more influence, especially over the pre-trial proceedings. His autonomy in deciding whether prosecution should continue is increased (although the reigning legality principle is not abandoned).
- Deadlines for the completion of pre-trial proceedings are introduced. These deadlines also differentiate according to the seriousness of the offense.

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[156] Comments on Adjusted Desk Research, Ministry of Justice of the Czech Republic (27 May 2002), p.4.
[157] Phare Expert Mission, February 2002, meeting with judges.
[158] Comments on the Desk Research; Background Information for the EC 2001 Regular Report; Summary of the main changes to the Code of Criminal Procedure, and Council of Europe 'Recent or proposed legislative and other measures in states to increase the efficiency of justice'.

As has also been mentioned in Module 2, the amendments foresee a greater emphasis on the actual court proceedings than is currently the case. This may lead to a heavier workload for judges.

The new legislation reportedly also causes considerable extra work for prosecutors, partly because of an increase in administrative tasks. Prosecutors have so far not been compensated for these extra burdens in terms of staff, equipment or salary.[159]

III.4 Pre-trial detention

The Czech Republic has the highest quote of imprisoned persons both in pre-trial detention and detention in Europe. In 1999, more than 7,000 individuals were prosecuted while in custody. The number of arrests has slightly decreased in comparison with previous years. Financial compensations for illegal detentions after acquittal burden the state budget.
The recent amendment to the Code of Criminal Procedure set more strict criteria for imposing a pre-trial detention upon an accused person, thus reducing the overall number of persons in detention.[160]

Pre-trial detention is decided upon by a judge, on the proposal of a prosecutor. During the detention, the prosecutor may review the detention at any time and release the detainee. A judge reviews the grounds for detention at the request of the detainee. Such a request may be filed once every 4 weeks. The maximum total duration of detention is four years. Of this period, 1/3 may elapse before the beginning of the trial and 2/3 during trial.[161]

With the influx of foreigners, their share in criminal activities is also growing. There are approximately 1,000 foreigners serving sentences in the form of imprisonment. If a court orders a deportation of a foreigner who has committed a crime, then a tool known as the *deportation custody* is often used. This should serve for detaining the perpetrator for the purpose of his/her serving the sentence until implementation of the decision is ensured. The Legal Counselling Centre of the Czech Helsinki Committee has reported that it has been contacted by foreigners who have been in a deportation custody for more than a year.

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159 Phare Expert Mission, February 2002, meetings with prosecutors.
160 Comments on Adjusted Desk Research, Ministry of Justice of the Czech Republic (27 May 2002), p.4.
161 Phare Expert Mission, February 2002, meeting with representatives from the Ministry of Justice.

CHAPTER IV

Execution of Judgements

On May 1st 2001, a new Act on Judicial Executors[162] entered into force. This act allows execution activities to be performed not only by Court Bailiffs but also by private Judicial Executors. The act takes over the French system of the 'huissiers de justice'.[163]

The Judicial Executors are organised in the Chamber of Executors. This chamber now has 106 members who were appointed at the outcome of an open competition. The chamber is under supervision of the Ministry of Justice. Around 80% of the new Judicial Executors are former lawyers, judges, prosecutors and tax-officers. Hardly any Court Bailiffs transferred to the new private profession, mainly because very few of the Court Bailiffs have law degrees.[164]

Court Bailiffs are employees of a court.[165] Working conditions and salaries for Court Bailiffs are quite poor. Costs of execution amount to 2% of the sum involved.[166]
Rising of salaries of Court Bailiffs has been reached within the scope of new remuneration rules, which would come into effect on January 1st 2003.
The mentioned distinctions between Court Bailiffs and the private Judicial Executors arise from the basic principle of Civil Justice applied in work of Court Bailiffs – the principle of disposition: the Court (and consequently the Court Bailiff) cannot do anything beyond the proposal of a plaintiff. Therefore commissions of a plaintiff, what property should be taken in the execution, are binding for the Court.[167]

The private Judicial Executors have several procedural advantages at their disposition, which makes it possible for them to track down and secure indebted sums more quickly. In the case of Court Bailiffs, for example, the claimant has to track down the assets of the debtor himself and specify exactly to the Court Bailiff on which assets the execution should be effected. Judicial Executors can lay a claim on any asset of the debtor. Both the

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[162] Act No. 120/2001 Coll.
[163] Background Information of the Ministry of Justice for the EC 2001 Regular Report, p. 2; Comments on the Desk Research, p. 12. See Chapter 4 of this Module for more information.
[164] Phare Expert Mission, February 2002, meeting with representatives of the Chamber of Executors.
[165] The system of Court Bailiffs has been described and criticised by: Geerts/Blankenburg, pp. 20-21 and the Final Report of the 23rd Conference of European Ministers of Justice London (8-9 June 2000), Appendix VII, 141-142.
[166] Phare Expert Mission, February 2002, meeting with Court Bailiffs from Prague District Courts.
[167] Comments on Adjusted Desk Research, Ministry of Justice of the Czech Republic (27 May 2002), p.4.

Judicial Executors and the Court Bailiffs believe that these procedural advantages should be granted to Court Bailiffs as well.[168]

CHAPTER V

Constitutional and Administrative Justice

V.1 Constitutional justice

The Constitutional Court is the judicial body responsible for the protection of constitutionality of legislation. (Art. 83, of the Constitution). This court has specific jurisdiction on the basis of art. 87 of the Constitution:

(...)

b) to annul other legal enactments or individual provisions thereof if they are inconsistent with a constitutional act, a statute, or an international treaty under Article 10;

(...)

d) over constitutional complaints against final decisions or other actions by public authorities infringing constitutionally guaranteed fundamental rights and basic freedoms;

(...)

i) to decide on the measures necessary to implement a decision of an international tribunal which is binding on the Czech Republic, in the event that it cannot be otherwise implemented.

Organisation, proceedings and the Court's competencies are regulated in the Act on the Constitutional Court of June 16th 1993. All courts can refer questions on the constitutionality of statutes to the Constitutional Court. Any natural or legal person (including local government bodies) may submit a constitutional complaint, if they claim that a public authority has infringed their basic rights or their freedoms as guaranteed by a constitutional act or an international treaty. The Court is authorised to annul actions of the public authority as unconstitutional. Persons submitting such a complaint are also permitted to attach thereto a petition for the Court to annul provisions of a statute or regulation. The Court has no competence to decide on the constitutionality of an international treaty or to annul one.

V.2 Draft Act on Administrative Justice

In 2000, the government presented several options for the introduction of a comprehensive system of administrative justice, including several alternatives for a future court structure. In the course of 2001, a Draft Act on Administrative Justice was

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[168] Phare Expert Mission, February 2002.

introduced in Parliament. The Act will come into force by 1 January 2003. It seems that the chosen alternative is the one in which administrative divisions will be introduced at the lower courts. A separate Supreme Administrative Court, for which the Constitution already provides, will also be established. According to the government, the introduction of a comprehensive system of administrative justice (courts and procedural laws) should have the following benefits (amongst others):[169]

- unification of the administrative case law, now developed partly by the Supreme Court and partly by the Constitutional Court;
- development of a clear administrative procedural law, which should clarify for example the issue of permissibility of the consideration of evidence by administrative courts;
- protection against other administrative actions than decisions (including protection against inactivity);
- regulation of disputes over competencies between administrative bodies or bodies of local government.[170]

As mentioned before, a structure was chosen in which administrative chambers will be established at the regular courts and in which a Supreme Administrative Court will function at the top of the hierarchy. According to the government, the act will introduce full jurisdiction in conformity with the Strasbourg principles. There will be one factual instance and the possibility of cassation with the Supreme Administrative Court to ensure unified case law.

V.3 The Ombudsman

An act creating the office of the Public Protector of Rights (Ombudsman) came into force in February 2000.[171] Mr. Motejl was elected as Ombudsman and took office in December 2000. There are currently around 30 lawyers working in the office.

The establishment of the Office of the Ombudsman is intended to reinforce the protection of citizens against unlawful conduct of, and maladministration by public bodies and institutions. The Ombudsman will be responsible for scrutinising ministries, district and financial offices and other state administration bodies whilst investigating whether fundamental rights and freedoms have been violated. He will also be empowered to deal with complaints concerning the police, the army, prison services, public health insurance offices and medical facilities. However, the Ombudsman has no power to sanction the authorities, his powers being limited to notifying a superior organ, or the Government, and to making the case public.

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169 First theses for the administrative justice concept and alternatives of its organisational structure, p. 2.

170 It is unclear in how far the Constitutional Court presently addresses this issue.

171 This section is based in part on information gathered during the Phare Expert Mission, February 2002, meeting with the Ombudsman of the Czech Republic Mr. Motejl.

The act excludes 'actions of courts, the prosecution service and law enforcement bodies' from the competence of the Ombudsman. However, complaints concerning the inactivity of these organs are deemed admissible. The Ombudsman is also competent for complaints concerning the state-administration of courts. These complaints mainly concern delays in proceedings. In these cases, the Ombudsman will analyse the way the court has dealt with the complaint concerning the delay.[172]

[172] Phare Expert Mission, February 2002, meeting with the Ombudsman.

Estonia

This report is based on information gathered up to January 18th 2002

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MODULE I

AN INDEPENDENT JUDICIARY

CHAPTER I

Overview of the judicial system [1]

I.1 General

Trough judicial reform at the beginning of the 1990s, a three-instance court system was established in Estonia. Justice is administered by 15 County Courts, 3 City Courts and 4 Administrative Courts in the first instance. In the second instance, 3 District Courts serve as courts of appeal. The Supreme Court serves as a cassation-court in the highest instance.[2] In June 1992, as new Estonian Constitution was adopted by referendum.

Courts of the First instance

A reorganisation of the courts of the first instance was carried out in 2000.[3] County and City courts deal with all civil and criminal cases. The Administrative Courts' reform has been accomplished in 2000; Administrative courts hear cases which the court has been specifically empowered to deal with. If any case is linked with a civil law dispute, the case will be heard by a City or County Court.[4] Before January 1, 2000 there were only two administrative courts (in Tallinn and in Tartu), but 'since January 2000, the administrative judges from the former Pärnu City and County Courts are united into a new court: Pärnu Administrative Court. Starting from January 2001, the Jõhvi Administrative Court is operating. Since January 2001, the administrative judges of

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1 See "Judicial Organisation in Europe", Council of Europe Publishing 2000, pp. 83-88 and the Preliminary country report on the Czech Republic by the Council of the European Union of 21 December 1999 (9765/6/99 REV 6), p. 28.

2 Information brochure, 'Ministry of Justice', Tallinn 2001, p. 8; see also information brochure by the Ministry of Justice, *'The Judicial System of Estonia'*, Tallinn 2001, p. 6 and 15.

3 Information brochure by the Ministry of Justice, *'The Judicial System of Estonia', Ministry of Justice*, Tallinn 2001, p. 11.

4 Information brochure, 'Ministry of Justice', Tallinn 2001, p. 9.

county and city courts have been either transferred to the regional administrative courts or reappointed as judges of general jurisdiction.'[5]
The competences of Administrative Courts have changed as well in the year 2000. Since January 2000, when the Code of Administrative Court Procedure entered into force, the hearing of cases of violation of administrative law is transferred to the county and city courts of 1st instance. Administrative courts began to discuss administrative matters only;

art 3 (1) of the Code of Administrative Procedure states that the following fall within the competence of administrative courts:

1) adjudication of disputes in public law;
2) grant of permission to take administrative measures in the cases provided by law and
3) adjudication of other matters which are placed within the competence of administrative courts by law.

Furthermore, adjudication of disputes in public law for which a different procedure is prescribed by law does not fall within the competence of administrative courts (art. 3 (2) of the Code of Administrative Procedure). This enables judges to improve their specialisation.

The Supreme Court has the following competences in administrative matters (art. 49 Code of Administrative Court Procedure):

1) the hearing of appeals filed against decisions of circuit courts in cassation proceedings;
2) the hearing of petitions for review submitted against court decisions which have entered into force;
3) the correction of courts errors;
4) the determination pursuant to the procedure provided for in the Court Act of a court within the competence of which the adjudication of a matter falls.

Courts of Second Instance

The three District Courts (in Tallinn, Tartu and Viru) are the courts of the second instance. These courts of appeal are divided into two chambers: the Criminal Chamber and the Civil Chamber. The Tallinn court is the exception, having also an Administrative Chamber.[6]

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5 Information brochure by the ministry of Justice, *'The Judicial System of Estonia"* Tallinn 2001, p. 15.

6 Information brochure by the Ministry of Justice, *'The Judicial System in Estonia'*, Tallinn 2001, p. 17.

The Supreme Court

The Supreme Court is the court of cassation and it consists of a Civil-, Criminal and Administrative Chamber in which cases are examined by at least three justices.[7] Furthermore, there is the Supreme Court *en banc*; this constitutes the body of all members of the court and is competent to act when at least 11 of the 17 Members of the Supreme Court are present.
The granting of leave to appeal is decided by the Appeals Selection Committee, composed of three justices.[8] A leave is granted if at least one of three members of the Panel finds that the appeal contains sufficient reason for granting leave.[9]

Furthermore there is a Constitutional Review Chamber, which consists of 5 members of the Supreme Court. The Chief Justice of the Supreme Court is Chairman of both the Supreme Court and the Constitutional Review Chamber (see below on the Constitutional Review Chamber). The Constitutional Chamber has the power to nullify any law or other legislative act if it is in conflict with the letter or intent of the Estonian Constitution. Its members form a Chamber elected from the civil, criminal and administrative law chambers. It is the Supreme Court *en banc* that elects the 5 members of the Constitutional Review Chamber, on proposal of the Chief Justice, for a term of five years.
Constitutional issues can be raised by:

1) the President in case of disagreement with parliament in the course of legislation (art. 107 Constitution);
2) the Legal Chancellor in conflict with the legislation or with a local government body (art. 142 Constitution) and
3) any court, if it has in its in its decision declared a law or other legislation unconstitutional and has not applied it.

The most active originator is the Legal Chancellor.[10]

Arbitration

Also, immediately in 1991, an arbitration court of the Estonian Chamber of Commerce and Industry was instituted. As decisions of arbitration are final and not subject to appeal proceedings, it offers a popular way of settling commercial disputes. Estonian Law on

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7 Information brochure by the Ministry of Justice, *'The Judicial System in Estonia'*, Tallinn 2001, p. 19.
8 Information brochure by the Ministry of Justice, *'The Judicial System in Estonia'*, Tallinn 2001, p. 19.
9 Information brochure, 'Ministry of Justice', Tallinn 2001, p. 10-11.
10 NB. The new Courts' Act which was adopted on June 19, 2002, provides for the increase of the number of Supreme Court justices (currently 17, then 19) and for the creation of a permanent Constitutional Review Chamber by January 2003. The new act will enter into force on the 10th day after it has been published in the Official Journal (i.e. by the end of July). Comments to adjusted desk research from the Estonian Ministry of Justice, 22 July 2002.

Enforcement of the court decisions sets forth the enforcement of the arbitration court decisions be equal to the court decisions. [11]

CHAPTER II

The creation of a true balance of power

II.1 De jure and de facto division of competences between judiciary, executive and parliament

II.1.1 *Vis-à-vis the executive*

General

The Constitution provides for the separation and balance of powers among the Parliament, the State President, the Government and the courts in art. 4 (certain guarantees of judicial independence – such as e.g. life tenure and protections against removal from office – are also included in the Constitution). The Constitution states in article 146 that the courts shall be independent in their activities and shall administer justice in accordance with the Constitution and the laws. The Constitution provides furthermore that law shall provide guarantees for judges' independence.[12]

The institutional independence of the Judiciary in Estonia has been subject of debate for a time and it has become more actual with the drafting of a new Courts Act. The Draft Courts Act seems to reflect the attitude, that judges 'have only an individual, not a collective or institutional independence.' This act brings the introduction of a so-called "Advisory Committee on Judicial Administration"[13].
There is an on-going debate on the interpretation of "courts" between the Ministry and the Judiciary, as it seems that the Estonian executive interprets judicial independence of "courts" rather narrowly, having an individualised focus on independence. Judges, however, interpret "courts" as institutions being independent in all their activities, not only in delivering justice (institutional independence).

The proposed Advisory Committee on Judicial Administration

The Estonian Judiciary does not have a constitutional representative body of its own (with the exception of the Supreme Court, which represents itself).[14] The Ministry of

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[11] See e.g. Information brochure by the Ministry of Justice, *'The Judicial System of Estonia', Ministry of Justice*, Tallinn 2001, p. 11.
[12] Art. 147 Constitution of the Republic of Estonia.
[13] In Art. 45 draft translation of the draft Courts Act, dated January 13, 2002.
[14] OSI Report 2001, p. 161; referring to 1995 Government of the Republic Act, Art. 69.

Justice has agreed to create an Advisory Committee on Judicial Administration. This Committee shall comprise the Chief Justice of the Supreme Court, five judges elected by the Court *en banc* for three years, two members of the Parliament, a sworn advocate designated by the leadership of the Bar Association, the Chief Public Prosecutor or a public prosecutor designated by him or her, and the Legal Chancellor or a representative designated by him or her. The Minister of Justice or a representative designated by him or her shall take part in the advisory committee with the right to speak.[15]

This Committee only has consultative/advisory powers which do not need constitutional amendments. The Advisory committee shall grant its 'consent' to the following issues concerning judicial administration:

1) the determination of the territorial jurisdictions of the courts,
2) determination of the structure of the courts,
3) the transfer of a court to another settlement,
4) the number of judges of a court,
5) the appointment or premature release of the chief judge of a court,
6) the determination of the number of lay judges,
7) the establishment of the internal rules of a court,
8) the determination of the number of candidates for the judicial office.[16]

Furthermore the Advisory Committee shall 'form an opinion' on the persons standing as a candidate for a vacant office of a justice of the Supreme Court and on the principles of drawing up and amending the annual budgets of the courts.[17]
The Advisory[18] shall also 'discuss' the overview of judicial administration and the administration of justice before the Chief Justice of the Supreme Court and submits it to the Parliament. It also shall discuss other issues raised by the Chief Justice of the Supreme Court or the Minister of Justice.[19]

The Conference of Judges

Each court would have a general assembly of judges to endorse rules for case assignment and to fulfil some consultative functions.[20] A General Conference of Judges (composed of all judges) does already exist, but this body has no representational functions. The General Conference does have some indirect involvement in the selection of judges (see

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15 Art. 45 (1) draft translation of the draft Courts Act, dated January 13, 2002.
16 Art. 46 (1) draft translation of the draft Courts Act, dated January 13, 2002.
17 Art. 46 (2) draft translation of the draft Courts Act, dated January 13, 2002.
18 The adopted text, i.e. the final version of the Courts' Act, contains new ideas about the Courts Administration Council. Firstly, there is no "advisory" added to the name of the Council. Secondly, it is stated that the courts of the 1st and the 2nd instance are administered via the cooperation between the Courts Administration Council and the Ministry of Justice (Art. 39). Art. 39(3) states that the Minister of Justice does not have any disciplinary powers or right of command in respect of judges. Comments to adjusted desk research, received from Estonian Ministry of Justice, 22 July 2002.
19 Art. 46 (3) draft translation of the draft Courts Act, dated January 13, 2002.
20 OSI Report 2001, p. 165.

below).[21] Yet, the General Conference of Judges would, according to the Draft Courts Act, elect members of the Disciplinary Senate and the Judicial Examination Commission. These matters are reported to be currently in the purview of the general assembly of trial judges and the general assembly of appellate court judges.[22]

Administrative autonomy of the Judiciary

The draft Courts Act states that Judicial institutions of appeal shall be administered by the Ministry of Justice. The Ministry of Justice thus has a strong influence on the administration of the judiciary.
For all district and regional courts, the Ministry determines the seats of courts, their territorial jurisdiction[23] and the number of judges and supporting staff at each court, considering the opinions of the chief judge of the county or city court and the chief judge of the circuit court in whose territorial jurisdiction the court is located.[24] Also the organisation of work of county and city courts shall be prescribed in their internal rules, which are established by the Minister of Justice. The Minister of Justice may establish, for a specific county or city court, the internal rules which apply to the court only and separate internal rules for the land registry department, registration department and probation supervision department of the court.[25]

For Administrative courts, the Minister of Justice determines the territorial jurisdiction, as well as the number of judges in an administrative court (the latter after considering the opinions of the chief judge of the administrative court and the opinion of the chief judge of the circuit court in whose territorial jurisdiction the administrative court is located – both on the approval of the Courts Administration Council).[26] Also the internal rules which are to prescribe the organisation of work of administrative courts are being established by the Minister of Justice. [27]
For Courts of Appeal it is all the same: The Minister of Justice shall determine the structure and the composition of court officers of a circuit court after considering the

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[21] OSI Report 2001, p. 161.
[22] OPI Report 2001, p. 166.
[23] Art. 10 draft translation of the draft Courts Act, dated January 13, 2002
[24] Art. 11 (2) draft translation of the draft Courts Act, dated January 13, 2002.
[25] Art. 15 (2) draft translation of the draft Courts Act, dated January 13, 2002; According to comments from the Estonian Ministry of Justice (22 July 2002), the adopted text of the Courts Act states that the seats of courts, their jurisdiction and the number of judges will be determined by the Minister of Justice *on the approval of the Courts Administration Council*. The organisation of work concerning the staff dealing directly with administration of justice shall be prescribed in the court internal rules which are adopted by the chief judge of the court. The organisation of work concerning other staff (departments of criminal probation and registers, courts' registry) is prescribed in the rules adopted by the Minister of Justice.
[26] Artt. 19 and 20 draft translation of the draft Courts Act, dated January 13, 2002.
[27] Art. 23 (1) draft translation of the draft Courts Act, dated January 13, 2002; see also footnote no. 24, second part with regard to the adopted text.

opinion of the chief judge of the court,[28] and the Minister of Justice shall also determine the number of judges in a circuit court after considering the opinion of the chief judge of the circuit court.[29] The internal rules are also to be established by the Minister of Justice.[30]

The Courts Department within the Ministry is responsible for management (in cooperation with the Courts Administration Council) and financing of the courts of first instance and the courts of appeal.[31] The Minister of Justice may transfer the judicial administration duties within his or her competence to a court.[32] In any case, the judicial administration shall ensure:

1) the possibility of independent administration of justice;
2) the working conditions necessary for the administration of justice;
3) sufficient training for judges and court officers and
4) access to justice.[33]

Financial autonomy of the judiciary

Estonian courts have no separate control over their own budgets or the budgeting process and their involvement in the budget process is minimal. The budgets of courts of first instance and of courts of appeal are drafted by the Minister of Justice within two months after the entry into force of the State Budget Act. Its proposal is sent to the Ministry of Finance, after which the budget is sent to the Government and finally Parliament must approve it. According to art. 46 (2) of the draft Courts Act, advisory committee[34] can give its opinion on the principles of budgeting. During a budgetary year, the Minister of Justice may change the budget expenditure of a court only with good reason after considering the opinion of the chief judge of the court and based on the principles established by the advisory committee on judicial administration (see above).[35]

It was reported that 'presidents of the District- and Regional Courts submit a draft budget to the Ministry of Justice, before the Ministry of Justice's proposal is sent to the Ministry of Finance. During the preparation of the final draft budget for the Government, the Finance Ministry has the right to change the draft budget for the courts without the agreement of the Ministry of Justice. The Government is to settle unresolved disagreements between ministries. There is no requirement to inform the Parliament about the disagreements.'[36] In the State Budgets there is no separate general budget for the courts, although the chapter devoted to the Ministry of Justice includes a separate

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28 Art. 24 (7) draft translation of the draft Courts Act, dated January 13, 2002.
29 Art. 25 (2) draft translation of the draft Courts Act, dated January 13, 2002.
30 Art. 27 (1) draft translation of the draft Courts Act, dated January 13, 2002; see also footnote no.24, second part with regard to the adopted text.
31 Art. 44 (1) draft translation of the draft Courts Act, dated January 13, 2002.
32 Art. 44 (2) draft translation of the draft Courts Act, dated January 13, 2002.
33 Art. 44 (3) draft translation of the draft Courts Act, dated January 13, 2002.
34 The 'Courts Administration Council' in the adopted text of the Courts Act (comment from Estonian Ministry of Justice, 22 July 2002).
35 Art. 47 (1) and (2) draft translation of the draft Courts Act, dated January 13, 2002.
36 OSI Report 2001, p. 167.

budget line for district and regional courts. It was reported that regarding the spending of the budget, the courts have their own budget. Currently this budget is reportedly divided into budget lines: changes between budget lines must be approved by the Ministry of Justice. In the coming years the budget was said to be probably given into two parts; one part for salaries and one part for all other costs. Maybe the next step will be an even more flexible system of allocation of the budget, it was reported.[37]

Only the Supreme Court has (limited) opportunities to defend its budgetary objectives throughout the budgeting process. The budget of the Supreme Court shall be passed pursuant to the procedure provided by the State Budget Act.[38] The budget for the Supreme Court is drafted by the Supreme Court and is submitted to the Ministry of Finance. The Ministry of Finance has the right to change the draft only with the consent of the Supreme Court. It is the Government that has the right to make changes in the draft, but it is required to submit to the Parliament the exact content of, and the reasons for the proposed changes. The Supreme Court is thus autonomous in administrative and organisation matters, as it is the President of the Supreme Court that supervises the Supreme Court. It is the State Audit Office, which has the authority to audit the efficiency of maintenance expenditures, the economic purposefulness of transactions, the use and preservation of state assets, the legality of financial transactions and the accuracy of accounting and reporting of all courts, including the Supreme Court.[39]

In general, the funds allocated to the judiciary have been decreasing from 1999 to 2001. 'This is not the result of a general budgetary cutback, as at the same time the total budget increased and the outlays for several individual ministries, including the Ministry of Justice, were higher in the 2001 budget than in 2000.[40]

Supervisory control in judicial institutions and statistical reports

The purpose of supervisory control is, according to the Draft Courts Act, to ensure the hearing of cases within reasonable time, the regularity of operations of judicial institutions and the performance of duties of judges and court officers.[41] Supervisory control in a judicial institution shall be exercised by the chief judge of the court, and supervisory control of the chief judges of courts of first instance and courts of appeal shall be exercised by the Minister of Justice, and in addition, supervisory control of judges of a court of first instance shall be exercised by the chief judge of the circuit court.[42] Yet, the Draft Courts Act expressly states that supervisory control shall not

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37 Information of ms. Egle Käärats, representative of the Department of Courts of the Ministry of Justice, January 2002.
38 Art. 47 (3) draft translation of the draft Courts Act, dated January 13, 2002.
39 OSI Report 2001, p. 166, referring to Art. 6 of the State Audit Office Act.
40 OSI Report 2001, p. 168.
41 Art. 48 (1) draft translation of the draft Courts Act, dated January 13, 2002.
42 Art. 48 (2) draft translation of the draft Courts Act, dated January 13, 2002.

cover the content of decisions or prejudice the independence of judges in the administration of Justice.[43]
Furthermore the courts of first instance and courts of appeal shall submit a statistical report on cases to the Ministry of Justice twice a year. The Minister of Justice shall approve the reporting form and the term for submission thereof.[44]

The Ministry of Justice has issued information stating that 'Estonia is introducing principles of legal economics to provide cost-effective measures to improve the efficiency of justice. There is an urgent need for the thorough analysis of the administrative cost structure. The results of the analysis shall provide information for restructuring the administrative cost of the legal system. The analysis shall also point out the administrative functions which can be delegated to the 3rd sector in order to approximate the administrative costs of the legal system and to guarantee the effective delivering of justice'.[45]

Publicly pronounced criticism of the Executive on the Judiciary

The OSI Report 2001 reports, that The State President (whereas the confidence in the judiciary is declining in general) 'has expressed his general disappointment with aspects of the judiciary's activities. In a speech on the 81st Anniversary of the Estonian Republic on February 24, 1999, the State President asserted that the thinking of the majority of judges indicates that they are holdovers from the old totalitarian system. In another speech on the 80th Anniversary of the Estonian Supreme Court on January 14, 2000, the State President declared that the credibility of the judicial system is in question because several court decisions have offended the citizenry's sense of justice'. Yet, it must be noted that the same OSI report also states that: 'Despite these general criticisms, the State President has never expressed dissatisfaction with any specific court decisions. Government officials have in some cases however. For example, the Minister of Justice characterised the sentence imposed on a robber in a highly published case as too severe.

There have been no indications that political actors have attempted to pressure or improperly influence judges. On a few occasions judicial independence has been publicly questioned, when court decisions ran contrary to public opinion. Government officials have not directed personal insults at judges'.[46]

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43 Art. 48 (3) draft translation of the draft Courts Act, dated January 13, 2002; The adopted text of the Courts Act provides that the supervisory control of judges shall not be exercised by the Minister of Justice. The Minister can only supervise the chief judges (comment from Estonian Ministry of Justice, 22 July 2002).
44 Art. 49 draft translation of the draft Courts Act, dated January 13, 2002.
45 Information by the Ministry of Justice on the Estonian Judicial System, Tallinn, 2001, p. 43.
46 OSI Report 2001, p. 154-155.

II.1.2 *Vis-à-vis the legislator*

The Parliament has influence in appointing justices of the Supreme Court as well as in the setting of the budget and the remuneration of judges (see below).

II.2 De jure and de facto division of competences within the judiciary

Relations with superior courts

The OSI Report 2001 states that 'district courts judges enjoy full discretion in deciding cases brought before them within the framework provided by law; higher court judges have no opportunity to dictate the outcome of a case, outside the normal process of appellate review. At higher instances, cases are reviewed strictly within the boundaries of the regulations governing appeal and cassation. A superior court can proceed beyond the appeal or cassation stage only if statutorily defined defects in the judgement or the composition of the original court are found. However, a higher court does not have authority to give a lower court binding instructions on what has to be rectified on retrial.'[47]

In Estonia, 'the Supreme Court does not issue compulsory clarifications of laws binding for the court of general jurisdiction. Rather, the lower courts recognise the authority of higher courts by citing the judgements of higher courts; it is extraordinary for a lower court to disagree consciously with a prior judgement of a higher court in a similar case, but it is not forbidden and does sometimes happen in practice.'[48]

The OSI Report 2001 states furthermore that any subordination between judges on different levels in terms of the substantive administration of justice apart from the appeals process, does not exist. For instance, 'there are no appointed supervisors in higher courts to act as mentors to or inspectors of lower court judges. Higher court judges are occasionally consulted on legal matters by the judges of lower courts, but there is no information from which to conclude that such consultations have involved specific pending cases.'[49]

Article 42 of the Draft Act states that the division of tasks of judges of courts of first instance and of courts of appeal shall be prescribed in the plan for the division of tasks. The following principles are mentioned, to be the basis for the division of tasks among judges:

1) all matters received by the court for hearing shall be divided among judges according to the plan for the division of tasks;
2) matters shall be divided at random and on objective bases determined in the plan for the division of tasks;

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47 OSI Report 2001, p. 181.
48 OSI Report 2001, p. 181.
49 OSI Report 2001, p. 181.

3) the plan for the division of tasks shall prescribe the procedure for formation of court panels and for the substitution of judges;
4) the plan for the division of tasks shall be approved for one calendar year. A full court may amend its plan for the division of tasks during a working year only with good reason;
5) everyone can access the plan for the division of tasks in the court office.[50]

Case distribution

Cases are distributed at random, taking into account the workload of the judges, as well as with the specialisation of judges.[51]

Legal Chancellor of Estonia: Guardian of law and Ombudsman

An important role in balancing political and judicial powers has been given to the Legal Chancellor. The Constitution prescribes that the Legal Chancellor has an independent position. His term of office is 7 years, having two duties to fulfil.

Firstly the Legal Chancellor has to deal with complaints regarding state officials and institutions, in case the rights of the citizens have been violated (the Ombudsman function). In this respect, the Legal Chancellor can – on demand as well as on own initiative – investigate and reprimand public authorities.

Secondly the Legal Chancellor has to monitor the legislative acts issued by the state and lower authorities and the international agreements, to see whether these are in conformity with the Estonian constitution and law. The Constitution provides for the Legal Chancellor's right to speak in the Parliament and in government sessions in order to discuss a raised subject. Furthermore he can issue a proposal to bring any act in conformity with the Estonian law. As mentioned above, he can initiate proceedings before the Constitutional Chamber of the Supreme Court. His office has in effect initiated the majority of constitutional cases. The Legal Chancellor can investigate issues on his own initiative, for instance after reading about a case in the newspaper. The reason for this is, that – still – often people do not know they have the right to complain.[52]

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50 The PHARE-mission has not gotten hold of the plan for the division of tasks as mentioned in Art. 42 of the draft translation of the draft Courts Act, dated January 13, 2002.
51 Information by the Järva County Court in Paide, January 2002.
52 Information by the Legal Chancellor, Mr. Allar Jõks, January 2002. See in general: Information brochure by the Legal Chancellor, *the Legal Chancellor of Estonia as the Guardian of Law and Ombudsman, Status and duties of the Legal Chancellor in the Estonian legal system,* Tallinn 2001.

CHAPTER III

The independent functioning of the judiciary

III.1 Incompatibilities

Judges may not be members of Parliament, municipal councils, or political parties. Furthermore, judges may not hold any position in the executive branch or elsewhere except in teaching and research. It is also prohibited for judges to be a founder, managing partner, member of the management board or supervisory board of a company, or the director of a branch of a foreign company. Also being a trustee in bankruptcy, member of a bankruptcy committee or compulsory administrator is not allowed. Being an arbitrator chosen by the parties to a dispute is also not allowed.[53] The rules limiting judges' activity outside the judicial branch are significantly be altered by the Draft Courts Act, as the OSI Report 2001 rightly mentioned.[54] A judge may now also be employed in the service of the Supreme Court or the Ministry of Justice at his or her request and with the consent of the chief judge of the court. During the service in the Supreme Court or the Ministry of Justice, his or her authority as a judge shall be suspended. During the service in the Supreme Court or the Ministry, a judge shall retain the judge's salary and other guarantees.[55]

III.2 Media

According to the Head of Public Relations Department of the Ministry of Justice, conflicts between the judiciary and the Ministry of Justice pop up in the media, when judges discuss (= complain on) the system (independence of courts) in the media (or elsewhere). It was reported, that both the public and the media perceive the judiciary as slow and inefficient.[56]
Yet, criminal cases are of course the most interesting to follow for the Media. Also prisons are under a lot of media attention.

The Ministry of Justice is currently discussing the introduction of press-secretaries at courts (the discussion is on the matter whether it should be a judge or a journalist for instance). It was said by the Head of the Public Relations Department of the Ministry of Justice, that it would not be realistic, when every court would have an own press-judge. There are not that many journalists specialising in matters of the judiciary; the country is too small for that. Furthermore, according to the Head of the Public Relations Department of the Ministry of Justice, judges do not want to give comments to the media on cases, as they are afraid (especially those who have experienced the old Soviet-regime)

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53 Art. 52 draft translation of the draft Courts Act, dated January 13, 2002.
54 OSI Report 2001, p. 162.
55 Art. 60 draft translation of the draft Courts Act, dated January 13, 2002.
56 OSI Report 2001, p. 154.

of breaking their code and independence.[57] Therefore, the Ministry of Justice is more able to do it, in his view. Presidents of courts also give comments to the media, but mostly they do not have time to pay attention to media.

In the current situation, courts not having press-judges or something like that, journalists have to find out all by themselves: in small courts this is perhaps not such a major difficulty, but in the Tallinn courts this really raises problems. It was reported that the secretary of the president of the Tallinn Court acts as a press liaison. Requests for a press judge are reportedly denied by the Ministry.[58] Journalists are often not aware of the cases that are pending, as the cases are listed, mentioning only the names and the relevant paragraphs on which a party is accused. Yet, the Ministry of Justice has an internet page in construction listing all the court cases. Furthermore, the first level court judgement comes into force after 10 days. When the decision is not appealed against, the judgement is to be pronounced in public (judgements in the second instance are into force right away, when pronounced in public).

There are (reportedly) discussions going on though, to provide for media-training for judges (also for the prison leaders).[59] It was suggested by the journalist Mr. Jaan Väljaots, that legal training for journalists, as well as training for judges (on how to deal with the press) would be valuable in Estonia as earlier experiences of having a joined training for judges an journalist has been conceived as rather difficult (due to a difference in the attitude towards the media), but rather useful for both parties concerned. [60]

The Supreme Court does have a so called press-clerk (who is a journalist). It was reported that it would indeed, be better to have this job done by a judge. The justices of the Supreme Court seem well aware of the fact that good relations with the press are very important in order to have judgements explained to the public.

III.3 Lay judges and Assistant judges

General

It was reported that in criminal cases where the sanction is more than 3 years imprisonment, lay judges may sit. In civil cases lay judges may participate upon request of one of the parties, but this rarely happens. In the past in all cases lay judges were involved, but this situation changed a few years ago. Lay judges are involved both in establishing the guilt of the defendant and in the sentencing. The lay judges and the

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57 Information by Mr. Marko Lepik (Head of Public Relations Department of the Ministry of Justice), January 2002. this point of view was confirmed by information by a journalist, Mr. Jaan Väljaots, January 2002.

58 Information by the Tallinn City Court, January 2002.

59 Information by Mr. Marko Lepik (Head of Public Relations Department of the Ministry of Justice), January 2002.

60 Information by a journalist, Mr. Jaan Väljaots, January 2002.

professional judge vote in camera, dissenting opinions are published with the judgement.[61]

Candidates

Chapter 13 of the Draft Courts Act concerns provisions on lay judges.[62] A lay judge only participates in administration of justice in county and city courts, on the bases and pursuant to the procedure provided for by the procedural law. In the administration of justice, lay judges have equal rights as judges.[63] Every Estonian citizen with active legal capacity between 25 and 70 years of age who resides in Estonia, who has a proficiency in Estonian, and is of suitable moral character for the activity of a lay judge may be appointed as a lay judge. Some people are excluded for being appointed as a lay judge.[64]

A lay judge is appointed for four years and the same person shall not be appointed as a lay judge for more than two consecutive terms.[65] Persons of different sex and age, from different social groups and operating in different areas of activity shall be presented as candidates for lay judge. Candidates may be presented by each member of a local government council; a local government council elects the candidates and the number of candidates to be presented by each local government council within the territorial jurisdiction of a county or city court shall be determined by the chief judge of the court. The number of candidates shall be proportional to the ration of the number of residents in the local government and the number of residents in the territorial jurisdiction of the court.[66] The local government council submits a list of candidates which is published;

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61 Information by the Järva County Court in Paid, January 2002.

62 Next to lay judges, there are assistant judges known in the Estonian Judiciary (chapter 14 of the draft Courts Act). Assistant judges have had a preparatory service in the court of first instance in which he/she works, and the assistant judge also has had a special exam for becoming an assistant judge. The requirements for being an assistant judge are furthermore that the candidate is 21 years of age, resides in Estonia, and has completed an accredited academic law programme or special education for assistant judges at an institution of applied higher education. Furthermore the candidate has to have a high proficiency in Estonian. The restrictions on the services of judges also apply to assistant judges.

63 Art. 105 draft translation of the draft Courts Act, dated January 13, 2002.

64 A person convicted of a criminal offence, a bankrupt, a person who is not suited due to his or her state of health, a person who has resided less than one year in the territory of the local government which has presented him or her as a candidate for lay judge. Furthermore a person who is in the service of a court, prosecutor's office or the police, or who is in service in the armed forces cannot be appointed as a lay judge. Neither can advocates or notaries be, nor a member of the government of the Republic or a member of a rural municipality or city government. The President of the Republic, a member of parliament and a county governor can not be appointed as a lay judge either. Finally a person who has been brought to justice as an accused or has been tried accused of a criminal offence shall not be appointed as a lay judge during the criminal proceedings. See Art. 106 draft translation of the draft Courts Act, dated January 13, 2002.

65 Art. 107 draft translation of the draft Courts Act, dated January 13, 2002.

66 Art. 109 draft translation of the draft Courts Act, dated January 13, 2002.

everyone has the right to contest the appointment of a candidate for lay judge as a lay judge.[67]

Appointment

Lay judges are appointed to office from among the candidates for lay judges by the committee for appointment of lay judges at a court, whose membership shall be approved by the chief judge of the court and whose decisions concerning appointment of lay judges are final. The committee consists of the chief judge of a county or city court and one judge elected by the full court, and one member of a local government council elected by the council from each local government of the territorial jurisdiction of the court. The chairman of the committee is the chief judge of the court. [68]

Liability, remuneration and pension

If a lay judge fails to appear at the hearing without good reason, the chief judge of the court may impose a fine of up to 200 days' wages on the lay judge.[69]
The remuneration which is the highest rate in the civil servants' remuneration scale multiplied by coefficient 0,024 (that makes currently about 20 per day) shall be paid to lay judges for each day on which they participate in the administration of justice and lay judges shall be reimbursed for the expenses related to participation in the administration of justice.[70]

If a person becomes disabled during the performance of the duties of a lay judge as a result of a criminal attack directed against him or her, his or her state pension for incapacity for work shall be increased by 20 percent in the case of incapacity for work of 100 percent, by 15 percent in the case of incapacity for work of 80-90 percent and by 10 per cent in the case of incapacity for work of 40-70 per cent. If a person dies during the performance of the duties of a lay judge as a result of a criminal attack directed against him or her, the state survivor's pension paid to each family member who is incapacitated for work and was maintained by him or her shall be increased by 20 per cent.[71]

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67 Art. 110 draft translation of the draft Courts Act, dated January 13, 2002.
68 Art. 111 draft translation of the draft Courts Act, dated January 13, 2002.
69 Art. 115 draft translation of the draft Courts Act, dated January 13, 2002.
70 Art. 116 draft translation of the draft Courts Act, dated January 13, 2002; it is also stated in the same article that an employer shall exempt a lay judge from work for the time of participation in the administration of justice and that the Minister of Justice shall establish the procedure for payment of remuneration to lay judges.
71 Art. 117 draft translation of the draft Courts Act, dated January 13, 2002.

III.4 Supporting facilities

Buildings and facilities

The OSI Report 2001 states correctly, that 'the courts do not suffer from severe under-investment as compared to the other State branches. Nevertheless, judges' physical working conditions require significant improvements. Approximately half of all courthouses (including the Supreme Court's building) have been renovated, but some of the remaining courthouses are still in poor physical condition.'[72]

It was reported that after the reform of 1993 a lot has improved in courts. The computerisation in Estonian courts (every judge having a personal computer etc.) is impressive, even though not all courts are equipped the same way yet. The Järva County Court which was visited by the Phare-delegation (in Paide) was reported to be in tiny better shape then the average. In Tartu, the court will have a new court building this summer. The development is visible in the entire country; e.g. schools also have computers. In general one can say, as it was reported, that every professional that needs a computer, also has one at its disposal. The situation in courts is thus not exceptional, it reflects the general picture as far as computerisation is concerned.[73]

Supporting staff

The Ministry of Justice determines the number of supporting staff in the district and regional courts. The criteria which are used are the number of cases and the qualitative characteristics of the cases. Yet, the OSI Report 2001 mentions, 'no formal criteria, such as caseload per judge, have been established to determine the necessary number of staff.[74] The courts' dramatically expanded jurisdiction during the 1990s has increased the workload on existing staff.'[75] The draft Courts Act states furthermore, that the Minister of Justice may decide that one director of administration of a court, is shared by several judicial institutions.[76]

A lack of supporting staff was reported more than once during the visits of the Phare-mission. One striking issue which was raised by the justices of the Supreme Court, concerns salaries of court staff; 'when one compares the salaries of staff within the

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[72] OSI Report 2001, p. 169, referring to information from the Vice Chancellor of the Ministry of Justice dated April 9, 2001.

[73] Information from justices of the Supreme Court/the Judge's Association, January 2002.

[74] According to the adopted text of the Courts Act, the number of supporting staff directly related to the administration of justice (consultants, secretaries sitting at hearings etc.) shall be determined by the chief judge of the court; the number of other supporting staff (accountants, secretaries in the registry etc.) shall be determined by the managing director (comment from Estonian Ministry of Justice, 22 July 2002).

[75] OSI Report 2001, p. 169.

[76] Art. 129 (3) draft translation of the draft Courts Act, dated January 13, 2002.

Judiciary with the staff of the Executive branch, one finds that secretaries of the Ministries earn twice as much as court clerks for far less work.'[77]

CHAPTER IV

The status of judges

IV.1 General

The Legal Status of Judges Act as was known in Estonia is repealed by the draft Courts Act.[78]

IV.2 Association of Judges

There is an Estonian Association of Judges, of which the majority of judges are member. In the first version of the inception report (March 2001), it was stated that 140 judges are members of the Association of judges, which represents the interests of judges and prosecutors. It is an autonomous body, of which some bigger events have been financed by the Ministry of Finance. Most important incomes of the Association are the membership fees. There is only one paid official within the Association. There are two traditional yearly events: (1) in winter: a scientific conference (2) in summer: together with the Ministry of Justice a two days seminar. Furthermore, the Association of Judges has been involved in developing professional training programs for judges, but as the funds for judicial training are allocated by the Ministry of Justice, all decisions concerning judicial training are made by the Ministry.

IV.3 Selection

Candidates for judicial office

A person who meets the requirements for judges may be appointed as a candidate for the judicial office. A public tender for the judicial office shall be publicly known by the Minister of Justice. Applications shall be submitted to the Minister of Justice. The Minister appoints a candidate for the judicial office. The candidate for the judicial office has to undergo a preparatory service, during which they will be trained for the office of judge (see below on the preparatory service and the training of judge).[79]

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77 Information by justices of the Supreme Court, January 2002.
78 Art. 144 draft translation of the draft Courts Act, dated January 13, 2002.
79 Art. 63 (4) and Art. 64 (1) draft translation of the draft Courts Act, dated January 13, 2002.

IV.4 Appointment

Public Tender| criteria for nomination

The draft Court Act arranges, that judges shall be appointed to office on the basis of a public tender; the Minister of Justice announces a public tender for a vacant position of a judge in a certain court. The Chief Justice of the Supreme Court shall announce a public tender for a vacant position of a justice of the Supreme Court. Applications for a vacant position of judge, shall be submitted to the Chief Justice of the Supreme Court. There is not a public tender, when there is a vacancy due to transfer of judges or due to employment of judges in the Supreme Court and Ministry of Justice. [80]

According to the draft Courts Act, a person who has undergone the judge's preparatory service or is exempted therefrom and has passed the judge's examination, may be appointed as a judge of a county or city court, or administrative court. [81]

A person who is experienced and a recognised jurist and who has passed judge's examination may be appointed as a judge of a circuit court. Persons having worked as a judge directly before the appointment, shall be exempted from the examination.
The OSI Report 2001 issues furthermore, that 'according to the Draft Courts Act, a trainee for the position of judge is to be appointed by the Minister of Justice on the recommendation of the Judge's Examination Commission.
A person who is an experienced and recognised lawyer may be appointed as a justice of the Supreme Court.[82]

Judges and chief judges in courts of first instance and of appeal

Judges of courts of first instance and courts of appeal are appointed to office by the President of the Republic, on the proposal of the Supreme Court *en banc.* The Supreme Court *en banc* shall previously consider the opinion of the full court for which the person runs as a candidate. If there are several persons running as a candidate for a vacant position of a judge, the Supreme Court *en banc* decides who it will propose to the President of the Republic, in order to be appointed to office.[83]

The chief judge of a county or city court and of an administrative court is appointed from among the judges of the court, for five years. The Minister of Justice shall appoint the chief judge of the court after considering the opinion of the full court. It is also the minister who releases court Presidents.[84] The chief judge of a circuit court shall also be appointed by the Minister of Justice (after considering the opinion of the full court) from among the judges of the same court, but for seven years. A chief judge of a circuit court

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[80] Art. 56 draft translation of the draft Courts Act, dated January 13, 2002.
[81] Art. 53 draft translation of the draft Courts Act, dated January 13, 2002.
[82] Art. 55 draft translation of the draft Courts Act, dated January 13, 2002.
[83] Art. 57 draft translation of the draft Courts Act, dated January 13, 2002.
[84] Art. 12 and 21 draft translation of the draft Courts Act, dated January 13, 2002.

may be released by the Minister of Justice, in agreement with the Supreme Court *en banc*.[85]

Until now, no major controversy has arisen over the State President's choices for the bench and no allegations that political parties influenced his decisions have been aired.'[86]

Appointment of Justices and the President of the Supreme Court

Justices of the Supreme Court shall be appointed to office by Parliament, on the proposal of the Chief Justice of the Supreme Court. The Chief Justice of the Supreme Court shall previously consider the opinion of the Supreme Court *en banc* concerning a candidate.[87] The President of the Supreme Court is elected by Parliament on the Proposal of the State President, without any consultation with the judiciary. It consists of an appointment for nine years. The Chief Justice of the Supreme Court can be released by Parliament, on the proposal of the President of the Republic.[88]

Appointment of justices of the Supreme Court has in practice been professional, not party-political. Its 17 Supreme Court justices are recruited among university professors, others were judges or advocates. Yet, it remains to be mentioned, as the OSI Report 2001 has done, that 'theses appointments are especially significant because the Parliament relies on the President of the Supreme Court's proposals in electing the other members of the Supreme Court, and the State President relies on the proposals of the plenary sessions of the Supreme Court in appointing all other judges.'[89]

IV.5 Promotion

There does not seem to be any regulation, dealing with the promotion of judges and containing the criteria for promotion such as e.g. ability, integrity and efficiency. It seems that promotion of a judge to a higher court is only done through the ordinary appointment process as described above. Yet, the draft Courts Act regulates that a service record as well as a personal file are to be is maintained with regard to a judge.

A Service Record has to set out (1) his or her name and personal identification code, (2) date and place of birth, (3) residence (4) marital status (5) information concerning education in law and an academic degree (6) the date of taking the oath of office (7) career (8) holidays and (9) decisions of the disciplinary chamber and the date of expiry of penalties. The Minister of Justice has to organise these service records of judges of county and city courts, administrative courts and of circuit courts. It is the Chief Justice of the Supreme Court who organises such a record of justices of the Supreme Court. An

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85 Art. 26 draft translation of the draft Courts Act, dated January 13, 2002.
86 OSI Report 2001, p. 173.
87 Art. 57 (4) draft translation of the draft Courts Act, dated January 13, 2002.
88 Art. 30 draft translation of the draft Courts Act, dated January 13, 2002.
89 OSI Report 2001, p. 175.

employment record book shall be maintained with regard to a judge pursuant to the procedure provided by law. [90]

A Personal File contains (1) a copy of the document certifying his or her education in law and academic degree (2) the decision of the judge's examination committee (3) a copy of his or her Estonian passport (4) the decision on appointment of him or her as a judge (5) decisions of the disciplinary chamber (6) the decision on release or removal of the judge from office. Other documents concerning the professional activity of a judge may be added to this personal file and it is the Minister of Justice who will have to organises the maintenance of personal files of judges of county and city courts, administrative courts and circuit courts. The Chief Justice of the Supreme Court shall organise the maintenance of personal files of justices of the Supreme Court. [91]

IV.6 Professional security

IV.6.1 Tenure

General

It is a constitutional rule that judges shall be appointed for life (art. 147 Constitution), whereas the mandatory retirement age of a judge is 67 years, according to art. 51 of the draft Courts Act. Provisions for appointments of temporary judges do not exist. Justices of the Supreme Court are appointed for life as well. They may also be elected to the Constitutional Review Chamber (a permanent Constitutional Review Chamber will be created by January 2003) by the Supreme Court *en banc* for a five-year term, as has been described above. There is a possibility to be re-elected.

The probation period

Article 102 (1) under (3) juncto art. 103 of the draft Courts Act states that a judge shall be released from office 'due to unsuitability for office, within three years after appointment to office'. Otherwise, probationary judges have the same status as other judges. There is no need for new appointment if this provision is not invoked. It is up to the Judges Examination Commission to provide a standpoint on the judge's fitness for the bench. The possibility to lodge complaints against release is not regulated.'[92] The OSI Report 2001 describes furthermore that 'the rationale for the three year probationary period is that it is not possible to determine whether individuals are fit for a judicial post before they have some years of experience. The period may arguably be unconstitutional, but to date the two judges who have been released on these grounds have not filed complaints.

The current state of affairs of professional security of judges during the above mentioned three years' probation period has not become clear during the Phare-mission to Estonia.

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[90] Art. 61 draft translation of the draft Courts Act, dated January 13, 2002.
[91] Art. 62 draft translation of the draft Courts Act, dated January 13, 2002.
[92] OSI Report 2001, p. 176.

IV.6.2 Transfer

In the interests of administration of justice, the Minister of Justice may transfer a judge with his or her consent, temporarily to another county or city court after previously considering the opinion of the chief judge of the court where the judge permanently administers justice.[93] It is the Supreme Court *en banc* that may appoint a judge to office in another court of the same level or of a lower level with the consent of the judge and on the proposal of the Minister of Justice.[94]

IV.6.3 Removal

General

Article 147 of the Constitution provides that judges may be released 'only on grounds and according to the procedures provided by law' and only that judges can only be removed from office by a court judgement. Article 102 (1) of the draft Courts Act provides that a judge shall be released from office:

1) at the personal request of the judge
2) if the judge has attained 68 years of age
3) due to unsuitability for office, within three years after appointment to office
4) due to his or her state of health if it hinders employment as a judge
5) upon the liquidation of the court or reduction of the number of judges
6) if the judge is appointed or elected to the position or office which is not in accordance with the restrictions on the service of judges or
7) if facts become evident which pursuant to law preclude the appointment of the person as a judge.

Judges of courts of first instance and courts of appeal shall be released from office by the President of the Republic on the proposal of the Chief Justice of the Supreme Court. The Minister of Justice has to give its approval to release on the grounds on the grounds as mentioned under (1), (5) and (7).[95]
The Chief Justice of the Supreme Court shall be released from office by the Parliament, on proposal of the President of the Republic. Other justices of the Supreme Court shall be released from office by the Parliament on the proposal of the Chief Justice of the Supreme Court.

Removal due to unsuitability

As said above, a judge may be released from office due to unsuitability for the profession.[96] In article 103 of the draft Courts Act, a framework of this ground for

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93 Art. 13 (2) draft translation of the draft Courts Act, dated January 13, 2002. For administrative court judges the provision is laid down in Art. 22 of the draft Courts Act.
94 Art. 59 draft translation of the draft Courts Act, dated January 13, 2002.
95 Art. 102 (2) draft translation of the draft Courts Act, dated January 13, 2002.
96 Art. 102 (1) under (3) draft translation of the draft Courts Act, dated January 13, 2002.

removal is given. This probationary period takes three years from appointment to office and it is the Supreme Court *en banc* which has to decide upon the unsuitability of a judge.[97] The chief judge of a court shall present to the judge's examination committee one a year an opinion on a judge who has been employed by the court for less than three years.[98] Upon assessment of the suitability for the office of judge, the Supreme Court *en banc* shall consider the proposal of an entitled person or body to commence a disciplinary proceeding, the opinion of the judge's examination committee and other information concerning the work of the judge.[99]
During a session, the whole suitability of the judge will be assessed; at least ten days before the unsuitability of a judge for office is discussed at a session of the Supreme Court *en banc* a reasoned proposal of a person or body entitled to commence a disciplinary proceeding for release from office (see below on the disciplinary proceedings) and the opinion of the judge's examination committee (see above and also below on the examination committee) shall be presented to the judge whose suitability for office is assessed, and her or she is allowed to examine the gathered materials.[100]

Removal due to conviction for a criminal offence or a disciplinary offence

A judge of a court of first instance or a court of appeal in respect of whom a conviction for a criminal offence by a court or a decision of the disciplinary chamber of the Supreme Court for removal from office has entered into force shall be removed from office by the President of the Republic. A justice of the Supreme Court who is convicted for these reasons shall be removed from office by the Parliament. (see below on disciplinary proceedings).[101]

IV.6.4 Remuneration/Social Welfare

It was reported that the 1991 Legal Status of Judges Act substantially improved the material conditions and social security of the judiciary. Judges are now well paid, and courts do not suffer from severe under-investment as compared to other branches. Nevertheless, in a number of courts, judges' physical working conditions require significant improvements[102]. The draft Courts Act states that the salaries of judges shall be determined in 'the Salaries of State Public Servants Appointed by Parliament or President of the Republic Act'[103] Besides this salary, judges are entitled to receive additional remuneration, which consists of a percentage of the salary that ranges from 5 to 25 percent according to the years of employment a judge has had.[104]

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97 Art. 103 (1) draft translation of the draft Courts Act, dated January 13, 2002.
98 Art. 103 (2) draft translation of the draft Courts Act, dated January 13, 2002.
99 Art. 103 (3) draft translation of the draft Courts Act, dated January 13, 2002.
100 Art. 103 (4) and (5) draft translation of the draft Courts Act, dated January 13, 2002.
101 Art. 104 draft translation of the draft Courts Act, dated January 13, 2002.
102 OSI Report 2001, p. 170.
103 Art. 79 draft translation of the draft Courts Act, dated January 13, 2002.
104 Art. 80 (1) draft translation of the draft Courts Act, dated January 13, 2002.

Furthermore, the chief judge of a court of first instance or of a court of appeal shall receive 15 percent of his or her salary as additional remuneration. If the number of judges in a court of first instance is at least 15, the chief judge of the court shall receive 25 per cent of his salary as additional remuneration.[105] In agreement with the Chief justice of the Supreme Court, the Minister of Justice may determine that the additional remuneration payable to a judge who is transferred to another location based on the needs of administration of justice is up to 50 per cent of the judge's salary and judges supervising candidates for the judicial office, candidates for assistant judge or university student trainees shall receive addition remuneration for supervision equal to 5 per cent of their salary for each supervised person during the supervision.[106] It is expressly stated that judge shall not receive additional remuneration for an academic degree or proficiency in foreign languages.[107]

Salaries are scheduled to be increased after adopting the Draft Courts Act.

Pension

There will be several sorts of pensions for judges, according to the draft Courts Act:
1) a judge's old age pensions,
2) a judge's superannuated pension,
3) a judge's pension for incapacity for work and
4) a survivor's pension for judge's family members.[108]

The pensions are all defined in the draft Courts Act (artt. 78-81). A person who has been removed from the office of judge for a disciplinary offence or who has been convicted of an intentionally committed criminal offence does not have the right to receive a judge's pension. A person who has been convicted of a criminal offence against the administration of justice shall be deprived of a judge's pension.[109] A judge's pension shall explicitly not be increased on the bases provided for in the Public Service Act.[110]

Holidays

The draft Courts Act furthermore states that judges have the right to receive an annual holiday, the duration of which is 49 calendar days for a judge of a court of first instance or court of appeal and 56 calendar days for a justice of the Supreme Court. Judges are explicitly not entitled to an additional holiday provided for in the Public Service Act.[111] An extraordinary holiday for up to one year without pay may be granted to a justice of the Supreme Court by the Chief Justice of the Supreme Court, and to a judge of a court

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105 Art. 80 (2) draft translation of the draft Courts Act, dated January 13, 2002.
106 Art. 80 (3) and (4) draft translation of the draft Courts Act, dated January 13, 2002.
107 Art. 80 (5) draft translation of the draft Courts Act, dated January 13, 2002.
108 Art. 81 (1) draft translation of the draft Courts Act, dated January 13, 2002.
109 Art. 81 (3) draft translation of the draft Courts Act, dated January 13, 2002.
110 Art. 81 (4) draft translation of the draft Courts Act, dated January 13, 2002.
111 Art. 88 (1), (2) and (3) draft translation of the draft Courts Act, dated January 13, 2002.

of first instance or a court of appeal, by the Minister of Justice with the consent of the full court of the court where the judge is employed.[112]

Other social guarantees

According to the draft Court Act, a judge who is released from office due to liquidation of the court or reduction of the number of judges shall receive six months' salary of his or her last position in compensation. The chief judge of a court who, after being released from the position of chief judge, continues to be employed as a judge shall not receive the compensation. If a judge of a higher court is appointed as a judge of a lower court, with his or her consent due to the liquidation of the court or reduction of number of judges, he or she shall retain the salary of the previous position together with additional remuneration. Furthermore, judges shall not be conscripted into active service in the armed forces or called up for training exercises of the armed forces.[113]

IV.7 Disciplinary proceedings

IV.7.1 Grounds and penalties

A disciplinary penalty may be imposed on a judge, according to the draft Courts Act, for a disciplinary offence, which is a wrongful act committed by a judge which involves failure to perform or inappropriate performance of his or her official duties. An indecent act of a judge is also a disciplinary offence.[114]
The following disciplinary damages exist in Estonia, according to the draft Courts Act:

1) reprimand, a fine of up to one month's salary
2) reduction of salary[115]
3) removal from office.[116]

If a retired judge does not perform the duty of confidentiality or the obligation of confidentiality of deliberations, his or her pension may be reduced by up to 25 percent as a disciplinary penalty. The pension shall not be reduced for longer than one year. [117]
Only one disciplinary penalty may be imposed on a judge for one and the same offence; a criminal punishment or administrative penalty imposed for the same act does not preclude the imposition of a disciplinary penalty. The nature, degree and consequences of the disciplinary offence shall be considered upon imposing a disciplinary penalty.

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[112] Art. 88 (5) draft translation of the draft Courts Act, dated January 13, 2002.
[113] Art. 90 draft translation of the draft Courts Act, dated January 13, 2002.
[114] Art. 91 draft translation of the draft Courts Act, dated January 13, 2002.
[115] Art. 93 of the draft Courts Act states that a judge's salary may not be reduced by more than 30 percent, being a disciplinary punishment. Furthermore the salary shall not be reduced for longer than one year.
[116] See also Art. 102 (1) under (3) and Art. 103 of the draft Courts Act, where the removal due to unsuitability within a three years' probationary period is codified. Art. 104 of the draft courts act states that judges can be removed from office after a conviction by the disciplinary chamber.
[117] Art. 92 (1) and (2) draft translation of the draft Courts Act, dated January 13, 2002.

Furthermore the personality of the judge and other circumstances related to the office will have to be taken into consideration.[118] A disciplinary penalty imposed on a judge shall be entered in the service record, as mentioned above.[119] The disciplinary penalty expires if the judge does not commit a new offence within one year after the entry into force of the decision of the disciplinary chamber (see below) and the chamber may cancel the penalty before the prescribed time.[120]

IV.7.2 Procedure

The disciplinary chamber of the Supreme Court (5 members) shall hear a disciplinary offence and this chamber will also impose the disciplinary penalty.[121] Disciplinary proceedings can be lodged by:

1) the chief Justice of the Supreme Court, in respect of all judges,
2) the chief judge of a circuit court, in respect of judges of courts of first instance of his or her territorial jurisdiction,
3) the chief judge of a court, in respect of judges of the same court,
4) the Minister of Justice, in respect of all circuit court judges and judges of courts of first instance.[122]

The disciplinary chamber may temporarily remove a judge from the service during the hearing of a disciplinary matter, of which it shall promptly notify the judge (the nature and degree of the disciplinary offence of which the judge is accused is to be taken into consideration, when taking this decision). Also the salary may be reduced in this case, and the chief judge of a court may assign duties unrelated to the administration of justice to a judge who has been temporarily removed from the service.
The judge who is accused, may file an appeal with the Supreme Court *en banc* against the ruling by which the judge was temporarily removed from the service or his or her salary was reduced within ten days after becoming aware of the ruling.[123]

The judge whose disciplinary offence is considered shall be invited to the session of the disciplinary chamber, where he/she may have a representative. If necessary, witnesses and other persons may be invited to the session. The presiding judge of the disciplinary chamber-session makes a report introducing the disciplinary charge and the judge against whom the disciplinary charge is brought, shall give statements with regard to the accusations. Members of the disciplinary chamber may question the judge against whom the charge is brought and other witnesses and other persons invited to the session. After

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[118] Art. 92 (4) draft translation of the draft Courts Act, dated January 13, 2002.
[119] Art. 92 (5) draft translation of the draft Courts Act, dated January 13, 2002.
[120] Art. 92 (6) draft translation of the draft Courts Act, dated January 13, 2002.
[121] Art. 97 draft translation of the draft Courts Act, dated January 13, 2002.
[122] Art. 95 draft translation of the draft Courts Act, dated January 13, 2002; according to the actual adopted text of the Courts Act, (4) is to be replaced by 'the Legal Chancellor in respect of all judges; (5) the Supreme Court *en banc* in respect of the Chief Justice of the Supreme Court.' (comment from Estonian Ministry of Justice, 22 July 2002).
[123] Art. 98 draft translation of the draft Courts Act, dated January 13, 2002.

the examination of all evidence, the judge whose disciplinary matter is being heard, has the right to express his or her opinion on the matter.[124]

The disciplinary chamber shall make a decision either convicting (and imposing a disciplinary penalty) or acquitting the judge of commission of the disciplinary offence. The judge on whom a disciplinary penalty has been imposed may file an appeal with the Supreme Court *en banc* within 30 days after de decision is made known.[125]
If a judge is acquitted of a disciplinary charge, the judge has to be awarded the reduced portion of his or her salary and the interest pursuant to law in connection with his or her temporary removal from the service. When the disciplinary chamber decides to convict a judge of having committed a disciplinary offence which is considerably less serious than the act of which the judge was accused and after which the judge was temporarily removed from the service, the chamber may decide that the judge shall be reimbursed for the reduced portion of salary in part or in full. The reduced portion of salary will have to paid back to the judge within on e month after termination of the disciplinary proceedings or entry into force of the decision of the disciplinary chamber.[126]

As said above, the Legal Status of Judges Act is repealed by the draft Courts Act. The provisions concerning disciplinary proceedings which can be found in the Legal Status of Judges Act (art. 19-23) will thus loose their judicial force.
It was reported that damages arising from a judgement issued contrary to law are paid by the State and judges are thus insulated against undue economic pressures stemming from the quality or acceptability of their decisions.[127] Furthermore it was reported that judges can be charged with a criminal offence and arrested only on the order of the State President acting on a proposal of the Supreme Court (on the basis of art. 18 of the Legal Status of Judges Act)[128].The OSI Report 2001 furthermore states that 'Supreme Court justices and the President of the Supreme Court can be charged with a criminal offence and arrested on a proposal by the Legal Chancellor, to which a majority of the members of the Parliament must give their assent. Thus judges are institutionally insulated against direct interventions by the executive in the form of trumped-up criminal charges."[129] The draft Courts Act does not regulate these issues.

The Association of Judges is reported to have adopted Judges' Rules of Behaviour. 'Although judges customarily obey them, the Rules have no official standing since the Association is a non-governmental organisation and there has been no delegation of power to the Association to adopt any generally binding rules."[130]

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[124] Art. 99 draft translation of the draft Courts Act, dated January 13, 2002.
[125] Art. 100 draft translation of the draft Courts Act, dated January 13, 2002.
[126] Art. 101 draft translation of the draft Courts Act, dated January 13, 2002.
[127] OSI Report 2001, p. 179.
[128] OSI Report 2001, p. 179.
[129] OSI Report 2001, p. 179.
[130] OSI Report 2001, p. 180.

CHAPTER V

Training and retraining of judges

V.1 Law School

Estonian academic legal education has traditionally been provided by the University of Tartu. The University of Tartu not only offers basic legal education but also takes part in the formation of the legal system and complementary education. The capacity of the law faculty is strictly limited: while 400 candidates ask for a stipend every year and about 350 self-paying students apply, only 60 student stipends are given each year, and about the same number of students who pay for themselves. The numerous clausus working strictly on the basis of high school grades, it grants a premium for the classical *gymnasium* education. Courses are in Estonian language, 90 % of the students speak Estonian at home. Students who speak Russian at home are welcome but must fulfil all language requirements. For language courses (also for Ugri-Russians) an additional year is recommended. In the light of capacity limitations of the faulty of law, it is not astounding that several private educational institutions try to offer legal education, as well. They focus on training in economic and international law, but have to fulfil the requirements of the general legal education.

Accreditation has been a major obstacle. Only those documents providing acquisition of a higher education obtained from studies under an accredited curriculum are recognised by the State. The accreditation is done by an international committee (presently some German, Austrian and Lithuanian members serve on it next to the Estonian members). Conditional accreditation for undergraduate studies (BA) has been received by the Institute of Law in Tallinn (in 1998 the first students took the final examination, two of them graduated). Another private academy Concordia International University Estonia (CIUE), established in 1992, offers law studies in domestic legal systems of the Baltic States and in international, comparative, and European Union law. It is an American-style institution of higher learning and all courses except the courses about Baltic laws, are taught in English. The majority of the professors come from the colleges and universities in the United States and Western Europe. The Institute of Law also gives classes in English, mainly in business law. Altogether private schools' enrolment is about 100 day students, 100 in the evening and 100 by mail/correspondence. They will be evaluated in 2001 for prolongation and possibly graduate degrees. Russian language schools did not participate in the competition for accreditation.

V.2 Preparatory service and judge's examination

As said above are judges obliged to take part in a preparatory service, which takes two years.[131] If a candidate for the judicial office is absent from the service for more than thirty consecutive calendar days, the time of absence from work shall not be included in the

[131] Art. 63 (4) juncto 64 (4) draft translation of the draft Courts Act, dated January 13, 2002.

preparatory service and the preparatory service shall be extended by this period, according to art. 64 (5) of the draft Courts Act. Furthermore, if a candidate for the judicial office does not pass the judge's examination (see below) during the preparatory service, the preparatory service shall continue until the judge's examination is passed or until the service relationship is terminated due to the fact that the judge also fails for the re-examination that a candidate is entitled to.[132]

The number of candidates for the judicial office is determined by the Minister of Justice, in accordance with the Supreme Court *en banc*. A candidate for the judicial office shall receive a salary in an amount equal to one half of the salary of a judge of a court of first instance.[133]
The preparatory service shall be conducted in the court of first instance where the judge supervising the candidate for the judicial office works. A part of the preparatory service shall be undertaken in other courts so that the candidate for the judicial office has been in the preparatory service in a county or city court, administrative court and circuit court. A part of the preparatory service may also be undertaken in the Supreme Court, the Prosecutor's Office or the Bar Association or in state agencies of executive power or local government agencies.[134] The Minister of Justice has to approve the preparatory service plan of a candidate for the judicial office on the proposal of the judge's examination committee.[135] According to the draft law, the Judge's Examination Commission will be composed of one district judge, one regional court judge, two justices of the Supreme Court, one legal scholar, one representative of the Ministry of Justice and one member of the Bar Association'.[136]

On the proposal of the judge's examination committee, the Minister of Justice shall appoint a judge who shall supervise a candidate for the judicial office. The purpose of the preparatory is to provide a candidate for the judicial office with the necessary knowledge and experience, and to determine whether the candidate for the judicial office is suited for the position of judge by his or her personal characteristics. A candidate for the judicial office shall be involved in the preparation of cases and he or she may perform the duties of a clerk of a court session, or a legal adviser to a court. At the request of a candidate for the judicial office, he or she shall be granted a study leave with pay fir thirty calendar days in order to prepare for the judge's examination.[137]

The judge's examination committee may exempt a person from the preparatory service or reduce the period of the preparatory service if the person has been employed as a judge, or as a sworn advocate or prosecutor for at least two years immediately before running as a candidate. The judge's examination committee may also reduce the preparatory service of a person if he or she has been employed for at least two years as a

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[132] Art. 69 (2) and (3) draft translation of the draft Courts Act, dated January 13, 2002.
[133] Art. 63 (4) and (5) draft translation of the draft Courts Act, dated January 13, 2002.
[134] Art. 64 (2) draft translation of the draft Courts Act, dated January 13, 2002.
[135] Art. 64 (3) draft translation of the draft Courts Act, dated January 13, 2002.
[136] Art. 72 (2) draft translation of the draft Courts Act, dated January 13, 2002.
[137] Art. 65 draft translation of the draft Courts Act, dated January 13, 2002.

senior clerk of a sworn advocate, or as an assistant prosecutor or in any other position which requires high qualifications in law.[138]

A candidate for the judicial office shall submit a written report on the preparatory service to the chief judge of the court and the judge who supervised him or her at the end of each half-year of the service, and at the end of the service. The judge supervising the candidate has to submit a written opinion on the results of the preparatory service of the candidate, to the chief judge of the court at the end of each half year, and at the end of the preparatory service. The chief judge subsequently has to send the documents together with his/her opinion to the judge's examination committee and the Ministry of Justice. The judges' examination committee shall give an evaluation of the continuation or termination of the preparatory service in respect of each candidate.[139]

The judge's examination consists of a oral and written part. The oral part of the judge's examination involves the assessment of the theoretical knowledge and the written part involves a judicial case analysis.[140] The suitability of the personal characteristics of a candidate for the judicial office shall be assessed on the basis of an interview and the opinion of the supervisor. The judge's examination committee may also consider other information which is important for the performance of the duties of a judge.[141] The examination committee shall submit its decision to the Supreme Court *en banc* and also communicate it to the examinee.[142]

The OSI Report 2001 learns furthermore, that a qualified individual may, in order to prepare for a judicial post and before taking the exam or after failing it, elect to participate in a training programme organised by the Supreme Court.
This programme lasts up to two years and no resources are reported to have been directly budgeted by the Supreme Court (for the training and remuneration of the participants), whereas resources have been allocated to the Ministry of Justice for this purpose (the OSI Report 2001 refers to the State Budget Act for the year 2001).[143]

V.3 Strategy for training of judges and prosecutors for the years 2001-2004

The Ministry of Justice is responsible for the organisation of judicial training, whereas the Government adopted long-term Strategy for Training of Judges and Prosecutors, which aims to determine in accordance with the assessments of the European Commission in its Regular Reports on accession, more precise and specific basis for the training of judges and prosecutors.[144] After the listing of causes of inefficient training of

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138 Art. 66 draft translation of the draft Courts Act, dated January 13, 2002.
139 Art. 67 draft translation of the draft Courts Act, dated January 13, 2002.
140 Art. 68 draft translation of the draft Courts Act, dated January 13, 2002.
141 Art. 71 (1) draft translation of the draft Courts Act, dated January 13, 2002.
142 Art. 73 draft translation of the draft Courts Act, dated January 13, 2002.
143 OSI Report 2001, p. 174.
144 Strategy for training of judges and prosecutors for the years 2001-2004, February 20, 2001, p. 1.

judges and prosecutors, a basis for resolving the risen problems is set out. It is said to represent the agreement between the target group (judges and prosecutors), governmental organisations (Ministry of Justice, State Public Prosecutor's Office), academic establishments (University of Tartu) and the training institution (Foundation Estonian Law Centre) on some questions.[145]

After formulation long-term and short-term objectives, the Strategy sets out training types which are to be dealt with (Post-training, supplementary training, training necessary for the Accession to the European Union, Attitude training, Specific Training). Furthermore a Training Council is introduced, which is composed of two representatives from the Association of Judges, one from the Supreme Court, two from the Prosecutor's Office, one from the Ministry of Justice, one from the University of Tartu law Faculty and one from the Estonian Law Centre.[146] One of the most important tasks of the Training Council is said to be the elaboration of standards related to the competence of judges and prosecutors, as well as the assessment of their training needs, determination of means for the increasing of training motivation and the financing plans necessary for the implementation of the strategy. The Training Council is to aim also on enhancing the effectiveness of the courts, and thus to elaborate the proposals for priority areas and programmes, which should also be taught to other legal professionals.[147]

The Ministry of Justice has started the first stage of a five-year post-training programme for judges and prosecutors – which is the programme for training the trainers –, in April 1999 (a Twinning-project). The focus was on legal principles and the laws, which are new for jurists trained during the Soviet period. The post-training programme covers all basic principles on private, criminal and public law. The Programme is organised in co-operation with German Bundesländer Schleswig-Holstein and Mecklenburg-Vorpommern, and financed by PHARE. As German legal scholars and practitioners are lecturing in the first stage of the program, the relevant Estonian positive law has been translated for them; the language of the training is German with translation into Estonian.[148] 'In the second stage of the post-training program the judges and other legal practitioners from the first group will proceed as trainers. In principle the second stage of the training program has been designed to involve all judges and prosecutors holding the office. The curriculum will be similar for the second group, but the program will last approximately 400 hrs, as there is no translation required."[149] This phase of the training

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[145] Strategy for training of judges and prosecutors for the years 2001-2004, February 20, 2001, p. 2.

[146] Strategy for training of judges and prosecutors for the years 2001-2004, February 20, 2001, p. 7. See also Information by the Ministry of Justice on the Estonian Judicial System, Tallinn, 2001, p. 34.

[147] Strategy for training of judges and prosecutors for the years 2001-2004, February 20, 2001, p. 8.

[148] Information by the Ministry of Justice on the Estonian Judicial System, Tallinn, 2001, p. 34-35.

[149] Information by the Ministry of Justice on the Estonian Judicial System, Tallinn, 2001, p. 35.

will involve all Estonian judges and prosecutors and is planned to start at the end of 2001.[150]

Final remarks on training

Supplementary Training of judges and prosecutors is carried out by the Estonian Law Centre (Eesti Õiguskeskus). This institute was founded in 1995 by the Ministry of Justice, the Supreme Court and Tartu University. The goal of the supplementary training is to introduce 'recent amendments to legislation and to provide a forum for discussions on current legal problems'.[151] Annually 300 seminar hours for 40 judges and prosecutors are delivered, according to the co-operation agreements concluded by the Ministry of Justice and the Law Centre. The training is financed from the State Budget by the Ministry of Justice. The supplementary training is designed to cover newest changes in private, criminal and public law.[152]

Special EC law training programs have been held starting from September 1998, in co-operation with the Ministry of Justice, the University of Stockholm and the SIDA (Swedish International Development Agency). 'In December 2000 another course of 168 hours in total for 40 judges and prosecutors was finished. Every judge and prosecutor will pas the basis EC law training. The Ministry of Justice has planned a horizontal EC law training for advanced group, which will be carried out in 2002."[153] Also in co-operation with TAEIX, another series of seminars on EC law have been organised by the Trier Academy of European Law.[154]

In addition to the aforementioned training, courses on computer skills and foreign languages are organised, according to information of the Ministry of Justice.[155]

It was reported by the Ministry of Justice, that 'during the following years the scope of training will definitely shift to EC law training. As a state in process of accession to the European Union the judges training shall be designed to enable them to apply the EC law. Five Estonian judges are participating in the PHARE horizontal project "Training of judges in community law."[156]

The report by Freedom House, 'Nations in Transit, Report on Estonia 2001' states that 'although most judges are politically impartial in their rulings, some judges continue to show uncertainty in their application of the law. The quality of court decisions varies considerably, but it remains particularly unsatisfactory in the lowest-level courts. To

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[150] Information by the Ministry of Justice on the Estonian Judicial System, Tallinn, 2001, p. 45.
[151] Information by the Ministry of Justice on the Estonian Judicial System, Tallinn, 2001, p. 35.
[152] Information by the Ministry of Justice on the Estonian Judicial System, Tallinn, 2001, p. 35.
[153] Information by the Ministry of Justice on the Estonian Judicial System, Tallinn, 2001, p. 35.
[154] Information by the Ministry of Justice on the Estonian Judicial System, Tallinn, 2001, p. 35.
[155] Information by the Ministry of Justice on the Estonian Judicial System, Tallinn, 2001, p. 35.
[156] Information by the Ministry of Justice on the Estonian Judicial System, Tallinn, 2001, p. 35.

address this problem, training programs have been conduction for judges and prosecutors, with some 60 percent having undergone 112 hours of training each."[157]

A Continuation Schooling Centre for court personnel was established at the Supreme Court in Tartu.

Starting from January 2003, the training of judges will be financed via the budget of the Supreme Court. The Training Council will be responsible for planning the training. Estonian Law Centre will provide technical support to the Training Council. The Ministry of Justice will no longer be responsible for the training of judges.[158]

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[157] Freedom House, 'Nations in Transit, Report on Estonia 2001', p. 179; http://www.freedom-house.org.

[158] Comments from Estonian Ministry of Justice, 22 July 2002.

MODULE 2

THE PUBLIC PROSECUTION SERVICE

CHAPTER I

Position of the public prosecutor

I.1 Relationship with the executive power

Division of tasks

According to the Prosecutor's Act the Prosecution Office is a government agency within the area of the Minister of Justice.
The Prosecutors Office Act (passed on 22 April 1998) and the Code of Criminal Procedure are the legislative guarantees and measures in place, to ensure that public prosecutors can perform their duties without unjustified interference by executive powers and bodies.
The responsibilities of the Prosecutors Office are:

a) supervises the legality of registration of reports of criminal offences and that legality of pre-trial criminal proceedings,
b) supervises the legality of surveillance by surveillance agencies,
c) represents public prosecution,
d) performs duties arising from international co-operation,
e) performs other duties to be imposed by law (§ 1 of the Prosecutors Act).

Prosecutors may participate in the hearing of civil, criminal and administrative matters in courts pursuant to the procedure prescribed by law. Prosecutors are not involved in civil or administrative cases, unless the prosecution service is a party itself. When a civil action is presented in a criminal case, a separate civil procedure will be held, in which the prosecutor does not play any role.[159]
The Ministry of justice exercises supervisory control over the prosecutor's office. The government of the Republic appoints the Chief Public Prosecutor on the proposal of the Minister of Justice. The Minister of Justice appoints senior and city prosecutors on the proposal of the Chief Public Prosecutor. The Minister of Justice appoints other prosecutors on the proposal of the prosecutors competition and evaluation committees.

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[159] Information of the Office of the Prosecutor General, January 2002. Also: comments on the inception report by the Ministry of Justice, 2001.

There does not seem to be any areas of overlap or lack of clarity in the above relationship. Within this area the Prosecution Service appears to have an acceptable degree of independence. The Department of Courts of the Ministry of Justice draws up strategic plans and prepares materials for the Minster of Justice, who has certain functions in the Public Prosecution Service. The supervisory control exercised by the Minister of Justice does not pertain to decisions that prosecutors make in performing their duties imposed by law and does not prejudice the independence of prosecutors. The Executive has not the power to give specific instructions in criminal cases (§ 9, section 1, Prosecutors Office Act).

Government instructions and the legality principle

The Minister of Justice can order the Prosecutor General to place certain priorities/emphasis in the criminal policy. There is a mechanism in place according to which objectives can be set. The Ministry of Justice sets the objectives, which means that for a certain period of time the priorities for the prosecution offices are determined. There is a 'list of offences' underlining these priorities. The objectives suggested by the Ministry of Justice will go to Parliament, via the Government.[160] Yet, according to the comments of the inception report (March 2002) 'there is no legal document regulating the influence of the Minister of Justice and his relationship with the Chief Public Prosecutor in creating criminal policy. It is reportedly entirely a discretion of the Minister whether to inform and ask the opinion of the Chief Public Prosecutor about planned changes in criminal law or not. However, it should be mentioned that lately the Ministry reportedly requests the statement of the Chief Public more frequently'.[161] Information of the Office of the Prosecutor General learns, that the priorities are confirmed in a protocol decision of the government, which is a public document accessible for everybody. [162]

I.2 Relationship with the legislative power

The Constitution does not mention the Prosecutors Office or prosecutors specifically; however it states unevoquivically that the activities of, *inter alia*, parliament shall be organised on the principle of separation and balance of powers. The Constitution forbids a Member of Parliament to hold any other state office. The Prosecutors Office Act provides that prosecutors shall not be employed elsewhere outside of their professional duties, except for teaching or research. Moreover, prosecutors shall not be members of a political party.

I.3 Relationship with the judicial power

The Prosecutors Office Act states specifically that prosecutors shall be independent in the performance of their duties and act only pursuant to law and according to their

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[160] Information of the Office of the Prosecutor General, January 2002.
[161] Comments on the inception report by the Ministry of Justice, March 2001.
[162] Information of the Office of the Prosecutor General, January 2002.

conscience. In the Prosecutors Office Act the duties of the prosecution are specified, it offers no room for judicial activities. The Prosecutors Office Act also regulates that a prosecutor cannot be a judge at the same time. A person who has been employed as a judge for at least two years before appointment to office of a prosecutor, may be appointed as a county or as a city prosecutor.

I.4 Relationship with the police and the pre-trial investigation

Supervision over pre-trial legality

Supervision over pre-trial legality and the representation of the public prosecution in criminal proceedings form already the essential part of the Prosecutors' Office, whereas to date, the public prosecutor has no authority over the police.[163] The new draft Criminal Procedure Code will extend considerably the role of the public prosecutor, as it will make the prosecutor the head of the pre-trial investigation, and thus being allowed to steer the police investigations.[164]

The draft law stipulates furthermore another important shift: the inquisitorial court procedure will be replaced by an adversarial court system, in which the role of the prosecutor will increase considerably. After the verification of the legality of the pre-trial investigation (under the 'old' Code of Criminal Procedure) and after approval or amendment of the summary of charges, the prosecutor sends the case to court. Thus the court receives a case which the prosecutor thinks is fair. It was reported that this shift of the system will change also the introduction of the file. In the adversarial system, the two parties will have the opportunity to get thoroughly acquainted with the file; in the draft code it is stipulated that the investigator draws up the file and forwards it to the prosecutor. The prosecutor examines the file and selects only the important data from it. This shortened file is then sent by the prosecutor to the court and the defense counsel.[165]

Co-operation with the Police

It was reported that the co-operation with the police functions at two levels. First, the Office of the Prosecutor General has direct meetings with the Police Board. The priorities established by the Government are also binding for the police. The Prosecutor General's Office and the Police Board discuss the best way to carry out the priorities which have been set. Second, at the county level, there is the system of the 'home prosecutor'. Certain investigators are attached to the prosecutor. When a prosecutor is needed to approve of certain legal actions, the investigator knows which prosecutor to contact. It was reported, that problems and miscommunications are likely to occur.

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[163] Information by the Ministry of Justice on the Estonian Judicial System, Tallinn, 2001, p. 24.

[164] See e.g. Eerik Kergandberg, Estonian Code of Criminal Procedure as Legal Decision, *Juridica International V,* 2000, p. 91. Also information by the Office of the Prosecutor General, January 2002.

[165] Information of the Legal Adviser of the Penal Law Department of the Ministry of Justice, Ms. Ülle Raig, January 2002.

However, these problems are solved at the local level. The Office of the Prosecutor General seldom intervenes in these matters.[166] The Ministry of Justice reported that Senior Prosecutors issue written directives stating which investigators are attached to which prosecutor. It implies, that particular investigators stay attached to the same prosecutor, unless the Chief Public Prosecutor or decides to make a change in these attachments Thus, the prosecutor is able to know a case from the very first procedural actions, and thus he can supervise over investigation effectively. In subsequent court proceedings the prosecutor is thus obviously better informed about the merits of the police investigations in the applicable case.[167]

The Prosecutor General is in general not satisfied with the level of training of the police, but he underlines that this is a general problem. There are some joined training courses for prosecutors and police officers, mostly organised by foreign countries.[168]

Witnesses/victims

The anonymity of a witness may be applied in order to ensure his or her safety. This is done by order of the preliminary investigator. The views of the victim have to be taken into account by the Prosecutor. It is not clear from the available documents who is to inform the victims. The CCP only states the rights of the victim. At least interested parties, particularly victims, are entitled to challenge the decision of prosecutors not to prosecute.

Human Rights

According to the Constitution generally recognised principles and rules of international law are an inseparable part of the Estonian legal systems. Estonia is party to the European Convention. Public prosecutors have to act only pursuant to law.

Impartialities

Prosecutors are not allowed to join political parties. They are allowed to join or form local, national or international organisations and to attend meetings of such organisations.

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166 Information by the Office of the Prosecutor General, January 2002.
167 Comments on the Inception report (March 2001) by the Ministry of Justice, 2001.
168 Information of the Office of the Prosecutor General, January 2002.

CHAPTER II

The office of the public prosecutor

General

The Prosecutors Office is divided into the Public Prosecutors Office and into 16 county and city prosecutor's offices. These are subordinate to the Public Prosecutors Office. The chief Public Prosecutor is head of the prosecution service. In the Public Prosecutors Office there are public prosecutors. They represent public prosecutions with the Supreme Court and the circuit courts. The Public Prosecutor Office may be divided into departments (to be approved by the Minister of Justice). The Chief Public Prosecutor designates the prosecutors who direct the departments and the prosecutors who belong to the departments.

Secondary tasks and supervisory functions| International tasks

The role of the public prosecutor in matters of extradition, mutual assistance upon execution of a court, judgement of a foreign state or the amendment of a sentence imposed by a court of a foreign state cannot be considered a secondary task. Other supervisory tasks and functions do not appear from the available information.

One of the tasks of the Prosecutors Office is to perform duties arising from international co-operation (§ 1, section 1, subsection 6, Prosecutors Office Act). Chapter 35 of the CCP, entitled international co-operation in the field of Criminal Procedure, enumerates the relevant legal authorities in this field and their respective tasks and functions. Amongst them is the Public Prosecutors Office.

Estonian prosecutors can join the international association of prosecutors.

Specialisation

Formally prosecutors are not specialised in certain areas, but it is nevertheless included in the work distribution plan. This plan is drawn up by the Senior Prosecutor in the prosecutor's office. Possibilities for specialised training do exist, it was reported. There is furthermore a specialised prosecutor in the Prosecutors Office whose task is to conduct mutual assistance, now that International legal assistance is the responsibility of the Office of the Prosecutor General. Reportedly the number of requests has grown in the last years (training in this field is also provided, it was reported).[169]

[169] Information of the Office of the Prosecutor General, January 2002.

Public Opinion

Reportedly the image and reputation of the prosecution service is rather high, but the public could nevertheless be better informed about the work of the prosecution service. It was said that improving this, was one of the aims of the prosecution service. A difficulty the prosecution service reportedly encounters is that the law stipulates that information about the pre-trial investigation can only be released after the investigator has given permission to do so. The police are thus the first to know, and wants to inform the public before the prosecution service has a change to do so. Also the data protection act puts limits on the publication of information about criminal investigations.[170]

The press is very interested in criminal cases; the Office of the Prosecutor General has a division for public relations, which has direct contacts with the press and media. Training for journalists on the criminal justice system would reportedly be useful, since according to the Prosecutor General, the press lacks professionalism when reporting on criminal cases. [171]

CHAPTER III

The legal status of the public prosecutor

III.1 Ethical code/statute for prosecutors

According to the Estonian comments on the Inception Report (version March 2001), there is no Ethical Code for prosecutors. This sphere is regulated by the Ethical code for civil servants, which also covers prosecutors. § 12 of the Constitution is quite clear on this issue: "Everyone is equal before the law. No one shall be discriminated against on the basis of nationality, race, colour, sex, language, origin, religion, political or other opinion, property or social status, or on other grounds." To what extent this principle has been translated into legislation is not clear from the available documents. The regular report from the commission on Estonia's accession dated 8 November 2000 states that Estonia continues to respect human rights and freedom.

III.2 Appointment

Prosecutors are appointed to office by the Minister of Justice for a unspecified term. Their salaries are determined by law and related to the highest level of the salary scale for state public (read: civil) servants. They are entitled to an old-age pension after having served for at least 25 years. The pension then amounts to 65 percent of the last salary. There are also provisions for a disability pension. Disciplinary penalties may be imposed on prosecutors for disciplinary offences. These are considered by the prosecutors

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[170] Information of the Office of the Prosecutor General, January 2002.
[171] Information of the Office of the Prosecutor General, January 2002.

disciplinary committee, which is comprised of four prosecutors and a judge. On their proposal the Minister of Justice decides on the imposition of a disciplinary punishment.

III.3 Salaries

Reportedly the salaries in the public sector are rather high, but the salaries of judges, prosecutors, police officials are not proportional to this. There is not a systematic development of salary increases. This causes, according to information of the Office of the Public Prosecutor General, a flux of personnel between the services. However, there are ties with the salary of the secretary general of the Ministry of Justice. According to the Prosecutor General, prosecutors should earn slightly less than judge, because the judges are the last in the criminal justice chain.[172]

III.4 Independence and impartiality within the public prosecutors service

The prosecutors Office Act states that prosecutors shall be independent in the performance of their duties and act only pursuant to law and according to their conscience.
The prosecutors of the county and city prosecutor's offices represent the public prosecutions with the county and city courts. They are led by senior county or city prosecutors. In these offices there are county, city prosecutors and assistant prosecutors. These offices may be divided into departments (to be approved by the Minister of Justice). The senior prosecutor designates the prosecutors who direct the departments and the prosecutors and assistant prosecutors who belong to the departments.

The division of duties amongst the prosecutors is determined by the Chief Public Prosecutor respectively the senior county or city prosecutors. Duties are divided according to the type of criminal offence, offender or other general criteria. The plan/or the division of duties has to be prepared one year in advance. This plan also determines the procedure for the substitution of a prosecutor.
Twice a year senior county and city prosecutors submit activity reports of their respective offices to the Chief Public Prosecutor. The Chief Public Prosecutor submits twice a year a consolidated activity report of the prosecutors offices to the Minister of Justice.

III.5 Promotion

Public prosecutors, county and city prosecutors and assistant prosecutors are appointed to office based on a public competition (see above). The prosecutors competition and evaluation committee assesses the suitability of an applicant for a position. Assistant prosecutors undergo a clerkship, the duration of which is two years. During this period the assistant prosecutor acquires the necessary knowledge and professional skills under supervision of either a senior city or county prosecutor or of a county or city prosecutor.

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[172] Information of the Office of the Prosecutor General, January 2002.

The Chief Public Prosecutor and the senior county of city prosecutors are appointed to office without a public competition; their term of office is five years. In order to be appointed as Chief Public Prosecutor a person has to be employed as a public prosecutor or senior county or city prosecutor for three years immediately before appointment to office. In order to be appointed as senior county or city prosecutor a person has to be employed as a prosecutor for at least three years immediately before appointment to office. They may be re-appointed to office for a new term of office.

There is a regular appraisal/assessment system. Yet, it is not clear from the available documents how transparency is ensured in the promotion process. However, once a year the Prosecutors Assembly, a meeting of all prosecutors, takes place. The Assembly hears reports from the Minister of Justice and the Chief Public Prosecutor concerning the activities of the prosecutors offices and considers issues concerning these activities and makes proposals for the resolution there of.

III.6 Release/Dismissal

The available documents do not mention the possibility of dismissal, but relate the possibility of release from duty on a disciplinary charge (by the Minister of Justice on proposal by the prosecutor's disciplinary committee). This must be considered a dismissal. The Minister of Justice can impose this penalty on the proposal of the disciplinary committee (5 members, 4 elected by the Prosecutors Assembly and one judge elected by the representative body of judges). The Chief Public Prosecutor can be released from service by the government on the proposal of the Minister of Justice. The Comments on the inception report by the Ministry of Justice state that it is indeed better to use 'release' instead of 'dismissal'.[173]
In the Prosecutor's Act there is no provision for judicial review. Yet it is explained in the comments on the inception report by the Ministry of Justice, that there is absolutely a right for an individual to have judicial review after a decision of the disciplinary committee or examination and evaluation committee.[174]

III.7 Safety

Prosecutors and his or her family members will be compensated by the state for any proprietary damaged during the performance of the duties as a prosecutor.

III.8 Disciplinary proceeding

The Prosecutors Office Act, Division 5 regulates the disciplinary liability of prosecutors. Disciplinary cases are considered by the disciplinary committee, consisting of four prosecutors and one judge. The disciplinary charge must be in writing and the prosecutor concerned must be heard. Removal from one part of the service to another, with or without consent cannot be imposed as a disciplinary penalty.

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[173] Comments on the inception report by the Ministry of Justice, 2001.
[174] Comments on the inception report by the Ministry of Justice, 2001.

CHAPTER IV

Recruitment/Training

IV.1 Recruitment

The criteria for becoming a public prosecutor are stated in the Prosecutor's Act. The Prosecution Service recruits students at the universities. During their studies, quite a lot of students participate in the practical training, which will give them an inside look into the prosecution service. After graduation the prosecution service informs the graduates about the public competition. This competition (like the French 'concours') is also announced in the newspapers and on posters within the university buildings. Some years the recruitment is reportedly more successful than other years.[175]

IV.2 Initial training

Candidates for becoming a prosecutor have to have a law degree from the university. As mentioned above, assistant prosecutors undergo a clerkship, the duration of which is two years. During that period the person concerned has to acquire the necessary theoretical knowledge and professional skills. To this purpose he or she is under the supervision of a (senior) county or city prosecutor. If the trainee is a fast learner, the Ministry of Justice can shorten the training service period with one year, it was reported. The Candidate has to pass a prosecutor examination.[176]

There are organised joint training activities for judges and prosecutors, in which assistant prosecutors can participate as well. There is e.g. a training program in conjunction with the German Länder in the framework the EU twinning program, in which all judges and prosecutors participate. The second stage will be carried out in 2001-2003. Obviously, these programs entail international contacts with colleagues. There are also projects that provide supplementary training required by amendments to legislation and training in EC law. Teaching through the Internet has also been offered to prosecutors and civil servants. It was reported that there are no specialists in Estonia to perform training to the prosecutors in pre-trial investigation and in adversarial court procedures.[177] According to the comments on the inception report of the Estonian counterpart 'At the moment specialisation on economic crimes only is in effect in Tallinn City Prosecutor's Office and Office of the Prosecutor General. This type of crime always requires additional knowledge in economics or at least in bookkeeping. Tallinn City Prosecutor's Office intends to implement also specialisation on drug related crimes. There is also specialisation for international co-operation in criminal matters existing in Public Prosecutor's Office. Due to the small size of other local prosecutor's offices (except Tallinn), specialisation in those offices does not seem to be rational.

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[175] Information of the Office of the Prosecutor General, January 2002.
[176] Information of the Office of the Prosecutor General, January 2002.
[177] Information of the Office of the Prosecutor General, January 2002.

The comments on the inception report by the Ministry of Justice contain the submission that 'all the training programs are financed and conducted generally by the Ministry of Justice. The Prosecutor's Office does not have "own" funds to initiate any training. However, there is a centralised learning system for prosecutors and judges, funded generally by the Ministry and taking place in Tartu Legal Center (which work in close co-operation with the University of Tartu and the Supreme Court). Training programs are very frequent and cover all spheres of law.

MODULE 3

COURT PROCEDURES AND EXECUTION OF JUDGEMENTS

CHAPTER I

Local, formal and material access to courts

I.1 Efficiency of the court system and regional accessibility

In order to improve the efficiency of the court system three city and county courts have been merged in Tartu, Pärnu and Sillamäe. In order to improve the access to court in administrative matters the administrative complaints, beginning with the year 2001, will be settled only by administrative judges specialised solely in administrative cases in regional administrative courts. Next to the administrative courts in Tallin and Tartu a third administrative court has been established in Pärnu on January 2000 and a fourth one will be running in northeastern Estonia in 2001.

The backlog of the cases in the courts is seen as one of the main problems, even though it was reported that in the Järva County Court in Paide cases are dealt with within one month. About 5 years ago, it was reported, this period was 3-6 months.[178] Other problems with respect to the judges are the heavy workload, the uncertainty of the judges in applying the law and the fact that the quality of court-decisions varies considerably and remains unsatisfactory in some courts of first instance.

As mentioned in Module 2, in criminal cases the public prosecutor plays an important role in the efficiency of the court system and the access to court. The situation of the organisation of the police, also a very important factor in the access to court in criminal cases, is said to be not so well. Out of the few remarks in the available documentation can be figured that while Estonian is the official language, that is also spoken by the leading officers, 50% of the policemen are Russian-speaking. The number of police officers in 1999 is 4200 and 800 posts remain vacant. Many officers left the police because of low pay and lack of adequate training. The reported conclusion that as a consequence, especially in the lower ranks of the police, corruption remains an everyday experience, is very serious. To cope with these problems in the police-organisation a salary reform is gradually being introduced (the salaries have increased 26% as compared to 1998). A

[178] Information by the Järva County Court, January 2002.

Police Development Programme was announced for 1999-2000, designed to raise the professional level by on the one hand reducing the police force considerably, on the other raising the pay for those who remain. A new Anti-Corruption Act entered into force in February 1999. A last and very important conclusion that is drawn in the documentation is that the co-operation between the different authorities (police, prosecutors and judges) still needs to be reinforced.

I.2 Provision of free legal aid

A new Legal Aid Act is drafted, and pending before parliament and there also is a State Fees Act. A matter that causes a serious debate in Estonia concerns the introduction of a new type of legal advisors, next to lawyers that are members of the Bar. These legal advisors do have higher education and they are trained to be such a legal advisor, yet they are not advocates and they are not member of the Bar (they fall under the responsibility of the Ministry of Justice). There was no translation available of the draft Legal Aid Act.

In the civil procedure there is no obligation to be assisted by a lawyer before the courts of first and second instance. If a court finds that the essential interests of a natural person who is party to the matter are insufficiently protected due to his or her insolvency, the court may appoint an advocate to represent the person at the state's expense (art. 59 Code of Civil Procedure). It was reported by the Bar Association that the burden of proof for the insolvency is rather heavy and that only the economic situation is taken into account and not e.g. the social of physical situation. The draft law does not improve this much, it was said, even though the circumstances of insolvency are better described. The procedure to apply for free legal aid is yet complicated and time consuming.[179]

In the criminal procedure the suspects, accused and accused at trial shall be ensured the right of defence. In criminal proceedings, sworn advocates of the Republic of Estonia, senior clerks and clerks of sworn advocates and other persons with the permission of the court may act as defence council. If a defendant had requested participation of a defence counsel but doesn't have one, the Estonian Bar Association shall ensure the participation of a criminal defence counsel at the expense of the state (art. 60 § 6 Bar Association Act, dated May 2001). The defendant may be fully or partly released from payment for legal assistance (article 36-1, §2 and 5 Code of Criminal Procedure).

All translations of the requests for legal assistance are made in a translation agency, which has a corresponding contract with the Ministry of Justice. In case of state legal aid the attorney's fees are paid by the state. The Minister of Justice determines the limits of such fees. Legal aid is to be given on order of judges as a *pro bono* obligation of the Advocacy. For criminal defence in serious cases and civil court cases which require lawyer representation there is a scheme granting court fee waivers and advocate's fees. But as these fees are moderate, lawyers are not very keen to get engaged for them.

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[179] Information by the Bar Association, January 2002.

There is no further system of free legal aid in administrative law. The draft Legal Aid act which is in Parliament now, will reportedly bring changes to that, expanding this. Furthermore, representation is not obliged in administrative procedure.[180]

CHAPTER II

Fair trial and due process in civil and criminal matters

II.1 The Estonian Criminal Law Reform 2000

It was reported, that the most important internal condition for the Criminal Law Reform in Estonia is the manifest increase of crime rate that the Estonian criminal policy-makers and all of the population have observed since 1989. Furthermore, it was reported that neither the Council for Crime Prevention nor the Ministry of Interior Affairs has proposed a clear criminal policy to be followed and that are not many signs suggesting the existence of a consistent penal policy in Estonia.[181]

In any case, the reform of the criminal procedure code already started in 1995; its purpose is reportedly to make the legal administration more efficient and economic. The new code has two main objectives: 1) to decrease the number of proceedings and 2) to economise on the public resources spent on the court procedure.[182] Obviously the court proceedings are the most expensive part of the whole criminal procedure, partly because they are lengthy. It was reported that this has a negative effect on the prestige of the courts and of the legal system in general. In the draft code alternatives to criminal proceedings are introduced, as well as possibilities for the prosecutor to terminate the prosecution on principles of opportunity (art. 203 of the draft Act). The prosecutor can thus request the court to terminate the proceedings and put certain obligations on the accused (compensation of damages, payment of fines for communal use, community service).

As has been mentioned in Module 2, the role of the prosecutor will become very important in the future. The leading idea is, that the prosecutor has to become the executor of the criminal policy (it should be noted here by the way that there is still a discussion going on in Estonia on the alleged 'new' role of the prosecutor in the pre-trial

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[180] Information of the Ministry of Justice, January 2002.

[181] Jaan Ginter, Criminal Policy Choices and the Reform of the Estonian Criminal Law, *Juridica Internationl V, 2000, p. 81-82.*

[182] Information by the Legal Advisor of the Penal Law Department of the Ministry of Justice, Ms. Ülle Raig, January 2002.

investigation).[183] It was written, that 'the draft Penal Code of 2000 is a major step forward to establishing a consistent criminal policy in Estonia.'[184]

Preliminary investigation and executive judges

Eerik Kergandberg, member of the drafting committee, describes in his article *'Estonian Code of Criminal Procedure as Legal Political Decision'*, some 'choices related to subject of Criminal Procedure'.[185] He states that 'among the choices related to the subjects of criminal procedure, the one that should be mentioned first is that according to the draft the plan is to introduce the institutes of preliminary investigation and executive judge. The idea is, that these judges are ordinary first-degree judges to whom relevant task have been assigned with a work division plan."[186] He thinks that in the current situation of Estonia, additional positions for judges of preliminary investigation should be created, because the enormous workload of existing judges does not allow to change any of them into judges of preliminary investigations'.[187]

It was reported by the Ministry of Justice, that the period currently set for the pre-trial investigation does not really have a purpose and is hardly met. The pre-trial period is indirectly set by the period allowed for pre-trial detention. In the draft Criminal Code a maximum period (which cannot be exceeded or extended) of one years is set. The defendant has the right to ask for a review of the detention. After 6 months there is an automatic review (art. 136 of the Draft Code).[188]
A suspect can be held in detention for 48 hours without being brought before a judge. Within the first 24 hours a defence counsel must be found in cases of compulsory representation. Either the suspect appoints a counsel himself or he gets a state appointed counsel. In the latter case, the investigator appoints a counsel (under the current law this will be a member of the Bar Association) and sets a price with him. This counsel can be replaced at a later stage in the pre-trial period. This system is highly criticised.[189]

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[183] Information by the Legal Advisor of the Penal Law Department of the Ministry of Justice, Ms. Ülle Raig, January 2002.
[184] Jaan Ginter, Criminal Policy Choices and the Reform of the Estonian Criminal Law, *Juridica International V, 2000, p. 83.*
[185] Eerik Kergandberg, Estonian Code of Criminal Procedure as Legal Decision, *Juridica International V,* 2000, p. 90.
[186] Eerik Kergandberg, Estonian Code of Criminal Procedure as Legal Decision, *Juridica International V,* 2000, p. 90.
[187] Eerik Kergandberg, Estonian Code of Criminal Procedure as Legal Decision, *Juridica International V,* 2000, p. 90.
[188] Information by the Legal Advisor of the Penal Law Department of the Ministry of Justice, Ms. Ülle Raig, January 2002.
[189] Information from the Bar Association, January 2002.

Simplified Proceedings

It was reported that already since 1996 the system of plea-bargaining is in use. The draft code complements the list of simplified proceedings. Two new proceedings have been added:

1) short proceedings in which no witnesses or experts are invited (the cases is settled based on the file only) and
2) decisions in small, minor cases may be settled in absentia.

Another novelty of the code is the introduction of surveillance in the proceedings. This may result in evidence, as the code regulates.[190]

II.2 Public pronouncement of the judgement

The right of article 6 §1 EHCR to be judged by an independent and impartial tribunal is secured in article 146 of the Constitution that states that justice shall be administered solely by the courts and that the courts shall be independent in their activities and shall administer justice in accordance with the Constitution and the laws. As is already remarked under chapter 1 the draft Courts' Act provides for a higher grade of independence of courts, setting the ground for a self-government of the courts.

Other rights of article 6 §1 EHCR, that court sessions shall be in public and that court judgements shall be pronounced publicly, except for some in the law described situations, are embedded in the Constitution (art.24) and the Courts Act (art.6). Next to that, article 24 of the Constitution gives everyone a specific right to be tried in his or her presence and the right to appeal to a higher court against the judgement in his or her case.

II.3 Specific rules of procedures in civil matters

The most characteristic feature of the new Code of Civil Procedure (1998) is the more consistent implementation of the principle of competitiveness. The central figures of the procedure are no longer the court and the judge, but the parties of the court dispute. The active role of the court collecting the evidence was substituted by the active role in managing the procedure. It now are the parties that need to be active and prove the facts on which the claims and objections of the parties are based. The court may collect evidence on its own initiative only for the protection of the public interest, like in matters of family law and in matters on petition.

The person has the right to an oral hearing of his matter, the competence of the court of appeal to adjudicate the matter by means of written proceeding is reduced. New is that there is no obligation to be assisted by a lawyer and that the court's obligation to explain the participant what is going on, is reduced. Next to that there are several regulations to promote a justly and expeditious hearing of the matters. One of them is that the court

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[190] Information by the Legal Advisor of the Penal Law Department of the Ministry of Justice, Ms. Ülle Raig, January 2002.

must reason the adjournment of adjudication of the matter, and also enter the reason into the minutes. Another is that the party of the procedure is entitled to file an appeal against ruling, should he find that adjudication of the matter was adjourned for an unreasonably long term. Finally there is the Appeals Selection Committee, which functions independently like a filter and decides if a judgement of the Supreme Court is substantially necessary.

In the draft of the Code of Civil Procedure, that is expected to become law in 2001, even more possibilities will be created to shorten and simplify the procedures and the enforcement of judgements. It will introduce summary proceedings for recovery of debt or liquidated demand and will simplify the enforcement of the decision in absentia. The possibilities to appeal will be limited, depending on the cost of the claim. Differently from the present situation the new Code of Civil Procedure will also include the enforcement procedure and the procedure of arbitration. It was reported that the execution of a court sentence at the Järva County Court in Paide, which has entered into force is done in reasonable time. About one third of the cases are appealed. On March 2001 a new bailiffs act (see below) entered into force; the creditor now goes to the bailiff, who will execute the civil judgement.[191]

Next to the civil procedure there is the Arbitration Court of the Estonian Chamber of Commerce and Industry settling disputes arising from contractual and other civil law relationships, including foreign trade and other international economic relations. It is a non-governmental institution. The arbitration is used, but not very widely, mainly because of its high costs.

There are also Labour dispute committees functioning as extra-judicial independent individual labour dispute resolution bodies. These committees are competent to resolve a labour dispute if the chairman of the committee and at least one representative of the employees and one representative of the employers participate in the work of the committee. They are established within the local labour inspectorates of the Labour Inspectorate. The chairman is appointed by the Minister of Social Affairs on the proposal of the Director General of the Labour Inspectorate. The chairman must be a person with higher education in law.

There are also plans to establish Rent Dispute Committees as an obligatory institution of the court preliminary procedure in the matters of rental dispute, similar to the labour dispute committees. Aim is to reduce the workload of the court, but also to concentrate all rental disputes into the hands of experts in this specific field.

Compliance with art. 6 § 2 and 3 EHCR in criminal matters; principles of decision-making

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[191] Information by the Järva County Court, January 2002.

Presumption of innocence

In article 22 (1) of the Estonian constitution this right is formulated 'no one shall be presumed guilty of a criminal offence until a conviction by a court against him or her enters into force.' Paragraph (2) of the same article (22) states that 'no one has the duty to prove his or her innocence in a criminal proceeding'. Paragraph (3) of article 22 of the Estonian Constitution states that 'no one shall be compelled to testify against himself or herself, or against those closest to him or her'.

The right to be immediately informed

The right to be immediately informed about the accusation can be found in article 35-1 of the Code of Criminal Procedure.

II.4 Compliance with art. 5 ECHR in case of pre-trial detention

The provision of article 5 §1 EHCR, that states the right to liberty and security of person and describes six situations in which someone can be deprived of his liberty, are literally copied in article 20 of the Constitution of the Republic of Estonia. Added is the explicit statement that no one shall be deprived of his or her liberty merely on the ground of inability to fulfil a contractual obligation.

The provision of §2 of article 5 EHCR, the right of the arrested person to be immediately informed in a language that he understands about the reason for arrest, is also literally copied in article 21 §1 of the Estonian Constitution. In the last provision the rights of the arrested person are extended to information about his rights and the opportunity to notify those closest to him or her, although the last right can be restricted. According to the same §1 of article 21 in the Constitution the person suspected of a criminal offence shall also be promptly given the opportunity to choose and confer with a counsel. All these rights in article 21 §1 Constitution can also be found in article 11 §1 of the (old?) Code of Criminal Procedure.

Article 21 §2 of the Constitution and article 11 §2 of the Code of Criminal Procedure prescribe that no one shall be held in custody for more than 48 hours without the specific authorisation of a court. This is an elaboration of the right given in article 5 par 3 EHCR that the arrested person 'shall be brought promptly before a judge or other officer authorised by law to exercise judicial power'. This provision gives the arrested person the guarantee that an impartial court will decide about his arrest, and also that this decision will be taken promptly, within 48 hours, after the arrest, to ensure that no one will be kept longer in custody than necessary.

The other rights of article 5 §3 EHRC, the right to be judged within reasonable time and to be released pending the procedure appear in the Code of Criminal Procedure. Article 11 §3 of this Code prescribes that a prosecutor is required to immediately release anyone who has been wrongfully deprived of his or her liberty or who is held in custody longer than the term prescribed by the law or a court judgement. With respect to the right to be judged in reasonable time, the Code of Criminal Procedure sets a maximum length of

pre-trial detention of six months. Only in the case of particular complexity or extent of a criminal matter, the Chief Public Prosecutor or senior county or city prosecutor may request the extension of the term for holding in custody for up to one year as an exception.

Article 35-1 §1 of the Code of Criminal Procedure gives provisions for the procedure around the decisions by court about the pre-trial detention. A suspect has also the right to submit petitions for removal, submit applications, file appeals and participate in the court sessions in which the taking of the suspect into custody or the extension of the term during which the suspect may be held in custody is discussed. If a person being held in custody is undergoing treatment in an in-patient medical institution, the court may, without the presence of the person, extend the term during which the person may be held in custody. A suspect may participate in procedural acts with the permission of the preliminary investigator. Furthermore the pre-trial detention has a maximum length of 6 month.

With respect to article 5 par 5 EHCR there is a provision in article 45-1 of the Code of Criminal Procedure for the compensation of damage, caused by wrongfully charging the person with a criminal offence or by wrongfully taking the person into preventive custody. At the end of the proceedings the court or prosecutor has to explain to the person the procedure for restoration of his or her rights which have been violated, and to take the measures prescribed by law for the compensation of damage.
Next to custody in exceptional cases a preventive measure may be applied to a person who is suspected of the commission of a criminal offence prior to the bringing of charges or the prosecution of a suspect pursuant tot expedited procedure. In such cases charges shall be brought or the suspect shall be prosecuted not later than within ten 24-hour periods. If taken into custody is applied as a preventive measure and no charges are brought or the suspect is not prosecuted within ten 24-hour periods, a county or city court judge may extent the preventive measure for up to thirty 24-hour periods. If no charges are brought or the suspect is not prosecuted, the suspect shall be released from custody (article 67 CCP).

CHAPTER III

System and procedures for administrative justice

III.1 General

There are 4 Administrative courts in first instance. There are 2 Administrative courts in second instance (Tallin Appeal Court and Tartu Appeal Court). There is 1 Administrative chamber within the Supreme Court.
A citizen can attack any administrative measure; all matters can be subject to administrative court procedure. A personal interest of a citizen has to be proven, though.

There does not exist a sort of 'public interest claim'. Yet, constitutional basic rights can of course be invoked. Also a third party can also lodge a complaint (e.g. a neighbour who wants to oppose to the construction of a huge company building across his house, taking away the beautiful view). Yet, there is reportedly not much experience in these kinds of procedures. Still more and more the population is reportedly aware of the fact that there is an administrative court, ready to hear their legal complaints on the administration. State liability matters are also to be lodged before an Administrative Court.[192]

III.2 Internal administrative review procedures

An Office of Public Administration Reform (OPAR) was established in January 1999 in the State Chancellery under the responsibility of the Prime Minister. However, progress has been slow and mainly carried out by individual Ministries or other public bodies.

III.3 Court procedures

The new Penal Code will enter into force in 2002. The draft gives opportunities to punish both criminal offences provided in the present Criminal Code as well as administrative offences provided in the present Code of Administrative Offences. Examples for this draft were the German and French codes of penal law.

III.4 Ombudsman

Since June 1999 the Legal Chancellor is officially a complaint institution, thus serving as ombudsman. The issues treated are similar to those of the administrative courts, but the Ombudsman does not treat property questions, labour problems or liability claims. The Ombudsman cannot be called upon if a court procedure is already pending, while the administrative court can be invoked 30 days after the Ombudsman has given his advice. The advice of the Ombudsman is not binding, but is almost always followed by administrations. The Annual Report to Parliament is accompanied by a press conference. Press coverage is an important ingredient to success.

CHAPTER IV

Execution of judgements

IV.1 Compliance with rules covering all execution procedures

The Code of Enforcement Procedure dates back from 1993, but it has been thoroughly amended and changed several times.

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[192] Information of the Public Law Department of the Ministry of Justice, January 2002.

IV.2 Execution in civil and commercial matters

Commercial and real estate registers cover all of Estonia. They are situated at the courts of first instance, but function independently. The commercial register is computerised and also presented in paper form. The real estate registers are not yet computerised, but efforts are made to speed up the computerisation of those registers.
With the privatisation, real estate business and banks as main clients, notaries nowadays can earn much money. While being a notary was in Soviet times not very attractive, there is now a long waiting queue for admittance. On advice of their German colleagues, Estonia in 1993 took over the scheme of the 'exclusive notary'. Notaries are selected by a special commission, trained by the Ministry of Justice and appointed by the Minister of Justice. During the transformation period intensive schooling courses were given and they still remain necessary. In 2001 all notaries shall be certified again.

IV.3 Execution in criminal matters

It was reported by the Järva County Court, that a bailiff collects the fines which a person is sentenced to pay. When people are sentenced to imprisonment, they can be taken into custody at the court hearing. Another possibility is that the judgement contains an order to restrain a person. When the decision is final, a letter is sent in which the person is asked to present himself at the prison. When this is not done, he can be brought to prison.[193]

Prisons

Extensive changes were already introduced in the criminal execution system, since the Code of Execution Procedure (1993); according to information of the Ministry of Justice work camps were abandoned, three types of prisons were established (open, semi-closed and closed prisons and in each prison three regimes were established: quarantine, general and favoured regime – transferring to progressing or rotational prison system, which enabled the prisoner to move from stricter regime to the more lenient or for good behaviour). Furthermore a set of prison officers was established as one category of public servants and a prison commission was created for each prison as a public control body. One of the most important changes in management of prisons was submitting the prisons from jurisdiction of the Ministry of Internal Affairs to jurisdiction of the Ministry of Justice and establishing the Board of Prisons for immediate administration of prisons.[194]

A new Imprisonment Act came into force on December 1st 2000. The aim of the act is to up-date the Estonian prison system to international standards and principles. The following amendments were introduced:

1) categorisation of prisons to closed and open prisons only,
2) abolition of in-prison regimes,

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[193] Information by the Järvan County Court, January 2002.
[194] Information of the Ministry of Justice, *The Prison system of Estonia,* Tallinn 2000, p. 3.

3) turning imprisonment into a flexible type of punishment, enabling to differentiate imprisonment to a form suitable for each individual prisoner,
4) focusing on re-socialisation of a prisoner during the serving of sentence,
5) increasing of independence and decision making right of prisons,
6) organising of prison service as a career system,
7) giving higher priority to training of prison officials.[195]

Although the new act is an important step in the right direction, it has only come into force recently and the conditions in the prison system are still far from the objectives stipulated in the Act. Overcrowding of prisons and out-dated prisons remain a major problem. The prisons are not in a state conducive to rehabilitation. With respect to the right to medical care for instance, ensured in the new act, the lack of funds, outdated medical equipment and lack of trained medical personnel remain a problem. Another problem is the lack of adequately trained personnel and low salaries for prison personnel. Initiatives are needed to reverse the rising tide of violence in Estonian Prisons. The number of crimes against persons has remained stagnant.
In Tartu a new prison is built for 500 inmates. After the expected opening in November 2002 the Central prison in Tallinn will be closed down.
The Estonian Prison System works together with the Swedish Prison and Probation Administration and the Finnish Criminal Sanctions Agency in a project 'Twin Prison Co-operation in Estonia'. The objective of this co-operation between the Estonian, Swedish and Finnish prisons is to strengthen the capacity and democracy of the involved institutions to secure rule of law and the respect of human rights. Within the co-operation, particular emphasis is put on the training of Estonian prison officials.

Probation

In May 1998 a new Probation Supervision Act was adopted, introducing a probation system in Estonia. In June 1998 the probation system was established, being one of the essential parts of the national reform of criminal law.[196]

IV.4 System of bailiffs

On the 1st of March 2001 the new Bailiff's Act entered into force, bringing extensive changes for all people involved in the enforcement proceedings. 'There was an attempt to create a system of enforcement proceedings that would correspond to the legal circulation based on principles of free market economy and to the regulation of foremost pecuniary legal relations present in the contemporary civil society. An increased number of cases to be enforced serves an evidence of an increased legal circulation, which requires a new approach from the system of enforcement proceedings and from the people working in this system', was written.[197]

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[195] Information of the Ministry of Justice, *The Prison system of Estonia,* Tallinn 2000, p. 3.
[196] Information of the Ministry of Justice, *The probation supervision system of Estonia*, Tallinn 2001.
[197] Nicola Hesslen, The bailiffs reach the liberal status, *UIHJ Magazine* no. 12, p. 46.

By comparing the law on the status of free-lance bailiffs in France, the Act of Bailiffs and the Enforcement Proceedings of The Slovak Republic and the bill of law on a free-lance Bailiff of Germany (as well as other comparative material), the Estonian new law on Bailiffs was drafted. The main requirement for being appointed as a bailiff is a person's academic legal higher education (this requirement will enter into force on the 1st. of July 2002). Candidates for becoming a bailiff also will have to pass, in the future, a bailiff's preparatory service of reportedly 10 months, during which a candidate performs tasks assigned to him by a supervising bailiff. At the same time a candidate has to undergo a special training and a bailiff-exam, which is organised by the Ministry of Justice.[198] 'At present, in the course of his work, a bailiff faces several legal problems like problems connected with constitutional rights of people. Solving issues of such character presumes special qualification and extensive legal knowledge."[199]

Bailiff's legal status

'The basic idea in the Bailiff's Act was to make a bailiff into an independent person who holds an office in public law. This idea is accompanied by the principle that a bailiff holds an office in his or her own name and at own liability as a liberal profession performing duties of a state, being thus free-lance. This is accompanied by the principle of personal responsibility for his or her activity.

As a free-lance bailiff is liable for the damages caused by his or her activities, the law envisages the obligation to enter into a professional liability insurance contract in order to avoid the situation, where a bailiff is not able to compensate for damage.[200] At the same time the law will not envisage a bailiff as an entrepreneur. Yet, legal provisions prescribing the activity of a natural person being an entrepreneur apply to him on taxation.[201] 'When introducing the Bailiff's Act, parallels were often drawn to the profession of a notary, which is also characterised by independence and personal liability for his or her activity."[202]

Independence, Supervision and Incompatibilities

'The law has paid great attention to ensuring the independence and impartiality of a bailiff. Independence finds its expression in the fact that a free-lance bailiff receives substantial instructions only from court through their decisions, which have decided the complaints about his or her activity. On the other hand, although the state has assigned some of his functions, the responsibility for the operation of the system of civil enforcement proceedings remain with the state.[203]

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198 Information by the Civil Enforcement Division of the Ministry of Justice, ms. Kadriann Ikkonen, January 2002.
199 Nicola Hesslen, The bailiffs reach the liberal status, *UIHJ Magazine* no. 12, p. 46.
200 Nicola Hesslen, The bailiffs reach the liberal status, *UIHJ Magazine* no. 12, p. 46.
201 Nicola Hesslen, The bailiffs reach the liberal status, *UIHJ Magazine* no. 12, p. 46.
202 Nicola Hesslen, The bailiffs reach the liberal status, *UIHJ Magazine* no. 12, p. 46.
203 Nicola Hesslen, The bailiffs reach the liberal status, *UIHJ Magazine* no. 12, p. 46.

The presidents of county and town courts and the Minister of Justice thus execute a strict supervision over bailiffs.[204] Yet, the Estonian authorities executing this supervision shall not give bailiffs instructions on how to implement law and the expediency of a legal solution chosen by a bailiff is also not subordinated to supervision'.[205] A debtor can lodge a complaint against the bailiff to the bailiff himself. The claimant can also lodge a complaint. The bailiff will deal with the complaint; when the debtor is not satisfied with the answer he receives, he can go to court (up to the Supreme Court). The Ministry of Justice exercises disciplinary supervision, which is reportedly a formal supervision instead of a material supervision.[206]
'In order to ensure the impartiality (neutrality) of bailiffs 'the law provides office-related restrictions according to which a bailiff shall not hold other paid offices besides the office of bailiff or perform any other paid work except teaching or research in educational or research institutions. A bailiff's opportunities to act as an entrepreneur have also been essentially restricted'. [207]

Execution of judgements

The bailiff must inform the debtor that the execution has started. When he does not fulfil his obligations, the bailiff can after a certain period, confiscate goods and accounts of the debtor. The responsibility for the confiscation lies completely with the bailiff. There are limits to the confiscation of goods: a person or a family must still be able to sustain himself/itself. Cases of execution of real estate go to the court first. [208]

The Bailiff's Office and Remuneration

'A bailiff's place of work is his or her office, which is subject to a number of requirements, taking into consideration the fact that this is an office that serves a public interest. Both one bailiff and a number of bailiffs together can operate an office, which does not mean that a bailiff is allowed not to act on his or her own name. The order of making and negotiating proceedings is strictly stipulated. A bailiff acts and holds an office in the territorial jurisdiction, where he has been appointed. The territorial jurisdictions of bailiffs overlap with the territorial jurisdictions of courts (…). If there are several bailiffs acting in one territorial jurisdiction, a claimant has the right to choose the person to whom to submit an enforcement document. The total number of bailiffs has been established with the regulation by the Minister of Justice and there are eighty-nine bailiffs to cover all Estonia. According to the regulation, the total number is ninety. The number has been derived from economic calculations, which take into account the total number of enforcement proceedings and the number of persons necessary to carry them

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[204] Information of the Civil Enforcement department of the Ministry of Justice, Ms. Kadriann Ikkonen, January 2002.
[205] Nicola Hesslen, The bailiffs reach the liberal status, *UIHJ Magazine* no. 12, p. 46.
[206] Information of the Civil Enforcement department of the Ministry of Justice, Ms. Kadriann Ikkonen, January 2002.
[207] Nicola Hesslen, The bailiffs reach the liberal status, *UIHJ Magazine* no. 12, p. 47.
[208] Information of the Civil Enforcement department of the Ministry of Justice, Ms. Kadriann Ikkonen, January 2002.

through, proceeding from the attributes of a bailiff and the present statistics.'[209] The text of Module 3 of the inception report (version of March 2001) contained the submission that after the reform of enforcement procedures, the number of bailiffs will be reduced to 90-100.

A bailiff is not a state officer any more, and therefore bailiffs will not receive any salary from the state anymore.[210] 'The fee for enforcement proceedings serves as an essential source of a bailiff's income.'[211] This could improve a system's efficiency, as the bailiff now has an interest in the results of enforcement in a certain case. 'In case of enforcing a pecuniary claim, a bailiff's remuneration depends on the monetary amount of a claim and on how much he or she is able to actually enforce for the benefit of a claimant.' [212]
'There are also fixed fee rates for achieving the assignment of things and achieving the performance of an act or its being left unperformed. The rates of fees have been established with a consideration that bailiffs might be able to perform enforcement proceedings, cover the office costs and receive remuneration for their own work and the work of their assistants.
A bailiff has a right to remuneration only in the extent and in order as provided by law and on the basis of law. Agreements contradictory to this requirement are null and void.(…)A bailiff shall have the right to request an advance payment from the claimant, which enables a bailiff at any case to commence swift and efficient enforcement proceedings. After the bailiff has received remuneration from the debtor, the advance payment is returned to the claimant.'[213]

The Chamber of Bailiffs

In order to help bailiffs to switch painlessly over to a new system, a professional union, the Chamber of Bailiffs, has been founded. This was registered on February 15, 2001. Today the Chamber has over forty members[214] and its basic aim in the articles of association is to represent and to protect common professional interest and to organise the exchange of experience on activity and the exchange of information. The Chamber has the right to represent its members before bodies of state and local municipalities, by relation and making co-operation with other organisations. One aim of the Chamber of Bailiffs is among others, 'to develop international co-operation.' [215]

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[209] Nicola Hesslen, The bailiffs reach the liberal status, *UIHJ Magazine* no. 12, p. 47.
[210] Information of the Civil Enforcement department of the Ministry of Justice, Ms. Kadriann Ikkonen, January 2002.
[211] Nicola Hesslen, The bailiffs reach the liberal status, *UIHJ Magazine* no. 12, p. 47.
[212] Nicola Hesslen, The bailiffs reach the liberal status, *UIHJ Magazine* no. 12, p. 47.
[213] Nicola Hesslen, The bailiffs reach the liberal status, *UIHJ Magazine* no. 12, p. 47.
[214] In May 2002 there were over 70 members; comments on the adjusted desk research, Estonian Ministry of Justice, 25 July 2002.
[215] Nicola Hesslen, The bailiffs reach the liberal status, *UIHJ Magazine* no. 12, p. 48.

Hungary

This report is based on information gathered up to November 23rd 2001

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MODULE I

AN INDEPENDENT JUDICIARY

CHAPTER I

Overview of the judicial system

I.1 General

The Hungarian system at present consists of three levels, but the (amended) Constitution already provides for the introduction of the fourth level, the Courts of Appeal.[1]
In order to reduce the workload of the courts and to establish clear lines of authority, the Horn government (1994-1998) planned to introduce an additional level between the county courts and the Supreme Court. It decided to establish a level including five appellate courts in order to take over the appellate functions of the Supreme Court. This will allow the Supreme Court to concentrate on issues of legal principle. At the end of 1998, the Orbán government considered it better to postpone the issue[2] because of the alleged lack of proper conditions for the functioning of the appellate courts. The legislation was amended for establishing just one appellate court, the National High Court, to start its functioning on 1 January 2003.
However, the Constitution foresees more than one appellate court.[3] On 20 November 2001, the Constitutional Court issued a decision that it is unconstitutional to establish just one Court of Appeal.[4] The decision indicated that the legislator should establish more courts of appeal by the end of next year.[5]

At the local level there are 111 local or city courts dealing with civil (including commercial, bankruptcy, company registration etc.), administrative and criminal matters, and 20 labour courts. The second level is a network of 20 regional/county

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1 Addition to the inception report by the Office of the National Council of the Judiciary (ONCJ), 22 August 2001.
2 Népszabadság, 28 May 1999; 1 June 1999.
3 Article 45 of the Constitution mentions 'Regional Courts of Appeal", (Act XX of 1949 as revised and restated by Act XXXI of 1989, as of 1 December 1998).
4 Information obtained during the meeting with the president and members of the Constitutional Committee of Parliament (Budapest, 21 November 2001).
5 Addition by Mr. Höltzl, State Secretary for International Co-operation of the Ministry of Justice (Budapest, 22 November 2001).

courts, including the Budapest Regional Court. Primarily they hear appeals lodged against the decisions of the local courts, but in cases specified by the laws of procedure, they act as courts of first instance.

In the present judicial system, the Supreme Court primarily functions as a court of appeal and of extraordinary remedies. It reviews court petitions on their legal merit[6] and carries out the task of conceptually guiding lower courts. Its function to unify the law will become more marked with the setting up of the National High Court of Justice.[7]

A theoretical debate is going on in Hungary about the establishment of separate administrative courts. At the moment, the administrative justice is incorporated in the regular court system.[8]

I.2 Lay judges[9]

Previously, all first instance cases were handled by two lay judges and one professional judge. However, the importance of lay judges in the Hungarian judicial system has decreased. Nowadays, in some criminal cases in first instance courts there still are lay judges. Even though lay judges have the majority in the bench of three, it almost never happens that the professional judge was outvoted by the lay judges. The role of the professional judge is very important.

In civil cases in the first instance courts, lay judges are hardly involved anymore. In second instance courts and at the Supreme Court there are no lay judges. In labour courts, representatives of employees should sit on the bench.
Lay judges are elected by general public vote, for 4-5 years. The position of lay judge is generally not a wanted position. Mostly retired people are elected.
Hungary has no jury system.

I.3 Constitutional Court

In 1989, Parliament amended the Constitution of 1949. Formally, the Constitution of 1949 was not suspended but rather modified in essential parts in order to abolish the totalitarian past. It turned out to be a pragmatic solution in the light of the deep cleavages between political parties. The formulation of an entirely new Constitution would have

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6 Council of Europe, National Report Hungary in *'Legal Co-operation with Central and Eastern European Countries, Compendium of Legal Practice for Lawyers in Central and Eastern Europe'*, (1995), p. 213-219.

7 Official reaction on the inception report by the Hungarian Ministry of Justice, 30 October 2001.

8 Remark made during the meeting with representatives of the Hungarian Bar Association (Budapest, 19 November 2001).

9 Information obtained during the meeting with Mr. Helyes of the Office of the NCJ (Budapest, 22 November 2001).

led to lengthy disputes on highly charged issues such as the abolition of the death penalty, which Parliament might not have been able to resolve.
After the political turnover of 1989, Parliament passed the act on the establishment of the Constitutional Court. In a country with a long positivist tradition of jurisprudence, constitutional principles introduced a new element. The Constitutional Court started its work on 1 January 1990. Its tasks are the review of the constitutionality of statutes, and the protection of constitutional order and fundamental rights guaranteed by the Constitution. The competencies of the Constitutional Court comprise the posterior and prior review of legal norms, the review of statutes for conformity with international treaties, the competence of establishing unconstitutional omission to legislate, the competence of passing judgements on constitutional complaints, the resolution of certain conflicts of competence and the interpretation of provisions of the Constitution.

The Court can annul a piece of legislation, a secondary legal act or a governmental or administrative decision, where it finds that it violates the Constitution.[10]
The establishment of the Constitutional Court was an important change in the Hungarian system. The Court has played an important role in the process of systematic change, when many issues from the legacy of communism could not be solved by Parliament. The Constitutional Court was considered to be one of the checks and balances in this process. Therefore, it received a broad mandate when it was established.[11]
In the past ten years, Parliament and the Government have paid due respect to the Constitutional Court, even though it has annulled a large number of Acts.[12]

As is mentioned above, apart from the legislative function, the Hungarian Constitution grants the Constitutional Court an extensive right of constitutional complaint to everybody affected by Hungarian law. The formal prerequisite is a 60-day period after exhaustion of all legal remedies. As a consequence of this very wide definition of access, the court is loaded with a high number of constitutional complaints.

At present, the Constitutional Court has 11 members. They are elected by a two-thirds majority vote of all members of Parliament. The president of the Constitutional Court is elected by the members of the Constitutional Court itself. The president is elected for a period of three years and can be re-elected.

Most important among the qualifications for being appointed to the Constitutional Court are professional merits. Most of the judges have been university professors. The members of the Constitutional Court are nominated for a period of nine years.
The independence of the judges of the Constitutional Court is assured by the Constitution[13], that states that members of the Constitutional Court may not be

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[10] *'The Constitutional Court of the Republic of Hungary'*, information leaflet received during the meeting at the Constitutional Court (Budapest, 21 November 2001).
[11] Comment made by Dr. Harmaty, Justice of the Constitutional Court, during the meeting in Budapest on 21 November 2001.
[12] Ibidem.
[13] Article 32a, sub 5 of the Constitution (1 December 1998).

members of a political party and may not engage in any political activities outside of the responsibilities arising from the Constitutional Court's sphere of jurisdiction.

On the average, the court rules on approximately 150 cases annually. Of these, about 35 percent find some grounds for constitutional reclamation.

CHAPTER II

The creation of a true balance of power

II.1 De jure and de facto division of competencies vis-à-vis the executive and the legislature

National Council of the Judiciary

Since 1 December 1997 the National Council of the Judiciary (NCJ), which is an independent organ, supervises the organisation of the judicial system, the administration of the courts and the budget of the judiciary. This is stipulated by the Constitution.[14] As a result, the independence of judges is strongly institutionalised. The Ministry of Justice is basically only involved in drafting and amending legislation, for example regarding the legal harmonisation in relation to Hungary's accession to the EU, and in matters concerning international judicial co-operation.

The NCJ consists of 15 members, of which ten members are judges. Its president is the President of the Supreme Court. The other nine judges are elected by the judges through delegates. The Minister of Justice, the Chief Public Prosecutor, the President of the National Bar Association, and two members of Parliament (appointed by the Constitutional and Judicial Committee, as well as by the Budgetary and Financial Committee) are ex-officio members of the Council.
There is no division of portfolios within the NCJ. The members of the NCJ have not been seconded to the Council. Besides their Council membership, they perform their normal working activities.

The principal functions of the NCJ are:
- to prepare and submit to the Government its proposals concerning the next annual budget with respect to the courts. Should the bill on the budget, prepared and submitted to Parliament by the Government, differ from the proposals of the NCJ, the Government shall indicate in detail the original proposals of the Council, stating the reasons for not accepting them;
- to take care of implementing the judicial chapter of the act on the national budget adopted by the Parliament;

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[14] Article 50 (4) of the Constitution (1 December 1998).

- to appoint and dismiss the heads of the judicial colleges of the Supreme Court, presidents and vice-presidents of the National High Court of Justice and the county courts, the heads of the colleges of the National High Court of Justice and the county courts, as well as the heads and the vice-heads of its own Office;
- to orient and control the administrative activity of the court presidents;
- to determine the principles of the organisational and functional regulations of the courts and to approve the organisational and functional regulations of the National High Court of Justice and of the county courts;
- to create regulations binding to courts, to make recommendations and to supervise their implementation;
- to submit an annual report to Parliament on the overall situation of the courts and the activities of the Council.[15]

Budget

In previous years, the government did not fully support the budgetary needs of the judiciary. The bill on the budget that was submitted to Parliament differed considerably from the budget proposal of the NCJ, even though independent audits and audits done by the State Audits Office indicated that the NCJ budget was realistic and well founded. Contrary to the provisions, the Government did not state the reasons for not accepting the NCJ budget.[16]
The President of the NCJ has the right to be heard during the discussions in Parliament on the State budget and he uses this right. Nevertheless, no fruitful debate has evolved from this.[17] The representation of the financial interests of the judiciary towards the Government and Parliament is a difficult aspect in the system, even though the underlying principles are right and the Ministry of Justice two Members of Parliament have a seat in the NCJ.[18]

As a result, since 1999 the position of the judicial body regarding the budget has deteriorated. The amount available to the judiciary has decreased from 2,6% to 1,7% of the national budget. In 2001, for the first time since the accession negotiations with the European Union, the declining budget for the judiciary is mentioned in the Regular Report of the European Commission.[19]

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15 Section 39 of the Act LXVI of 1997 on the Organisation and Administration of Courts.
16 Information obtained during the meeting with representatives of the Office of the NCJ (Budapest, 21 November 2001) and the meeting with Mr. Solt, President of the Supreme Court (Budapest, 22 November 2001).
17 Remark made by Mr. Solt, President of the Supreme Court (Budapest, 22 November 2001).
18 Comment made by Mr. Solt, President of the Supreme Court (Budapest, 22 November 2001).
19 Remarks by a representative of the opposition during the meeting with the Constitutional Committee of Parliament (Budapest, 21 November 2001) and 2001 Regular Report on Hungary's Progress towards Accession, European Commission, 13 November 2001, p. 17-18.

Office of the NCJ

The Office of the NCJ supports the Council and provides continuity. The functions of the Office are regulated by law. It has no decision-making authority. According to the law, the Office prepares the Council for decision making and it implements these decisions.
The Office has about 125 staff members, of which 25 judges. These judges do not work in the court while they work at the Office.
The Office has a six months' working plan. This plan does not need approval from the Council, but provides the Council with information on the activities of the Office. Furthermore, the Council is given monthly updates on the activities of the Office, as well as on national case statistics, (annual) reports from the courts, performance evaluations of courts, etceteras.

Preparation of legislation

The Supreme Court and the Hungarian Judges' Association are involved in the preparation of legislation related to the judiciary and other bills affecting the administration of justice. Their involvement is institutionally guaranteed. No draft legislation can be submitted by the Minister of Justice to the Government without indicating the opinion of the Supreme Court and the Judges' Association.[20]

Undue influence from the executive

In the Constitution and different Acts, it is stated that no pressure or influence shall be put on the judges. However, it is reported that since the 1997 reforms, "members of the executive have criticised judges' decisions for their leniency, blaming them for an increase in crime, and have bemoaned publicly the fact that the reforms cut ties between the judiciary and the executive."[21]
Furthermore, although the Constitution and specific legislation proclaim that no pressure should be put on judges, there is no provision on sanctions that could be imposed if politicians fail to respect the mentioned prohibition.[22]

II.2 De jure and de facto division of competencies within the judiciary

Until the Second World War, Hungary did not have a written constitution or a written civil code. This has influenced the role of the judiciary in an important way. From that time, the Supreme Court had the right to issue statements to safeguard the consistency of the law. These statements are general statements about legal issues. They are binding for all courts. In this sense, the Supreme Court is a law making body.

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[20] Information provided by Mr. Bàrd (Central European University and local expert to the project's mission to Hungary).
[21] Open Society Institute, *"Judicial Independence in Hungary"*, (2001), p. 188.
[22] Addition by Mr. Bàrd (CEU and local expert to the mission to Hungary), 3 December 2001.

This situation has existed in Hungary in the last 40 years. The right of the Supreme Court to issue statements that are mandatory for all courts (although not directly binding for the citizens) has triggered tensions between the Constitutional Court and the Supreme Court.[23] The system is as follows: the Supreme Court issues a general decision (ruling) fixing general principles. Those who claim that the Constitutional Court should have jurisdiction to check the Supreme Court's general decisions on their constitutionality argue that these decisions are like legal norms.

Several cases are pending before the Constitutional Court, in which the Court must decide whether a specific ruling of the Supreme Court is constitutional or not. At this moment, the Constitution does not give a clear right to the Constitutional Court to review these cases.[24]
It is reported[25] that the Ministry of Justice has proposed a Government bill to allow the Constitutional Court to review decisions of the Supreme Court aimed at ensuring uniform interpretation. This bill would mean that the Constitution must be changed. It remains to be seen whether a consensus can be reached to achieve the necessary two-thirds majority.[26]

The rulings of the Constitutional Court may not always be followed by the courts, since it is questionable to what extent the judges keep up to date with the information on these rulings.[27] Therefore, the courts may not always take the rulings and explanations of the Constitutional Court into consideration. As a result, different interpretations of certain laws can occur in different courts. The Supreme Court, as the institution to safeguard the consistency of the law, must see to these situations.

CHAPTER III

The independent functioning of the judiciary

III.1 Incompatibilities

Judges may not be members of political parties, nor are they allowed to carry out political activities.[28] However, they are allowed to join associations for the protection of interest

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[23] Remarks made by Dr. Harmaty, Justice at the Constitutional Court, during the meeting on 21 November 2001.
[24] Ibidem.
[25] Open Society Institute, *"Judicial Independence in Hungary"*, (2001), p. 221.
[26] Remark by Dr. Harmaty, Justice at the Constitutional Court (Budapest, 21 November 2001).
[27] Information obtained during the meeting at the Constitutional Court (Budapest, 21 November 2001).
[28] Article 50(3) of the Constitution (1 December 1998).

and other social organisations. Except for teaching, professional research and artistic activity, they are not to perform any other jobs.

III.2 A judge should not be subject to any authority

The media

It was stated[29] that the press often leaks information on cases that are 'under the judge' or in the investigative stage. The mass media try to influence the public in one way or another, which is considered to be a problem. If a decision of the judge does not coincide with the opinions expressed by the media, people tend to criticise the judiciary. This happens especially in sensational cases. However, it was stated that the judiciary is not treated worse by the press than other institutions.[30]
The Office of the NCJ has a press department, which provides help and assistance to the courts. Furthermore, in every county there is a spokesperson (the president or a delegated spokesperson).

Public opinion

The European Commission reports that public confidence in the judiciary is still low.[31] However, "this is not principally due to the mistrust of the probity of the system, but rather a perception that the courts are out of touch, unapproachable and slow". The report adds that this is recognised by the National Council of the Judiciary as an area of concern.

III.3 Supporting facilities

According to the findings of the European Commission, the budgetary means of the courts are not sufficient to ensure proper court building maintenance and to offer the appropriate facilities for the smooth functioning of courts. Overall, technical facilities are still inadequate.[32]
The president of the court receives the budget for the court, but is not free to spend it as the presidents pleases. The expenditure is regulated by the NCJ. The court sometimes can save on remuneration, for instance when a senior judge resigns and is replaced by a junior judge. Of the amount saved, the president can reallocate only 50%. The other half is reallocated by the NCJ.[33]

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[29] Remarks made during the meeting with the Hungarian Bar Association (Budapest, 19 November 2001).
[30] Remark made by Mr. Helyes of the Office of the NCJ (Budapest, 22 November 2001).
[31] European Commission, *"Country Report Hungary"* (Rev 1), 9 October 2001, p. 26.
[32] *"Regular Report on Hungary's Progress towards Accession"*, European Commission, 13 November 2001, p. 17.
[33] Information obtained during the meeting at the county court in Tatabanya (21 November 2001).

Currently, a Phare programme on institutional building for the judicial sector in Hungary is being carried out. Part of this programme is "court information system and network development". The programme will last until September 2002. Without the Phare projects, the Hungarian judiciary would have no IT facilities or EU law training, since there are no funds available in the budget.[34]
Judges have to spend considerable time on administrative matters connected with their cases.[35]
The Regular Report mentions that the new profession of 'legal assistant' is intended to provide qualified administrative support to judges. The first college training for this new curriculum started in the academic year 2000-2001.[36]

CHAPTER IV

The status of judges

IV.1 Selection and appointment

Law faculty graduates can apply for the position of trainee judge. A trainee judge will undergo an initial training of three years at the court[37], which is concluded by an examination. After passing this examination, the person is eligible to become a court secretary. With one year working experience as a court secretary, the person is eligible to apply for a the post of a judge. The plenary of the court nominates a candidate for a vacant post to the National Council of the Judiciary. The Council recommends the candidate to the President of the Republic, who appoints the judge.

Initially the judge is appointed for a probationary period of three years. During these three years evaluations by the court take place. These evaluations are regulated by law.[38] In case of approved professional activity, the judge will receive life tenure. There is no difference in competence between the judge on probation and the judge appointed for life. Judges may stay in their positions until the age of seventy.

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34 Remark made during the meeting with representatives of the Office of the NCJ (Budapest, 21 November 2001).
35 The findings of the European Commission were mentioned by the President of the Supreme Court (Budapest, 22 November 2001) and confirmed by the President and vice-President of the county court in Tatabanya, and the President of the local court in Tata (Tatabanya, 21 November 2001).
36 *"Regular Report on Hungary's Progress towards Accession"*, European Commission (13 November 2001), p. 17.
37 See also Chapter 5 on the training of judges.
38 Information obtained from Mr. Helyes during the meeting in Budapest on 22 November 2001.

Candidates who are not a trainee judge, but who have enough relevant experience can also apply for a vacancy in a court. The chances of these persons to be selected were rather small in the past. The judiciary preferred court secretaries to outsiders. However, lately this has changed under the influence of the NCJ.[39]

Leading positions

The president of the county court nominates the president of the local court. The top echelon within the judiciary (the presidents, vice presidents and heads of colleges) are appointed by the National Council of the Judiciary. All other positions are filled upon appointment by the president of the county court. These top echelon positions are open for application through an open 'tender' procedure.[40]
The President of the Supreme Court is elected for a period of six years on the recommendation of the President of the Republic, by a two-thirds majority vote of all members of Parliament.

Lustration

In 2000, a law was passed which extends lustration to all judges. The law gives a rank order of categories of professions that should undergo screening. The judiciary is ranked 23rd or 24th. Therefore, it is not clear when the judges are to be screened. In any case, since over half of the judges came into the profession after 1990, the lustration rules should not effect these judges.[41]

IV.2 Promotion

The performance of the judges is evaluated twice every six years by the National Council of the Judiciary.[42] Their promotion depends on the result of these evaluations.

The president of the county court decides on the promotion of a judge from the local court to a county court within the same county, since the president of the county court is the head of the judiciary in that county. The National Council of the Judiciary decides on promotions to a court in another county.[43]

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39 Ibidem.
40 Ibidem.
41 Comments made by Mr. Solt (Budapest, 22 November 2001).
42 Comment on the inception report by the Hungarian Ministry of Justice (30 October 2001).
43 Information obtained from Mr. Helyes during the meeting in Budapest on 22 November 2001.

IV.3 Remuneration

Act LXVII on the Legal Status and Remuneration of Judges of 1997 marks an important step towards the professional as well as organisational independence of judges and courts.[44]
With the new law, the salaries for judges were raised in order to reinforce their independence. The system of remuneration is regulated by statute enacted on 1 July 1998. Advancement should be based on seniority and merit; and should exclude any possibility that would restrict the independence of the judges by modifying their remuneration.

The salary of judges is no longer dependant on the salary of civil servants. The Act stipulates the basic salary of a beginning judge. Judges advance to a higher salary class once every three years.
For judges in the county court and the Supreme Court a multiplier is added.
After working for six years at the same court level, judges with outstanding activity may be scaled by the NCJ to a higher salary-class corresponding to the salary of a higher court. Placement to a higher degree for exceptional efficiency can be effected twice during a judge's career.

Regarding the remuneration, judges do not compare unfavourably with, for instance, law professors and doctors. However, in general, judges are not allowed to generate additional income. The salary of a judge with at least 15 years of experience can be compared to the salary of a deputy state secretary. The salaries of court personnel are regulated separately.

As a result of recent amendments, the average salary within the judiciary is below the average for civil servants. The court personnel can get a compensation for this gap. However, this is not available for the judges.
The NCJ tries to introduce the system in which, even with the separate salary regulations for the judiciary and the civil servants, there is a relation in the sense that when the salaries of the civil servants rise, the salaries within the judiciary will rise accordingly. However, to the Council it seems that there is no political will for this.[45] According to the law, Parliament must review the salaries of judges every year, but there is no obligation to adjust the salaries.

In January 2000, the salaries of judges were adjusted to inflation, as were the salaries for civil servants. But this raise was not paid for entirely from the national budget. A remaining 3% had to come from the existing budget for the judiciary.[46]

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[44] Since the English text of this Act was not available, the information is collected from secondary sources.
[45] Comment made during the meeting with representatives of the Office of the NCJ (Budapest, 21 November 2001).
[46] Ibidem.

Judges may be seconded temporarily to other courts with the approval of the NCJ. In this case, they may be given a bonus. This was an effective solution for backlogs in the past, but this arrangement is being reconsidered by the NCJ.[47]

IV.4 Disciplinary procedures[48]

The Act LXVII on the legal status and remuneration of judges of 1997 regulates the disciplinary procedures against judges. Within the different instances, disciplinary courts have been established. The disciplinary court judges are elected by the Plenary Session of Judges. Disciplinary proceedings are not public and the decisions of the disciplinary courts may be appealed against. Disciplinary sanctions include reprimand, admonition, demotion to a lower salary grade, dismissal from leadership posts and initiation of dismissal proceedings. The majority of disciplinary cases in previous years were instituted for breach of judicial duty. Only one dismissal procedure has been initiated to date.

CHAPTER V

Training and retraining of judges

The National Council of the Judiciary is responsible for the initial and continuous training of judges.

The initial training of young lawyers to become a judge consists of a three year programme of practical training at courts that includes theoretical elements as well. This initial training is compulsory. The Office is responsible for the provision of the training materials. However, since the training activities are implemented by and take place at the court, the training is very much decentralised. There is no general, standard training curriculum for the judicial trainees.[49]

The legislation establishes the right and the duty of judges to take part in the training needed for their judicial work. The NCJ is obliged to provide the necessary training free of charge. Under the supervision of the NCJ, its Office is responsible for development of training curricula and the technical implementation of training programmes.[50]

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47 Information obtained during the meeting with the Ministry of Justice (Budapest, 22 November 2001).

48 Information obtained from the OSI report *"Judicial Independence in Hungary"* (2001), p. 218-219.

49 Addition to the inception report by Mr. Helyes during the meeting in Budapest, 22 November 2001.

50 Addition to the inception report by the Office of the National Council of the Judiciary, 22 August 2001.

Every year at least one third of the judiciary attends a training programme. During the academic year 1999-2000, a comprehensive programme of training in EU law started with the strong support of the Phare programme. By June 2003, all judges will have had core training in this field.[51]

Bearing in mind the growing importance of the training of the judiciary in conditions of the rapidly changing social, economic and consequently legal environment, the National Council of the Judiciary has decided to set up a National Judicial School, aiming at institutionalising capacities and resources for a better and most appropriate performance in the field of judicial training. The future autonomous School will have a stronger academic background. Therefore, it will not only be the permanent centre organising judicial training, but it will also be a strategic intellectual centre in the field of judicial training.
The process of establishing the School has been already initiated and counts on the co-operation and assistance of the French School of Magistrates (Ecole Nationale de la Magistrature).[52]

The Prosecution Service has its own training centre. There seem to be no plans to combine the two centres in one school. However, there is co-operation, for instance in organising common training on EU law in the framework of a Phare Twinning Programme.

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[51] Information obtained during the meeting with the Office of the NCJ (Budapest, 21 November 2001).

[52] Addition to the inception report by the Office of the National Council of the Judiciary, 22 August 2001.

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MODULE 2

STATUS AND ROLE OF THE PUBLIC PROSECUTOR

CHAPTER I

Position of the public prosecutor

I.1 Relationship with the executive power

Provisions in the Constitution and in Act V of 1972 on the Organisation of Public Prosecution of the Republic of Hungary ensure that public prosecutors can perform their duties without unjustified interference by executive powers and bodies.

The Prosecutor General is not subordinate to the Minister of Justice. In the Hungarian legal system, the Government cannot give instructions to the Prosecutor General or any other prosecutor. No government interference is allowed by law either generally (with the aim of implementing the government's criminal policy) or in individual cases. When applying the law on the basis of the principle of legality, the only guiding principle prosecutors are called upon by the Prosecutor General to take into account, is the public interest.[53]

I.2 Relationship with the legislative power

The position of the Prosecutor General and his subordinates under the Constitution ensure that public prosecutors can perform their duties without unjustified interference by the legislative power.

Under the Hungarian Constitution, the link between the Public Prosecution and the Parliament is quite loose. The Prosecutor General is elected by the Parliament by simple majority on the proposal of the President of the Republic for a term of 6 years, which is renewable. His accountability towards Parliament means that he has to submit annually a general report on the activities of the Prosecution Service to the Parliament. He may be questioned by members of Parliament (in plenary or standing committee sessions), and

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[53] Comment on the inception report by the Office of the Prosecutor General, 26 July 2001.

the Parliament may accept or reject his answer by voting. The Prosecutor General may attend the sessions of the Parliament, and has the right to participate in the debate.
The Constitution declares that public prosecutors – including the Prosecutor General – may not be members of political parties and may not engage in any political activities.
The Prosecutor General cannot be given instructions or orders by anyone, especially not in individual cases.[54]

I.3 Relationship with the judicial power

The Public Prosecution is part of the criminal justice system. As a centralised and independent judicial organ, it is subordinated and accountable only to the Parliament through the person of the Prosecutor General. It is the Prosecutor General who directs the whole organisation functionally as well as administratively. This means that the Public Prosecution is not organisationally connected either to the Government or to the Judiciary. Neither the Ministry of Justice, nor the National Council of the Judiciary have powers in this respect.[55]

In the Hungarian legal culture it has always been evident that prosecutors do not have judicial power in terms of taking decisions of judicial character or supervising judges. During the Soviet era, the prosecution had some Soviet type authorities. This is clearly reflected in the fact that in the 1980s the departments within the prosecution service which were responsible for representing charges before county courts were called "Departments for the supervision of courts". However, the Soviet-type approach to the judge-prosecutor relationship was developed in Hungary to a lesser extent than in the Soviet Union or other East European countries under Soviet dominance.[56]
The Soviet-type prosecutors had the right of deciding on the provisional arrest in the pre-trial phase. This competence was taken over by judges in the late 1980's. Hungarian prosecutors have such "pro-active" rights as to bring the case before the court and to present motions, submissions, conclusions, appeals, etc. to the court, but they have no right to exercise the functions of judges (deciding on the guilt of the accused or sentencing).[57]

The qualification requirements and professional standards are the same for judges and prosecutors. Therefore, if a prosecutor wishes, he may apply for a post of judge, and vice versa.
It is always up to the selecting authority whether a prosecutor succeeds in becoming a judge and vice versa.[58]

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54 Ibidem.
55 Ibidem.
56 Additional information obtained from Mr. K. Bàrd (CEU, local expert to the mission to Hungary), 11 April 2002.
57 Addition to the inception report by the Office of the Prosecutor General, 26 July 2001.
58 Ibidem.

I.4 Relationship with the police[59]

In Hungary, the police is subordinate to the Ministry of Interior. Regarding the relation between the police and the prosecution service, there are two codes of criminal procedure to take into account. Currently, the amended Code of 1973 is still in force. From 1 January 2003 the new code, which was adopted in 1998 and amended substantially in 2001, will come into effect. Its entry into force has been postponed, partly because the provisions of the Code are based on the four-level court system, which will only take effect in 2003.[60]

Under the present code, the public prosecutor supervises the investigation by the police. The police must inform the public prosecutor about the initiated investigations. From time to time, the prosecutor will inspect the police files. The prosecutor may give orders to the police to carry out investigative actions.

The prosecutor must ensure that the police comply with the law while investigating a case. In the present situation this is mostly done when the prosecutor received the file from the police in order to issue a summons. Naturally, in legally complex cases, the prosecutor is involved at an earlier stage of the investigations.
Under the new Code, the prosecutor will direct and manage the whole investigation. The public prosecutor will have more extensive powers over the police than under the present legislation.

The police can dismiss a case without informing the prosecutor, but it does not have discretionary power to drop cases. The legality principle applies to the police as well. The prosecution of a case can be discontinued under certain conditions, for instance when there is a lack of evidence. Whenever a case is dismissed, anyone with a legal interest in the case can issue a complaint to the prosecutor. However, if the prosecutor dismisses the complaint, there is no legal remedy before the court.
Under the new Criminal Procedure Act, the victim of a crime will be able to pursue the case at his own cost when the prosecutor decides not to (continue to) prosecute. This system is based on the Scottish and Austrian model of subsidiary private prosecution.

Within the Prosecution Service recently a small investigative office has been set up. This office can operate in important and difficult cases. This office also acts as a national authority to investigate high prestige cases (for instance when members of Parliament are involved). This department also deals with corruption cases. However, the prosecution does not have, and will not have under the new Code, a general investigative body.

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59 Information obtained during the meeting with the Office of the Prosecutor General (Budapest, 23 November 2001).

60 European Commission, *"Country Report Hungary"* (Rev 1), 9 October 2001, p. 22.

CHAPTER II

The office of the public prosecutor

II.1 In criminal law

The Constitution provides that the Prosecutor General and its Office ensure that the citizens' rights are protected, the rule of law is respected and that acts constituting criminal offences are steadfastly prosecuted.[61] To this end, prosecutors supervise all criminal investigations, represent the prosecution before the courts, may appeal against court decisions, supervise the execution of court decisions, and conduct investigations in cases specified by law.[62]

II.2 In administrative and civil law[63]

The tasks and competencies of the public prosecutor in administrative and civil cases are established by law.

In civil cases, the public prosecutor has the right to initiate a case to protect the general interest (for example environmental cases). These cases can also be started against private parties. The public prosecutor can also appeal and complain in these cases. Furthermore, there are the classical functions of the public prosecutor in civil cases (family matters, protecting the interests of the legally disabled people).
The amount of civil cases dealt with by the prosecution has decreased in the past years. The role of the prosecution service in civil cases has also diminished in accordance with the rule of law, since the involvement of the prosecution service was contrary to the autonomy of the parties in civil law. Other institutions have taken over some of the former tasks and authorities of the prosecution service in this respect. For instance the Ombudsman took over the tasks and authorities in respect of ensuring the lawful operation of the public administration.

II.3 International tasks[64]

The participation of Hungarian prosecutors in international judicial co-operation is regulated by international instruments (conventions and treaties) and domestic legislation.[65] The Office of the Prosecutor General is a Central Authority in mutual assistance cases; the other Central Authority is the Ministry of Justice. The Office of the

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61 Article 51 of the Constitution (1 December 1998).
62 Addition to the inception report by the Office of the Prosecutor General (26 July 2001).
63 Information obtained during the meeting with the Office of the Prosecutor General (Budapest, 23 November 2001).
64 Additions to the inception report by the Office of the Prosecutor General, 26 July 2001.
65 Act No. XXXVIII of 1996 on International Legal Assistance in Criminal Matters.

Prosecutor General is competent in all incoming requests which relate to investigative measures or acts. If the request relates to an act, which should be performed by the court, it is forwarded by the Office to the court through the Ministry of Justice. Thus, in mutual assistance cases all requests should be addressed to the Office of the Prosecutor General, and the execution of the overwhelming majority of requests is the responsibility of the prosecution service (i.e. prosecutors supervise, monitor and control the execution of letters rogatory by investigative bodies). Therefore, in practice the Prosecutor General of Hungary bears the main responsibility for international judicial co-operation in criminal matters in Hungary. An exception are matters related to extradition. Requesting and granting extradition falls within the exclusive competence of the Minister of Justice.[66]

The Public Prosecution of Hungary is active on the pan-European level, for example within the Council of Europe. As a candidate country for EU membership, considerable steps were taken in such fields as training in third pillar law, including new forms and mechanisms of international co-operation, preparations for joining the European Judicial Network and participation in the future Eurojust.

Within the framework of international agreements, contact points are being formally established. Furthermore, professional contacts are frequent through study visits, trainee-ships, and various international meetings and conferences.
Regional co-operation with neighbouring countries and with the South-European region is also high on the agenda. Direct contacts exist with Poland, The Slovak Republic and the Czech Republic based on bilateral agreements. At this stage, direct contacts in all relations would be difficult, due to the lack of appropriate (IT) infrastructure and the good command of languages. The establishment of the necessary infrastructure is under way (with Hungarian funds and Phare assistance) and many prosecutors study foreign languages (previously with Phare assistance, currently financed from the Office of the Prosecutor General's own resources).

In each county prosecutor office some prosecutors and in each local office at least one prosecutor is specialised in the field of international co-operation. Most prosecutors specialised in this field currently can be found at the Office of the Prosecutor General.

II.4 Ethical code/statute for prosecutors

The elaboration of a Code of Conduct is under way. Furthermore, the basic rules regarding the respect of human rights and of the principles of the proper administration of justice can be found as legal obligations in the Constitution, the Criminal Procedure Code and other provisions of domestic law. The relevant recommendations of the Council of Europe are also of high authority in Hungary.[67]

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[66] Additional information received from Mr. Bàrd (CEU, local expert to the mission to Hungary), 9 April 2002.

[67] Addition to the inception report by the Office of the Prosecutor General (26 July 2001).

CHAPTER III

The legal status of the public prosecutor

III.1 Working conditions

Remuneration

The prosecutor is entitled to a salary equal to the honour of his/her profession and of the responsibility weight upon him/her.[68] Salaries are dependent on the length of service, and they are calculated based on the Budget Act of the given year. It is prescribed by law that the lowest salaries of the prosecutors should always be equal to the lowest salaries of the judges.[69]

Workload

The data published by the Prosecutor General in 2000 indicate that in the 1990s the total number of cases increased by 64,4 %, while the increase in the number of prosecutors was only half of this (31%). This resulted in a 25% increase in the workload of prosecutors. In spite of these changes, the Hungarian public prosecution has completed its tasks on a high professional level and without backlog.[70]

Prosecutors, like all employees in the country, can bring grievance actions in connection with their employment and against the actions of their employers before the Court of Labour. This procedure is governed by the Act of Labour.[71]

III.2 Independence and impartiality within the organisation of the public prosecution service, centralised and decentralised

As has been mentioned before, the Prosecutor General directs the whole public prosecution service functionally as well as administratively. The Prosecutor General is the highest authority responsible for prosecuting crimes, and he may not be instructed either by the Government or the Parliament. The only authority from which prosecutors may receive instructions of general scope is the Prosecutor General.
The Office of the Prosecutor General has nation-wide competence and, in addition, it represents the prosecution before the Supreme Court in criminal and civil cases. The Office is divided into departments, divisions and sections.[72]

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68 Act LXXX of 1994 on the Status of Prosecutors.
69 Additions to the inception report by the Office of the Prosecutor General (26 July 2001).
70 Ibidem.
71 Ibidem.
72 Ibidem.

The 19 County Chief Prosecutor's Offices and the Metropolitan Chief Prosecutor's Office of Budapest are subordinated to the Office of the Prosecutor General. They have a territorial competence conform to those of the county courts in each county and the Metropolitan Court in the capital. The County Chief Prosecutor, who has a deputy for criminal and a deputy for public and administrative law affairs, leads the County Chief Prosecutor's Office. The County Chief Prosecutor's Offices are divided into divisions and sections.

As a separate organisational unit of the County Chief Prosecutor's Office, an Office of Prosecutorial Investigation operates in every county. They investigate offences belonging to the exclusive competence of investigation of the public prosecution. The Central Office of Prosecutorial Investigation, dealing with offences of special danger to society (e.g. corruption), belongs to the Metropolitan Chief Prosecutor's Office.
The local public prosecutor's offices are subordinated to the County Chief Public Prosecutor's Offices. They operate in towns, and in districts of Budapest.

In daily practice, each level works more or less independently. Supervision is mostly done following complaints by a defendant.[73]

The Military Chief Public Prosecutor is one of the deputies of the Prosecutor General. His office and the military public prosecutor's offices have exclusive competence in the field of military crimes and service connected other crimes.

Since the prosecution service is a hierarchical organisation, the acting prosecutor is not independent in his decisions. His superior can give him orders. The superior prosecutor allocates cases, which can be taken over at any time from the acting prosecutor or from the acting prosecutor's office.[74]

III.3 Promotion or downgrading of prosecutors

All posts with the Prosecution Service are filled through open competition. Anyone who meets the requirements set by law can run for the post. The Prosecutor General selects a candidate, after taking into consideration all the professional abilities of the applicants, including their education and their experience.

The first appointment of a prosecutor is a probationary appointment for three years.[75] According to the Act on the Status of Prosecutors, the professional performance of the prosecutor should be assessed three years after this first appointment, before being appointed for an indefinite time. Prosecutors appointed for an indefinite time should be assessed again after three, after nine and after fifteen years of their appointment.

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73 Remark made during the meeting with representatives of the Office of the Prosecutor General (Budapest, 23 November 2001).
74 Additions to the inception report by the Office of the Prosecutor General, 26 July 2001.
75 See also Chapter 4, paragraph 4.1.

In addition, the employer assesses the performance of any prosecutor who asks for it, of any prosecutor who, based on his professional activity, is suspected to be unfit or of a prosecutor who is applying for a leading post within the Prosecution Service.
The aim of the assessment process is to evaluate the professional activity, the professional knowledge, and the personal ability for the post of the prosecutor. The assessment should rely on well-based, factual findings.[76]

III.4 Possibility of dismissal

The Prosecutor General decides on the dismissal of prosecutors. The prosecutor concerned can bring a grievance action against the decision before the Court of Labour.

A prosecutor may be dismissed:
- if the prosecutorial task he was active in has ceased, and there is no vacant and suitable post within the Prosecution Service for him to fill in;
- if his has work become unnecessary, due to staff cuts or structural reorganisation, and there is no vacant and suitable post within the Prosecution Service for him to fill in;
- if he is declared to be durably unfit;
- in a case of conflict of interests;
- if he is sentenced by a criminal court for imprisonment, labour in the public interest or prohibition from public affairs;
- as the most severe disciplinary sanction.[77]

III.5 Disciplinary proceedings[78]

The disciplinary proceedings against prosecutors are regulated by Act LXXX of 1994 on the Status of Prosecutors. The fair and proper evaluation of disciplinary cases is ensured by the provisions in this act, for example:
- clear definition of disciplinary offence (Art 53 (1));
- strict rules of the disciplinary procedure (deadlines, records etc.) (Art 57);
- rules of limitation (Art 54);
- disciplinary sanctions are listed (Art 55);
- right to defence (Art 60);
- principle of orality (Art 61);
- rules of exclusion (Art 62);
- right to court (Art 63 (3)).

Replacement from one part of the service to another, with or without consent, cannot be imposed as a disciplinary penalty. The decisions in disciplinary cases are subject to judicial review.

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[76] Ibidem.
[77] Additions to the inception report by the Office of the Prosecutor General, 26 July 2001.
[78] Additions to the inception report by the Office of the Prosecutor General, 26 July 2001.

CHAPTER IV

Recruitment and education

IV.1 Selection and appointment of public prosecutors

To become a prosecutor one should meet the following requirements: have Hungarian citizenship, a clear criminal record, the right to vote, a law degree and passed the special state examination for practising lawyers[79].
As in the case of prosecutors, trainee prosecutors are selected through competition. Anyone who meets the requirements set by law can run for the post. All the applicants are heard by a committee chaired by the Prosecutor General or one of his deputies. The decision is made by the Prosecutor General based on the professional qualities of the applicants. [80]

Prosecutors are appointed by the Prosecutor General. This is initially for a three-year term and thereafter indefinitely.

IV.2 Initial training[81]

The prosecution service provides a three-year initial training for law graduates to become a prosecutor. Traditionally, this element of the training system is decentralised on a large scale. It takes place at the local and county prosecutors' offices and the execution is the responsibility of the county chief prosecutors. Each trainee has 'instructor prosecutors' coming from different fields of the profession, with whom the trainee works for 4-5 months.
According to the long-term training strategy of the prosecution service, this traditional training method should be supplemented by centralised elements in the future. These central elements would provide special knowledge, not available locally, to help the preparation of trainees for the special examination for practising lawyers and to unify the present decentralised system.

IV.3 Continuous training[82]

The continuous training of prosecutors is based on a centralised system. Regularly, specialised courses are organised by the Office of the Prosecutor General for prosecutors working in different fields of law, for junior prosecutors and newly appointed prosecutors, for leading prosecutors etc. The aim of these courses is to sustain the prosecutors' competence in new legislation and in practice relevant to their work, to

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79 See paragraph 4.2.
80 Addition to the inception report by the Office of the Prosecutor General, 26 July 2001.
81 Ibidem.
82 Ibidem.

provide specialised training for prosecutors working in different fields of law, to help young colleagues to cope with their specific difficulties, to discuss up-to-date questions of management with responsible persons, etc. Preparation for EU membership by training in EU law, in European comparative law and in foreign languages has a high priority. Since the majority of Hungarian prosecutors did not study EU law at the university, they need general and specialised training and also refresher courses in this field.

Seminars and study visits are organised in the framework of Phare projects and projects with the Council of Europe and other European institutions.

MODULE 3

COURT PROCEDURES AND THE EXECUTION OF JUDGEMENTS

CHAPTER I

Access to Court

I.1 General remarks

The access to court is guaranteed by the Constitution. Everyone has the right to initiate proceedings before the Constitutional Court in the cases specified by law. As is mentioned earlier in this report[83] the Act on the Constitutional Court grants an extensive right of constitutional complaint to everybody affected by Hungarian law.

Chapter V of the Constitution contains important provisions for the protection against the violation of constitutional rights. It provides the legal basis for two special institutions: the Ombudsman (Parliamentary Commissioner) for Civil Rights and the Ombudsman (Parliamentary Commissioner) for the Rights of National and Ethnic Minorities.
Access to these Ombudsmen is guaranteed by article 32B(3) of the Constitution, stating that everyone has the right to initiate proceedings before the Parliamentary Ombudsmen in the cases specified by law. Besides these Ombudsmen, the Parliament may also elect special Ombudsmen for the protection of individual constitutional rights (article 32B(4)). All these Ombudsmen have to present yearly a report on their activities (article 32B(6)).

According to the Ombudsman for Civil Rights, the basic institutions of the rule of law are functioning satisfactorily, and the constitutional rights are adequately protected. An exception has to be made with respect to the rights of asylum seekers, which have been violated regularly, especially those of asylum seekers detained at the airport.

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[83] See Module 1, paragraph 1.3.

I.2 Efficiency of the court system and regional accessibility

The access to court is in principle guaranteed by an appropriate court system comprising the different levels and competencies on each level. However, as was mentioned earlier in this report, an important hindrance is the lack of financial resources.[84]

It has been reported[85] that the courts have to deal with backlogs and that procedures tend to be too long. This is mainly due to the extension of the jurisdiction of the courts and the new quality of legal disputes arisen from the free market system, especially from company law, privatisation, intellectual property and banking. Especially the simple cases take too long to conclude.[86] Moreover, it takes the Supreme Court on average more than a year to handle an appeal case.
On the other hand, it was stated[87] that in the first instance 80% of the cases are dealt with within the reasonable period of one year. Before the county courts, the overall majority of appeal cases are decided in less than a year.

I.3 Provision of free legal aid

In criminal cases

The law stipulates that an individual charged with an offence has the right to choose a defence lawyer. In certain cases, legal representation is mandatory. This is for instance the case when the potential sentence exceeds five years of imprisonment.[88] These cases are specified in the Criminal Procedure Code. If the accused does not have a lawyer of his own choice, the court must appoint a defence lawyer. The rights and duties of an appointed lawyer and a chosen lawyer are identical.

The fees of the appointed lawyer shall be advanced by the state. It was commented that the amount received is not in accordance with the amount of work done by the lawyer.[89] Furthermore, as to the bearing of the costs, the rules of the criminal procedure will apply. This means, as is stated in an OSI report[90] that if the defendant is ultimately found guilty, the state reclaims the fee as "criminal expenses" as well as any expenses incurred by the

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[84] See Module 1, paragraph 2.1 and 3.3.
[85] By the author of the inception report; and in comments made during the meeting with representatives of the Hungarian Bar Association (Budapest, 19 November 2001) and the meeting at the county court in Tatabanya (21 November 2001).
[86] Comment made during the meeting with the Hungarian Bar Association (Budapest, 19 November 2001).
[87] Comments made during the meeting with the Office of the National Council of the Judiciary (Budapest, 21 November 2001).
[88] Addition information received from Mr. Bàrd (CEU, local expert to the mission to Hungary), 9 April 2002.
[89] Comment made during the meeting with representatives of the Hungarian Bar Association (Budapest, 19 November 2001).
[90] Open Society Institute, *"Minority Protection in Hungary"*, (2001), p. 243.

appointed counsel, such as travel or accommodation. Although the state is rarely able to collect all criminal expenses, this practise is not in harmony with the relevant international standards in this regard.

In 1996, the Parliamentary Commissioner for Civil Rights conducted a comprehensive investigation as to the activities of the appointed defence counsels. The report noted a number of problems with the efficiency of the system of appointed defence counsels. For instance, it is not compulsory for the appointed counsel to appear at any pre-trial stage (except in the case of minors). Moreover, since the appointed defence counsel does not receive any fee for the activities during the pre-trial stage, there is little incentive to appear.

In the opinion of the Office of the National Council of the Judiciary, the system of free legal assistance definitely works, but it acknowledges that it has reservations about the quality of this service.[91]

In civil cases

If a party in a civil case is not able to pay for a legal representative, the court can be requested to appoint a pro bono lawyer to represent the party in court. This legal representation must be justified considering the circumstances of the case. The costs of the pro bono lawyer must be paid for by the loosing party. However, the State will bear the costs if the loosing party is the party represented by the pro bono lawyer.[92]
Free legal aid regarding the representing lawyer and the payment of the court fees are granted after passing an income test, especially with regard to problems related to new regulations, housing problems and unemployment. However, only people with a very low level of income are eligible for receiving free legal aid.[93]

People who need assistance in order to submit a claim to the court, may request this legal assistance directly from the courts. At the courts, trained clerks have weekly consultation hours, during which they give information and help draft petitions free of charge.[94]

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91 Comment to the inception report by the Office of the National Council of the Judiciary, 28 August 2001.

92 *"The functioning of the Hungarian Judicial System"*, Office of the National Council of the Judiciary, 8 February 2000.

93 Comment made during the meeting with representatives of the Hungarian Bar Association (Budapest, 19 November 2001).

94 *"The functioning of the Hungarian Judicial System"*, Office of the National Council of the Judiciary, 8 February 2000.

CHAPTER II

Fair trial and due process in civil and criminal matters

II.1 Compliance with article 6 of the European Convention on Human Rights (ECHR)

In accordance with article 6 ECHR, the Hungarian Constitution underlines the importance of fair trial and due process by stating that everyone is equal before the law and has the right to acknowledge the accusations brought against him, as well as his rights and duties in legal proceedings, to be judged in a fair and public hearing by an independent and impartial court established by law.[95]

No one shall be considered guilty until a court has rendered a final legal judgement determining criminal culpability (presumption of innocence). The access to legal defence and to legal remedy is guaranteed because the Constitution stipulates that individuals subject to criminal proceedings are entitled to legal defence at all stages of the proceedings. The Constitution provides everyone the right to seek legal remedy, in accordance with the provisions of the law, to judicial, administrative or other official decisions, which infringe on his rights or justified interests. Only under very strict conditions, the right to legal remedy can be restricted in the interest of, and in proportion with, adjudication of legal disputes within a reasonable period of time. The Constitution guarantees the access to legal remedies by stating that claims arising from infringement on fundamental rights, and objections to the decisions of public authorities regarding the fulfilment of duties may be brought before a court of law.[96]

The principles of 'habeas corpus' and 'life and dignity' are laid down in articles 54 and 55 of the Constitution and are fully in accordance with the ECHR. This is also the case with respect to the rule that any individual suspected of having committed a criminal offence and held in detention, shall either be released or shall be brought before a judge within the shortest possible period of time. The judge is required to grant the detained individual a hearing and shall immediately prepare a written ruling with a justification for either releasing the detainee or having the individual placed under arrest. In accordance with article 5(5) ECHR, the Hungarian Constitution provides that any individual subject to illegal arrest or detainment is entitled to compensation.[97]

The Constitution stipulates that during a state of emergency or state of danger the exercise of some fundamental rights and duties may not be suspended or restricted. These rights and duties are those mentioned in article 54-56 (life, dignity, corporal integrity), 57 (2-4) (presumption of innocence, legal defence, nullum crimen), 60 (belief),

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95 Article 57 of the Constitution (1 December 1998).
96 Ibidem, Art. 70K.
97 Ibidem, Art. 55(3).

66-69 (principle of equality, children, minorities, citizenship) and 70/E (the right to social security).[98]

The principle of legality (nullum crimen) is upheld by article 57(4) of the Constitution, which says that no one shall be declared guilty and subjected to punishment for an offence which did not constitute a criminal offence under Hungarian law at the time it was committed.

Article 8 of the Constitution states that the Republic of Hungary recognises inviolable and inalienable fundamental human rights and that the respect and protection of these rights is a primary obligation of the State. However, some fundamental rights as laid down in article 5 and 6 ECHR are not worked out in specific Constitutional provisions. In the opinion of the Hungarian Ministry of Justice, it is not necessary to regulate those partial rights under the Constitution as they form part of the broader fundamental rights enshrined under the Constitution. It is appropriate to incorporate such partial rights in the Code of Criminal Procedure or other legal provisions, which will have the same binding force on the proceeding authorities.[99]

As for the effect of the constitutional rights in practice, the annual report of 2000 of the Parliamentary Commissioner for Civil Rights states that the investigations conducted in connection with criminal proceedings, like in previous years, revealed a violation of the constitutional right to legal representation. In particular it was found that the material conditions of communication between the appointed defence counsel and the detainee were insufficient.[100]

The consulted documents[101] indicate that certain categories of foreigners and gypsies still have difficulties in asserting their rights before the law. However, according to the Hungarian Ministry of Justice, neither facts nor law support these observations. The Criminal Procedure Code enshrines the right to defence for all defendants irrespective of race, ethnicity or nationality and it makes an obligation of the authorities to ensure the enforcement of the defence rights.[102]

Undue delay

In 1999, the Council of Europe stated as the main causes of undue delays in Hungary[103]: insufficient financial resources, short time of practical experience of the majority of judges, increasing number of civil and administrative cases, increase of crime rates

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98 Ibidem, Art. 8(4).
99 Comment on the inception report by the Hungarian Ministry of Justice, 30 October 2001.
100 *"The experiences of the Hungarian Parliamentary Commissioner for Civil Rights in 2000"*, Budapest 2001, p. 26-27.
101 See list of references of the inception report.
102 Comment on the inception report by the Hungarian Ministry of Justice, 30 October 2001.
103 The Office of the National Council of the Judiciary comments that the major part of the undue delays had accumulated in previous periods of time beginning at 1990 (Comment received on 28 August 2001).

especially in the area of organised crime, absence of immediate and enforceable summary procedures, no effective limitation of appeal in small cases and the low effectiveness of the civil enforcement system.[104]

To address these and other shortcomings, reforms have been carried out in various areas. Several of these reforms are described under Module 1 and Module 2 in this report. Other measures that have been introduced in recent years are:
- the limitation of the instances in administrative cases;
- increasing the efficiency of court procedures through amending procedural rules;
- the introduction of simplified procedures in minor criminal cases, if the defendant pleads guilty.

In January 2003 the new Criminal Procedure Code will enter into force. This law will introduce new measures to increase the effectiveness of the criminal procedure.[105]
The National Council of the Judiciary can exercise an effective control on the courts to explore the reasons for undue delay and to take measures to reduce them without the infringement of the independence of judges, as could happen when this was done by the Ministry of Justice.
From 2003, the State may be held responsible for activities of courts, irrespective of the lawfulness of the conduct of the proceeding judge, if a legal dispute is not settled within reasonable time.[106]

II.2. Specific rules of procedures in civil matters

In December 1999, Parliament passed an Act on the modification of the Code of Civil Procedure, which mainly aimed at accelerating court procedures. The most important changes concerned the right of the parties to dispose of the subject of the dispute and of their procedural rights according to the provisions in the Constitution. The Act introduced deadlines for certain administrative activities of the courts. As a main rule, the first hearing has to be held within four months after the presentation of the claim. Certain judicial measures concerning the merits of the case may be taken by judicial secretaries or court clerks, which might contribute to reducing the judges' workload.

Besides the Code of Civil Procedure, the Law-Decree on Private International Law in particular contains important prescriptions for procedures entailing a foreign element. Special procedural rules apply to certain proceedings, such as lawsuits relating to marriage, parentage, parental custody, trust, lawsuits for press rectification, labour law lawsuits, court actions directed to the review by the court of administrative decisions, to the procedure of payment warrant, and the execution lawsuits.

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[104] CDCJ/CJ-EJ, *"Recent or proposed legislative and other measures in states to increase the efficiency of justice"*, 10 December 1999.
[105] Information obtained during the meeting with representatives of the Hungarian Bar Association (Budapest, 19 November 2001).
[106] European Commission, *"Country Report Hungary"*(Rev 1), 9 October 2001, p.27.

The basic principles in civil law that are to be found in the Civil Code or that have been elaborated by jurisprudence are:
- the right of free access to court;
- the principle of disposition;
- the principle of the provision of the material of the lawsuit or of trial;
- the principle of bilateral hearing;
- the principle of good faith;
- the principle of efficient legal remedy;
- the principle of free evidence;
- the principle of publicity;
- the principle of directness and verbality;
- the principle of free use of the mother tongue.

Hungarian civil law provides the civil parties ordinary appeal, contradiction to the court warrant, contradiction to the payment warrant, application for excuse and extraordinary legal remedies (revision and new trial).

Various means of alternative dispute resolution have been introduced in Hungary.[107] According to the legislation regarding arbitration, arbitration proceedings shall be instituted if at least one of the parties pursues regular economic activity, the dispute concerns this activity, the parties are entitled to freely dispose of the subject matter of the procedure and arbitration has been agreed upon in their contract. There are courts of arbitration, for example at the Hungarian Chamber of Commerce and Industry. Regarding consumer protection, conciliation boards have been set up with a view to promoting the settlement of consumer disputes. Such boards are set up at the regional economic chambers and they proceed similarly to the courts of arbitration.

Mediation prior to the institution of court proceedings has been established by labour legislation. Mediation was also introduced in disputes related to medical services. Mediation proceedings shall be instituted upon the joint request of the parties, the mediator shall not be entitled to determine the case. His only task is the promotion of reaching settlement between the parties.
The Ministry of Justice has been drafting a general law on mediation, which will permit mediation in cases where specific laws do not exclude it or do not prescribe other forms for settling disputes.

II.3 Compliance with art. 5 ECHR in case of pre-trial detention

The right not to be arbitrarily arrested is assured, since no citizen can remain in detention for over 72 hours without a decision of a judge on the charges.
During the last years, some alternatives to pre-trial detention have been introduced, such as: controlled freedom, compulsory residence and passport confiscation.

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[107] Addition to the inception report by the Hungarian Ministry of Justice, 30 October 2001.

CHAPTER III

System and procedures for administrative justice

III.1 Internal administrative review procedures

The ordinary courts can review administrative acts. The military courts follow the civil procedure and appeals against their decisions can be brought before the Supreme Court. Since 1 January 1999, the system of judicial review of administrative decisions has changed significantly. The two-instance system of appeal was transformed into a single-instance judicial review mechanism. Proceedings are instituted before the county courts and the Budapest Regional Court and are final. However, they are subject to extraordinary remedies.
Since there has been an increase in the number of proceedings, the possibility of review has led to the overloading of the Supreme Court.[108]

CHAPTER IV

Execution of judgements

IV.1 General remarks

On 1 September 2001, a new Act on the execution of judgements entered into force. This Act provides new instruments for the bailiffs to enforce civil judgements, like lifting bank secrets, confiscation of goods, etc. This Act also enables bailiffs to collect revenues, which before was exclusively done by the court bailiffs.[109]

The administrative enforcement of criminal cases is based on the required legal provisions with respect to uniformity and effectiveness of execution, planning, date of release of the prisoners, ordering and recovery of files. The Code of Criminal Procedure gives clear rules about the tasks and duties of the Public Prosecutor in executing punishments, fines and other measures.

IV.2 System of bailiffs[110]

In 1995, the position of the private bailiff was introduced in Hungary. At the same time, an independent Chamber of Bailiffs was set up. The independence of the private bailiffs

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[108] Comment on the inception report by the Hungarian Ministry of Justice, 30 October 2001.
[109] See also paragraph 4.4.
[110] Information obtained during the meeting with the Chamber of Bailiffs (Budapest, 20 November 2001).

did not materialise directly after 1995, since they were still supervised by the courts and not by the Chamber.

This situation changed when the new Bailiffs' Act came into effect on 1 September 2001. The new Act stipulates the licences of the court bailiffs and the private bailiffs. In cases where the court or an agency of the administration requests the execution, the court bailiff will execute the judgement. The court bailiff also collects the court fees. All other cases are dealt with by the private bailiff. The number of court bailiffs is less than 20% of all bailiffs.[111]

The 'private' execution must be requested in the court procedure, upon which the court will issue a warrant. In simple cases, the execution can be done in 3 - 6 months. Of course, in the ideal situation a notice is sent to the defendant in which he is ordered to pay, and he pays within a week. The enforcement on real estate takes more time, since this procedure contains several mechanisms to safeguard the rights of the debtor. Naturally, there are more factors that can lengthen the enforcement/execution procedure. Nevertheless, in 70% of the cases the enforcement is done within 6 months. The Chamber of Bailiffs hopes to improve these statistics in future.

When executing a judgement, the private bailiffs can collect the bailiff's fee at the same time. This fee is regulated by special decree. The bailiff has the obligation to execute, even if the fee is higher than the claim. In Hungary, debt collection is not part of the mandate of the bailiffs.

Training | appointment

In order to qualify to become a bailiff, an examination must be passed. Another precondition is to have gained practical experience for 12 months. The position of deputy bailiffs has been introduced in the system. After passing the exam, one can start working at a bailiff office as a deputy bailiff. A deputy bailiff has limited licenses.
Bailiffs are sworn in by the Head of the Chamber of Bailiffs, not before the court. The appointment is done by the Minister of Justice.
The Chamber of Bailiffs provides training activities for its members.

Supervision

Each individual bailiff must act within the law and regulations. Debtors have the right of complaint and can turn to the local court when they feel the bailiff has acted in breach of the law. The court can annul and/or reverse the action of the bailiff.
Heads of county courts and the Ministry of Justice can initiate disciplinary actions. There are three disciplinary courts at the county level, plus the court of appeal at the level of the Supreme Court. The courts are composed of one professional judge and two bailiffs.

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[111] Information obtained during the meeting at the Ministry of Justice (Budapest, 22 November 2001).

Furthermore, the Chamber of Bailiffs exercises administrative supervision over the bailiffs, for instance by means of a regular audit, which takes place every three years. The Chamber of Bailiffs has an ethical committee, which deals with complaints and which issues rules of conduct.

Latvia

This report is based on information gathered up to December 21rd 2001

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MODULE 1

AN INDEPENDENT JUDICIARY

CHAPTER 1

Overview of the judicial system in Latvia

1.1 General

The 1922 Constitution, fully restored in 1993, lays down the fundamental constitutional and legal guiding principles of Latvia's parliamentary democracy and its judicial system. It prescribes the institutional structure of the State. In 1992, the Law on Judicial Power was adopted.

The structure of the courts is based on Section 6 of the Constitution and on the Law on Judicial Power (art 2 § 1). Both the Constitution (implicitly) and the Law on Judicial Power guarantee the principle of separation of powers and the independence of individual judges and courts. (art. 82, 83 and 86 of the Constitution and art. 1 (1) and Chapter 2 'principles of and guarantees for the Independence of the Judiciary' of the Law on Judicial Power). The court system in Latvia consists of three levels (art. 1(3) Law on Judicial Power) : 34 District (and City) Courts, 5 Regional Courts and the Supreme Court. There also is a Constitutional Court (the functions of the Constitutional Court are regulated separately by the Constitutional Court Law; see art. 2 (4) Law on Judicial Power). Article 82 of the Constitution provides for military courts in the event of war or a state of emergency

District (city) Courts

A district (city) court is the court of first instance for civil matters, criminal matters and for matters which arise from legal relations (art. 30(1) Law on Judicial Power). Criminal cases and civil cases of specific categories are heard by a panel consisting of one professional judge and two lay judges. These courts also have administrative chambers, dealing with administrative cases.

Regional Courts

The regional courts have been set up in four regions of Latvia and in the City of Riga. They are courts of first instance for serious crimes and some civil and commercial cases,

which are specifically removed from the jurisdiction of the district courts. The regional court is a court of appellate instance for civil matters, criminal matters and administrative matters, which have been adjudicated by a district (city) court, or by a single judge. (art. 36 Law on Judicial Power). The regional courts are also appellate courts for district court judgements, when the appeal concerns matters of fact and a review of the evidence. Each regional court has a specific chamber for criminal cases. When a regional court hears criminal cases as a first instance court, the panel consists of one professional judge and two lay judges. When a case has been appealed from a district court, the panel consists of three professional judges.

The Supreme Court

The Supreme Court has two Panels (one for civil- and one for criminal matters, see art. 43 (2) Law on Judicial Power), which are the appellate courts for matters, which have been adjudicated by regional courts as courts of first instance (art. 45 (1) Law on Judicial Power). These Panels consist of three professional judges, and they shall adjudicate matters collegially (art. 46 Law on Judicial Power).

The Senate of the Supreme Court (consisting of three departments: civil-, criminal and administrative-, see art. 47 (3) Law on Judicial Power) shall be the court of cassation instance for all matters, which have been adjudicated by district (city) courts and regional courts (art. 47 (1) Law on Judicial Power). The Senate shall be the court of first instance for matters concerning decisions of the Council of the Office of the Controller General. (art. 47 (2 Law on Judicial Power). Every Senate shall adjudicate matters collegially, in panels composed of three judges (art. 48 (1) Law on Judicial Power).

The Plenary Session of the Supreme Court is a general meeting of the judges of the Panels of the Supreme Court and the judges of the Senate (art. 49 (1) Law on Judicial Power). The Plenary Session issues explanatory opinions on the application of laws (interpretations of laws and clarifications of enforcement of laws). These opinions are binding for all judges. (art. 49 (2) Law on Judicial Power).

The Constitutional Court

The establishment, operation and jurisdiction of the Constitutional Court are governed by the Law on the Constitutional Court of 5 June 1996.
The Constitutional Court has seven judges (art. 3 Constitutional Court Law) approved by the Saeima (the Parliament) (art. 4 Constitutional Court Law); three of them are delegated by the Saeima, two by the Cabinet of Ministers and two by the plenary meeting of the Supreme Court.

The scope of applicants has been widened by recent amendments to art. 17 of the Constitutional Court Law (entered into force January 1, 2001). The President, no less than twenty members of the Saeima, the Cabinet of Ministers, the Prosecutor General and the Council of the State Control already had the right to lodge a constitutional complaint to the Constitutional Court. Now also the Saeima, The Council of a Municipality, the State Human Rights Bureau, a court (when reviewing an

administrative, civil or criminal case), a judge of the Land registry (when entering real estate- or thus confirming property rights on it- in the Land Book) and a person whose fundamental constitutional rights have been violated, can submit an application to the Constitutional Court (art. 17 Constitutional Court Law).
The tasks of the entire court to review cases concern (see artt. 16 and 25 Constitutional Court Law);

1) compliance of laws with the Constitution, but also
2) compliance of other acts (with the exception of administrative acts) of the Saeima, the Cabinet of Ministers, the President, the Chairperson of the Saeima and the Prime Minister with the Law,
3) compliance of the legal norms of national rights of Latvia with the international agreements entered into by Latvia, which are not at variance with the Constitution and
4) compliance with the Constitution of international agreements signed or entered into by Latvia, even if they are not yet confirmed by the Saeima.

CHAPTER II

The creation of a true balance of power

II.1 De jure and de facto division of competencies between judiciary, executive and parliament

Official representation of the Judiciary

The judiciary has no official representative like a Council of the Judiciary, nor is there an independent court administration on the national level. The Latvian Judges' Association is the only registered judges' association at present. The Association was originally founded in 1929 and its charter was renewed in 1992.[1] The Latvian Judges' Association is a member of the International Association of Judges. The Association is an independent, voluntary, professional organisation, which, according to its statutes, promotes the 'intellectual, social and material interests of judges and strengthens judicial power and its prestige within the State. More than fifty percent of all Latvian judges are currently member of the Association, which is the largest public organisation of lawyers. The Association has not been particularly influential, however, or successful in petitioning the executive on issues it considers important.[2]

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[1] OSI report 2001, p. 240 and the Latvian comments on the inception report, no. 41. There is a website of the Latvian Judges' Association, but it is only available in Latvian: http//www.ltb.lv.

[2] OSI report 2001, p. 241.

Conference of Judges

There is a Conference of Judges, which is a self-governing organisation of the judiciary, according to art. 92 of the Law on Judicial Power. All judges participate and vote in the Conference, which has, however, quite limited powers and is perceived as a voting device for decisions made in other fora. Its tasks are:

1) to examine current issues of court practice,
2) to submit requests to the Supreme Court Plenum to issue explanations on the application of laws and
3) to discuss financial, social security and other significant matters integrally related to the work of judges. The Conference also elects the Judicial Qualification Board and its chairman as well as elects the Judicial Disciplinary Board. Except for these elections, the powers of the Conference are purely advisory.[3]

Judicial Qualification Board

The Judicial Qualification Board is a self-governing institution. Its purpose is to strengthen the professional independence of judges (art. 93 (1) Law on Judicial Power). The Judicial Qualification Board is composed of judges from all layers in the judicial hierarchy (see for the exact composition: art. 93 (2) Law on Judicial Power). The following people may participate at meetings of the Judicial Qualification Board in an advisory capacity : the Chairperson of the Judicial Committee of the Saiema, the Minister of Justice, the Prosecutor General, the Chief Justice of the Supreme Court, the Dean of the Law Faculty of the University of Latvia, the Chancellor of the Police Academy or persons authorised by them, as well as the authorised representative of the Latvian Association of Judges.

The Judicial Qualification Board evaluates the preparedness for the office of a judge of each candidate who receives his first appointment (see Chapter 3.2 on the appointment of judges), and it conducts the qualification examination for judges (art. 94 (1) Law on Judicial Power). Furthermore, it gives opinions concerning the nomination of judges for district (city) courts, regional courts, the Supreme Court and the Land Registry Offices (art. 94 (2)). The Judicial Qualification Board also certifies judges to grant them a qualification category, according to art. 94 (3) and 98 of the Law on Judicial Power. The issue of lowering the classification category of a judge is also decided upon by the Judicial Qualification Board, on the recommendation of the Minister of Justice, the Chief Justice of the Supreme Court, the Chief Justice of a regional court, the Chief Justice of a district (city) court, or the Head of a Land Registry Office (art. 94 (4) Law on Judicial Power). Finally, it shall approve the regulatory provisions for the work of the Judicial Qualification Board and for the procedures for certification of judges (art. 94 (5) Law on Judicial Power).
The Judicial Qualification Board has additional tasks, which are mentioned in the Law on Judicial Power.

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[3] OSI report 2001, p. 238-239; see also the Latvian comments on the inception report, no. 17.

In practice, the Minister of Justice, or the Ministry's State Secretary, and the President of the Supreme Court speak on behalf of judiciary and represent it in its relation with the other branches of government. There is no legal basis for their role, but rather a common perception among judges and political actors that the President of the Supreme Court is the senior ranking judge and that the Minister is the chief of the judiciary and has administrative and supervisory responsibilities over it.[4]

The Department of Courts within the Ministry of Justice

The Department of Courts is part of the Ministry of Justice and it is divided into two sections: the Section of Court Operations and Statistics and the Section of Legal Professionals and Qualifications.[5]

The section of Court Operations and Statistics prepares rules and issues regulations concerning court management and the handling of documents in regional and district courts; it gives instructions on administrative issues to presidents of regional and district courts; it supervises the organisation of regional and district courts' work (including case allocation, statistics and internships); and it supplies courts with legislative and other materials. In addition, it may request information and clarifications from officials of district and regional courts.[6]

The section of Court Operations and Statistics also indirectly monitors the performance and efficiency of the judiciary through its collection of statistics and assessments of the performance of the individual judge.' This data can be used, e.g. by the Judicial Qualification Board in deciding whether to grant a judge a higher qualification or by the Ministry of Justice in deciding whether to ask the Parliament to increase the number of judges in the country.[7]

Furthermore, according to the Latvian comments on the inception report, one of the main tasks of the Department of Courts is to ensure the implementation of international conventions and agreements on legal co-operation, as well as to examine applications and complaints of natural and legal persons within the competence of the Judicial Department. Besides this, the Department of Courts has the task to assess and to pay for damages caused to persons who have been convicted without a legal basis as a result of an unlawful or unjustified action by an investigative institution, the Office of the Prosecutor, or a court.[8]

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4 OSI report 2001, p. 239.
5 See OSI report p. 242, mentioning the legal basis for the Department of Courts: art. 33 and 40 of the Law on Judicial Power; see also the Latvian comment on the inception report, no. 22.
6 See OSI report 2001, p. 242, referring to a Statue of the Department of Courts of the Ministry of Justice, adopted April 2, 1996.
7 OSI report 2001, p. 242 and see infra.
8 See the Latvian comment on the inception report, no. 22.

Administration of the lower courts

Art. 107 of the Law on Judicial Power points out, that the Ministry of Justice shall implement the organisational management of regional courts, district (city) courts and Land Registry Offices within the scope specified by law. Thus the Ministry of Justice (art. 107 (2) Law on Judicial Power):

1) selects candidates for the office of judges of regional courts and district (city) courts,
2) issues recommendations concerning the election of lay judges,
3) formulates regulations for the organisation of the work of the regional courts and district (city) courts,
4) supervises the organisation of the work of the regional courts and the district (city) courts,
5) organises the training of the employees of the regional courts and the district (city) courts,
6) appoints bailiffs and, not later than within one year, confirms them in office or remove them from office,
7) organises and performs the statistical accounting of the work of the courts,
8) performs the systematisation and computerisation of legislative enactments and court practice, and ensure the provision of legislative and other necessary materials to the courts,
9) shall act with financial resources, in order to secure the activities of the regional courts, the district (city) courts and the Judicial Qualifications Board, and shall supply the courts with the necessary equipment and technical facilities, and shall finally
10) provide for the construction of court buildings and the maintenance in good condition of existing courthouses.

In June 1999, the Ministry of Justice, in co-operation with the Swedish Investment Development Agency (SIDA), started a research project on the support for development of the court administration system. Within the framework of this project, the Ministry of Justice has developed close co-operation with the Swedish National Court Administration (SNCA) and SIDA. Considering the recommendations that were made within this project, as well as the experience of other states with the administration of courts, the Ministry of Justice continues to work on the formulation of the court administration concept.[9]

Audits by the Ministry of Justice

The Ministry of Justice organises audits of the district and regional courts (in order to inspect, amongst other things, the assignment of cases to judges, the review of cases, the organisation of courts), using either Ministry employees or judges from the Supreme Court and regional courts (art. 108 (4) of the Law on Judicial Power).

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[9] See Latvian comments on the inception report, no. 18.

In practice, judges are not normally involved in inspections, which are conducted entirely by Ministry employees.

Presidents' role in the administration of the courts

Presidents of district- and regional courts have a broad management role at the court level. Many of the management functions (overseeing case allocation and -management, legal training for lay judges and court personnel, court schedules, the compilation of court statistics and the execution of court decisions, see art. 33 (2) and 40 (2) of the Law on Judicial Power) require close contact with and reliance upon the personnel and resources of the Ministry of Justice.

Budget of Courts

The court system is financed from the State budget (art. 117 (1) Law on Judicial Power). Furthermore, the State shall provide the courts with a material and technical basis in conformity with scientific and technical achievements and international requirements (art. 117 (2) Law on Judicial Power.

Supreme Court and Constitutional Court

The Supreme Court enjoys a very considerable degree of autonomy and independence from the Government and the Administration. The Supreme Court is generally responsible for its own administration.
Other matters, such as the court budget and court personnel must be referred to the Cabinet of Ministers. Therefore, also the Supreme Court is dependent for its funding on the executive branch.
The Constitutional Court is financed from the State budget, according to art. 37 of the Constitutional Court Law.

The number of judges and staff members in a district- and regional court

The number of judges in district and regional courts is determined by Parliament, based on the recommendation of the Minister of Justice (art. 32 (3) and 39 (2) Law on Judicial Power). Each individual court recruits its own staff. In practice, the Ministry determines the required number of judges and court personnel, based on its calculation of the average caseload in each court.[10]

II.2 De jure and de facto division of competencies within the judiciary

The opinion of the Supreme Courts on the application of laws

As mentioned above, the Plenum of the Supreme Court issues clarifications on the application of laws. It has become clear that they can be helpful, especially from a

[10] OSI report 2001, p. 244.

practical point of view. For instance: judges are often very young and inexperienced and many new laws are adopted. With the explanatory decisions of the Supreme Court, the lower judges receive a comprised summary without having to go through piles of legal texts.
However, article 83 of the Constitution states that judges shall be independent and subject only to the law.

CHAPTER III

The independent functioning of the Judiciary

III.1 Incompatibilities

According to art. 86 (3) of the Law on Judicial Power, the office of a judge may not be combined with membership of a party or other political organisation. A judge who is nominated as a candidate for Parliament, must resign from judicial service when the list of candidates is registered. In municipal elections, judges need only to relinquish their judicial posts when being elected. They may participate in political campaigns while still sitting on the bench.[11]

Generally spoken, judges cannot serve in the executive branch. However, specific positions prescribed by laws and international agreements may be held by judges. For example, by law one of the nine members of the independent Central Election Commission is a judge elected by the Plenum of the Supreme Court.[12]

By the Anticorruption Law of 21 September 1995, which covers not only judges but all State officials, limitations on other professional activities of judges are established. Judges are prohibited from holding any other position or engaging in any other professional or commercial activity, with the exception of educational, scientific, and creative activities. Judges are not allowed to strike, according to art. 86 (5) of the Law on Judicial Power.

The Constitutional Court Law states, that direct or indirect interference with the actions of the Constitutional Court in relation to judging shall not be permissible (art. 2). Furthermore, it states that a Justice of the Constitutional Court may not fill another office or have other paid employment except in a teaching, scientific and creative capacity. He/she may not be a member of the Saeima or the Council of a municipality.

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[11] OSI report 2001, p. 239, referring to: art. 6 of the Saeima Election Law, adopted 25 May 1995, art. 10 of the Election Law on City and Town Councils, District Councils and Pagasts (Councils), adopted 13 January 199.

[12] OSI report 2001, p. 240, referring to the Anticorruption Law, art. 19, adopted 21 September 1995, as well as to art. 8 of the Law on the Central Election Commission, adopted 13 January 1994.

The office of a justice of the Constitutional Court is incompatible with membership of a political organisation (party). A justice of the Constitutional Court may be a member of any other public organisation, however he must use this right in such a way that it will not harm the dignity and reputation of a justice and neither the independence and impartiality of the Court. (art. 34 Constitutional Court Law).

III.2 Lay judges

The Law on Judicial Power contains articles which regulate the conditions for being a candidate for a the position of lay judge (art. 56), and the procedures for election (art. 64), invitation (art. 65) and giving the oath (art. 70). Furthermore, the identification (art. 72), removal (art. 85), employment rights guarantees (art. 88) and the obligations of lay judges (art. 89) are regulated.

III.3 Influence of the media or other authorities

It was reported that the relationship between the media and the judiciary is not very good. Media criticism quite often is superficial and uninformed. This in turn influences public opinion regarding the judiciary which is not very high at the moment. Severe and unreasonable criticism of the handling of pending cases and of judgements creates an unfavourable atmosphere, which might influence the judges concerned and thus infringe their sense of independence. The same applies to criticism by government officials and politicians. This is detrimental to the respect the judiciary should enjoy in a state where there is a rule of law.

However, there is another side to this picture: the judiciary ought to be aware that the media, in order to report correctly, have to be made aware of the relevant law, the relevant facts and the relevant issues in cases which could attract a lot of attention.

III.4 Supporting facilities

Buildings

In general, as a consequence of inadequate funding, the judiciary suffers from shortages of space, necessary equipment, legal information and human resources. The courthouses are of a varying age and quality, some of them newly restored and others in bad condition. There is a lack of courtrooms, which causes delays. In many buildings, judges' offices are just next to the courtrooms, allowing the public to move freely in the corridors and into judges' offices. Courts, police, prosecutors and advocates often have their premises in the same building.

The Ministry of Justice drew up guidelines for the maintenance of court buildings in March 2000 with the aim of preventing corruption in the judicial system, improving public service and ensuring the protection of witnesses. Furthermore, the Ministry of Justice renovates premises in Riga for the needs of the four courts. According to building

guidelines, the offices of the judges will be separated from the public sector of the building.[13]

Legal research resources

Legal research resources are insufficient. The availability of specialist literature and collections of reports of judgements is inadequate. Courts do acquire collections of new legislation and of cases of the Supreme Court and the regional courts. The Ministry of Justice provides courts with legal information. All new laws are being published in the "Latvijas Vestnesis" (the official Latvian newspaper) to which the courts are subscribed. Each court is provided with one paper copy of the Official Gazette, which contains the current legislation adopted by the Parliament. The Gazette is also available in electronic version to all Supreme Court judges, regional court judges, and judges in twenty of the thirty-four district courts. There are plans to extend these services to the remaining courts within two to three years.

However, there is a lack of other relevant literature, because Latvian legal literature is scarce and because of the lack of funds for the acquisition of literature. As a result, courts are reported to have no decent library at their disposition. The Latvian judges do have access to the library of the Riga Graduate School of Law, where the Judicial Training Centre is located. [14]
According to the OSI report 2001, there is no electronic database for case law or legal writing in Latvia.

The Judicial Training Centre has a 'publication office'. It publishes 'the Lawyers Journal', as well as volumes with Judgements and Decisions of the Supreme Court Senate.[15]
The judgements of the Constitutional Court shall be published in the newspaper 'Latvijas Vestnesis ' and in the Official Gazette within five days of being given. Once a year, the Constitutional Court shall publish a collection of judgements of the Constitutional Court, including all judgements in full and individual opinions of justices attached to cases (art. 33 Constitutional Court Law).

Technical equipment and computerisation

In many courts, technical equipment is in short supply and of poor quality, which reduces the efficiency of the proceedings. The biggest problem is the lack of information technology available at courts. The Ministry of Justice has set computerisation of courts as one of its priorities. The State Investment project "United Court Information System" (UCIS) started in 1998. UCIS provides the development of an internet/intranet

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[13] See the Latvian comments on the inception report, no. 26.
[14] See the Latvian comments on the inception report, no. 26 and 27; see also the European Union Twinning Project Court System Reform, Report number 6, period 1.2.2000-30.4.2001, dated 30.4.2001, p.5.
[15] Dr. Iur. Habl. Prof. Edgars Meïïisis, Contemplating the need to restructure judicial training and the course it should take, http//court.jm.gov.lv/ltmc/news/en/restru/html.

technology based information system with a central database and decentralised data input. Furthermore, the Ministry of Justice is introducing a Computerised Legal Information System, called NAIS. In principle every judge should have a personal computer and access to a centralised system, including access to Internet.

Computerisation of case statistics and case management is also foreseen. Progress has been made indeed with regard to computerisation. All Supreme Court judges have computers and in several district and regional courts each judge of the court has a computer. Nevertheless, some district courts are reported to have still one single computer for the entire court, even after the assessment of the situation in the OSI Report 2001.[16] It is hoped by the Latvian counterpart, that court proceedings are thus speeded up. Furthermore, the Latvian counterpart hopes to ensure effective access to information and court system transparency.[17] Due to the lack of funds it is not possible to know when the computerisation plans will be implemented.

Supporting staff

Staff resources (assistants to judges) were reported to be insufficient; business managers and adequately trained administrative staff are hardly available. The OSI report 2001 finds, that the shortage of technical staff contributes to large case backlogs and promotes superficial review of cases. Each judge is supposed to have a secretary and a legal assistant. But, since the wages of the court staff are low and since there is a lack of space to accommodate them, many judges do not have assistants.

However, according to the Latvian comments on the inception report, all judges of the Supreme Court and the Constitutional Court have assistants. Every court is provided with a financial basis for employing one assistant. Hiring staff, including judicial assistants, is within the competence of the Chairman of the Court.[18] Furthermore, business managers and administrative staff are available for the court system. As far as the courts of first instance are concerned, the same result is achieved. For the courts of second instance, such a result is due to be achieved in the end of 2003.[19]

III.5 Independence vis-à- vis the parties

Of 99 countries, Latvia ranks no. 58 in the Transparency International Corruption Perceptions Index of 1999 and in 2000 Latvia ranked 57th out of 90.[20] Delna, the Latvian chapter of Transparency International, has made a study of the opinion of the Latvian

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16 OSI report 2001, p. 248; referring to the Development Program of the Judicial System of the Republic of Latvia 2002-2006, Courthouse Agency, January 2001.

17 OSI report 2001, p. 247; referring to information from the President of the Supreme Court, July 2000; Also according to the 6th Report of the European Union Twinning Project Court System Reform the delivery of computers to the courts continues; see the Latvian comments on the inception report, no. 32.

18 Additional comment on the desk report from the Latvian Ministry of Justice.

19 See the Latvian comments on the inception report, no. 35.

20 OSI report 2001, p. 265.

citizens about the public institutions. In 2000, the judiciary was regarded the seventh most dishonest institution of the country, behind Customs and Traffic Police.[21]

However, allegations of widespread corruption in the judicial system are almost never substantiated. There is possibly corruption among judges in lower courts (in contrast to judges in the higher echelons). The Latvian comments on the inception report submit on this latter issue, that there is no evidence to support the rumours of corruptive practice.[22]

CHAPTER IV

The status of judges

IV.1 Selection

Nomination requirements for a judge

Chapter 7 of the Law on Judicial Power regulates the nomination requirements for professional and lay judges. Chapter 8 regulates the nomination of candidates for the Office of Judge. Chapter 9 regulates procedures for the Appointment and Confirmation of Judges and Lay Judges and their Term of Office. The basic principle in selecting a candidate for the office of a judge is that only Latvian citizens, who are highly qualified and fair lawyers, may work as judges (art. 51 (1)). Furthermore in the selection of judges no discrimination based on origin, social and financial status, race or nationality, sex, attitude towards religion, type and nature of occupation, or political views is permitted. The requirement that a judge must be a Latvian citizen though, shall not be considered as discriminatory (art. 51 (2)).

Article 55 sets out some criteria in order to define persons who may not become candidates for a judgeship. For example, a candidate for a judge may not be a person that has been previously convicted of committing a crime. Also those who are or have been employed in staff positions or as supernumeraries of the State Security Committee of the USSR or the Latvian SSR, the Ministry of Defence of the USSR, or the state security service, any intelligence service or counter-intelligence service or Russia or another state, or as an agent, resident or safehouse keeper of the aforementioned institutions, may not be a candidate to become a judge.

The procedures for appointment vary according to the level within the court system. The Law on Judicial Power sets out the necessary requirements relating to office, appointment and dismissal, obligations, disciplinary procedures and professional qualifications (according to article 84 of the Constitution).

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[21] See the Delna Annual Report 2000, p 6.
[22] See Latvian comment on the inception report, no. 52.

Candidates for a judge of a district (city) court

Article 52 (1) of the Law on Judicial Power sets out that a Latvian citizen, who is at least 25 years old by the day of appointment, who has higher legal education and at least two years length of service in a legal speciality, and who has passed a qualification examination, may be appointed as a judge of a district (city) court.
Other courses may be recognised, e. g. those who have followed police training courses at the Police Academy or Rezekne Augstoskola,[23]can become public prosecutors and then switch to the court.

Apprenticeship

The time for apprenticeship shall be set at between one month to six months, taking into account the level of professional qualification of the candidate (art. 52 (5) Law on Judicial Power). The Ministry of Justice determines the procedure by which a candidate shall apprentice and take qualification examinations (art. 52 (4) Law on Judicial Power).
The main responsibility of apprentices is to familiarise themselves with the work of a judge by analysing cases and helping the judge in legal research. Apprentices do not adjudicate cases. Following the apprenticeship, candidates must complete an examination before the Judicial Qualification Board.

Candidates for a judge of a regional court

Article 53 sets out the criteria: a Latvian citizen , who has higher legal educational and at least two years length of service as a judge of the Commercial Court (an arbiter of the State Arbitration Tribunal), a judge of a district (city) court or a judge of a Land Registry Office (head or Deputy Head of a Land Registry Office), or who has no less than three years total length of service as a sworn advocate, or as a lecturer in the legal specialities at an institution of higher education or as a prosecutor, as well as until 30 June 1994 a deputy prosecutor, or as an assistant prosecutor, or an investigator for the prosecution, may be confirmed as a judge of the regional court.
For a judge from the district court, the appointment is treated as an entirely new process, not a promotion.

Candidate for a judge of the Supreme Court

A Latvian citizen, who has a higher legal education and at least four years length of service as a judge of a district (city) court, or three years length of service as a judge of the Commercial Court (an arbiter of the State Arbitration Tribunal) ; or two years length of service as a judge of a regional court may be confirmed as a justice of the Supreme Court (art. 54 (1)). A Latvian citizen who has a total of not less than six years length of service as an advocate, prosecutor or a lecturer in the legal specialities at an institution of higher education may also be confirmed as a justice of the Supreme Court (art. 54 (2)).

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[23] See the Latvian comments on the inception report, no. 42.

Candidate for lay judge

The only requirement for lay judges is that the person must be a citizen of the Republic of Latvia and at least 25 years old. The lay judges are elected by the local municipality and serve for five years.

Candidate for a justice in the Constitutional Court

Any citizen of Latvia who has had legal education at university level, and who has at least ten years' working experience in a legal profession or in a scientific or educational field in a judicial speciality in a research or higher educational establishment, may be confirmed a justice of the Constitutional Court. A person who may not be nominated for the office of a justice under art. 55 of the Law on Judicial Power (containing criteria to define the people who may not become a candidate for a judgeship), should not be appointed as a justice of the Constitutional Court (art. 4 § 2 Constitutional Court Law).

IV.2 Appointment

Nominations

In order to be appointed to or confirmed in the office of a judge of a district (city) or regional court, or a justice at the Supreme Court, candidates shall be nominated by the Minister of Justice. The Qualification Board issues an opinion on the candidate, on which the nomination is done. (art. 57 and 59 and 94 (2) of the Law on Judicial Power).
Judges of district (city) courts

The Minister of Justice issues a recommendation for appointment to the office, which is done by the Saiema. The term of office is three years. (art. 60 (1) Law on Judicial Power).

Article 60(2) of the Law on Judicial Power states : after a judge of a district (city) court has held office for three years, the Saeima, upon the recommendation of the Minister of Justice and on the basis of an opinion of the Judicial Qualification Board, shall confirm them in office, for an unlimited term of office, or shall re-appoint them to office for a period of up to two years. After the expiration of the repeated term of office, the Saiema, on the recommendation of the Minister of Justice, shall confirm in office a judge of a district (city) court for an unlimited term of office.

Article 60 (3) of the Law on Judicial Power sets out, that if the work of a judge is unsatisfactory, the Minister of Justice, in accordance with an opinion of the Judicial Qualification Board, shall not nominate a judge as a candidate for a repeated appointment to or confirmation in office.

The Chief Justice and the deputy Chief Justice of a district (city) court are appointed by the Minister of Justice, from among the judges of the court, for five years, on the basis of an opinion of the Judicial Qualification Board (art. 40 (1) Law on Judicial Power).

A nominee for court president must meet all the criteria for appointment as a judge to that same court, and in addition the Board, in forming its opinion, takes into account a poll among the judges of the court.[24]

Judges of regional courts

A judge of a regional court shall be confirmed by the Saeima, upon the recommendation of the Minister of Justice, for an unlimited term of office (art. 61 Law on Judicial Power). The Chief Justice of a regional court shall be appointed by the Saiema, for five years, from among the judges of the court, upon the joint recommendation of the Minister of Justice and the Chief Justice of the Supreme Court, on the basis of the opinion of the Judicial Qualification Board (art. 40 (1) Law on Judicial Power). The Minister of Justice appoints the deputy Chief Justice of a regional court, for five years, on the basis of an opinion of the Judicial Qualification Board. (art. 41 (1) Law on Judicial Power)

Justices of the Supreme Court

Justices of the Supreme Court, upon the recommendation of the Chief Justice of the Supreme Court, shall be confirmed in office by the Saeima as well, for an unlimited term of office (art. 62 Law on Judicial Power)
The Saiema appoints the President of the Supreme Court on the recommendation of the Cabinet of Ministers from among appointed judges of the Supreme Court for a period of seven years (art. 50 (1) of the Law on Judicial Power).
Two deputy Chief Justices of the Supreme Court are elected by the Plenary Session of the Supreme Court, for seven years from among the chairpersons of the departments of the Senate and the chairpersons of the court panels (art. 50 (4) Law on Judicial Power).
Justices of the Constitutional Court

The seven justices of the Constitutional Court shall be confirmed by the Saeima. Three justices of the Constitutional Court shall be confirmed upon the recommendation of not less than ten members of the Saeima. Two shall be confirmed upon the recommendation of the Cabinet of Ministers, and two justices shall be confirmed upon the recommendation of the Plenum of the Supreme Court. The Plenum of the Supreme Court may select candidates for the office of justice of the Constitutional Court only from among judges from the Republic of Latvia. (art. 4 § 1 Constitutional Court Law). The term of office of a justice of the Constitutional Court is ten years as of the day when the justice took up the duties of office (art. 5 Constitutional Court Law). The Chairperson of the Constitutional Court and his deputy are elected for a period of three years from among the members of the Constitutional Court, by an absolute majority vote of the entire total of the justices. The voting shall be by secret ballot (art. 12 Constitutional Court Law).

[24] OSI report 2001, p. 259.

Election and invitation to court of lay judges

The Minister of Justice determines the number of lay judges ; for district (city)courts this will be done in proportion to the number of inhabitants in the district (art. 64 (1) Law on Judicial Power). Lay judges are elected (in accordance with the procedures specified by law) for five years by the local district (city) government (art. 64 (2) Law on Judicial Power).
Lay judges are invited to fulfil their duties, by lot, for no longer than two weeks per annum, except in cases where the necessity to conclude the trial which has begun with their participation, requires the extension of this time (art. 65 (1) Law on Judicial Power). The summation to court is mandatory for a lay judge, as well as for the administration, institution or organisation in which the lay judge is working or studying. Anyone ignoring the summons, will therefore be held liable in accordance with the procedures prescribed by law (art. 64 (3) Law on Judicial Power).

IV.3 Professional Security

Life tenure

The Constitution states that judicial appointments are irrevocable (art. 84 of the Constitution). Once appointed to an unlimited term, judges are guaranteed tenure until a mandatory retirement age (see above). However, judges are not given tenure until three to five years into their service, and the final decision to grant them tenure is based in part on their performance in office and in part on the discretion of the Ministry of Justice and the Parliament.

A justice of the Constitutional Court may not be removed from office during his term, except in cases provided for in art. 10 of the Constitutional Court Law. When a judge, who has been approved to the office of a judge for an unlimited term, is confirmed as justice of the Constitutional Court, he shall have the right, after the expiry of the term of office as a justice of the Constitutional Court, to return to his previous position. The only restriction is that he must not have reached the retirement age for judges.

Re-appointment

The Minister of Justice, proposing the candidates for reappointment based on assessments provided by the Judicial Qualification Board, may refuse to re-nominate a judge (art. 60 of the Law on Judicial Power). Appeal against such a decision of the Board or the Ministry is not provided for.

The judge's performance on the bench, complaints concerning the judge's performance, the number of cases decided by the judge, and the percentage of the judge's decisions overturned on appeal, are informally taken into account by the Board. After the initial three-year term, judges are usually appointed to unlimited terms of office; according to the OSI report there were no instances reported of the Minister refusing a nomination

altogether, nor of Parliament refusing to appoint a candidate nominated by the Minister.[25]

IV.4 Retirement

Maximum age for holding office as a judge

The maximum age for holding office as a judge of a district (city) court and of a regional court is 65. The Minister of Justice and the Chief Justice of the Supreme Court, upon receiving a favourable opinion of the Qualification Board, may extend (with a joint decision), this time up to five years (art. 63 (2) Law on Judicial Power).
The maximum age for holding office as a justice of the Supreme Court and of the Constitutional Court, 70 years. (art. 63 Law on Judicial Power and art. 8 (1) Constitutional Court Law).

The Chief Justice of the Supreme Court, upon receiving a favourable opinion of the Judicial Qualification Board, may extend the time for holding office as a justice of the Supreme Court for up to five years (art. 63 (3) Law on Judicial Power). The Saeima may extend, upon a recommendation of the President, the time for holding office as Chief Justice of the Supreme Court by five years (art. 63 (4) Law on Judicial Power).

Judge Emeritus

The Chief Justice of the Supreme Court, or the Minister of Justice may recommend that the Saeima grants the title of Judge Emeritus to a justice of the Supreme Court, or a judge of the regional court or district (city) court, who has worked with integrity and has retired from the work of a judge (art. 66 Law on Judicial Power).

IV.5 Transfer

Assignment to a specific court and temporary substitution of judges

The Saiema assigns judges to specific district (city) or regional courts. Supreme Court justices are all assigned to Riga, the seat of the Court, just like the justices of the Constitutional Court. Judges may not be permanently transferred without their consent. Judges may be temporarily transferred to substitute a judge who is temporarily absent.

The Minister of Justice arranges the substitution of judges in the district (city) courts and regional courts, including the option of assigning emeritus judges (art. 74- 77 of the Law on Judicial Power). The substitution of justices of the Supreme Court is arranged internally, without any involvement of the Minister of Justice. Emeritus judges can be assigned to temporarily substitute justices of the Supreme Court. (art. 78 and 79 Law on Judicial Power). The substitution judges receive the salary of the judge whom they

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[25] OSI report 2001, p. 254-255, mentioning information from the Director of the Department of Courts of the Ministry of Justice, 17 May 2001.

substitute, as well as the supplements provided for by law, from funds from the State budget (art. 80 Law on Judicial Power).

IV.6 Promotion

General

Article 98 (1) of the Law on Judicial Power sets out that judges of courts (as well as judges of Land Registry Office) shall be certified. Taking into account the knowledge and work experience, judges shall be scaled in one of the six categories of qualifications.[26] Supplementary payments range per category from 20 to 100 percent of the basic salary.

As mentioned above, the Judicial Qualification Board decides on the qualification of an individual judge (art. 94 of the Law on Judicial Power).
Judges themselves cannot request directly a promotion in class. The Minister of Justice makes recommendations on assigning district and regional court judges to a particular class, which must be submitted no later than two months after the judge has become eligible for the next class. Promotion to a higher qualification class requires a (progressively) longer period of service in the class immediately preceding it; a judge must serve two years in the lowest class to be eligible for promotion to the next class, while to be promoted to the highest class, he or she must have served seven years in the preceding class. The President of the Supreme Court makes the recommendation for justices of the Supreme Court.

Appointment in a specific qualification class depends on seniority. New judge appointees are usually awarded the lowest, fifth qualification, class, but if a new appointee is highly qualified and has extensive legal experience, he or she may be placed in a higher qualification class. However, class promotion is not connected with promotion to a higher court; some district court judges have the highest qualification class.

In deciding to grant a particular qualification class, the Judicial Qualification Board reviews the judge's personnel file, maintained by the Personnel Department of the Ministry of Justice, as well as references from the State Secretary of the Ministry, and the presidents of the courts in which the judge has served. There are, however, no clearly formulated assessment criteria, nor do there appear to be any clearly established informal rules. There is no complaints procedure against a refusal to grant the next qualification; however, the Ministry reportedly supports the introduction of such a procedure. (The Ministry of Justice has not developed official criteria since according to the Law On the Judicial Power, the Judicial Qualification Board tests the judges and assigns the Class of Qualification)[27]. To date, however, no controversy in the field of granting qualifications has been reported; judges are granted the next qualification class

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[26] Regulation on the Judicial Qualification Board and Rules for Attestation of Judges, adopted 23 April 1999, by the Judicial Qualification Board. These Regulations and rules are not available in translation.

[27] Clarification received from the Ministry of Justice of Latvia.

more or less automatically once they have completed the minimum service requirement in their current class. [28]

IV.7 Dismissal

Competence and grounds to dismiss a judge from office

A judge of a district (city) or regional court and a justice of the Supreme Court shall be dismissed from office by the Saeima, upon recommendation of the Judicial Qualification Board (art. 81 (2) Law on Judicial Power).

If a judge has been convicted and the judgement of the court has entered into effect, the judge or justice shall be dismissed from office by the Saeima, upon the recommendation of the Minister of Justice (art. 81 (2) Law on Judicial Power). The Parliament has final discretion in the matter, according to art. 81 of the Constitution.

Dismissal of a Justice of the Constitutional Court

A justice of the Constitutional Court may be released from office by the decision of the Constitutional Court if the justice is unable to continue working because of reasons of health. To reach this decisions, the absolute majority vote of the entire total of the justices of the Constitutional Court is needed (art. 10 (1) Constitutional Court Law). Furthermore, a justice of the Constitutional Court may resign from office before expiry of his term on his own discretion, notifying the Constitutional Court in writing (art. 8 (2) Constitutional Court Law). Particular rules concerning the dismissal of the President of the Constitutional Court do not exist in the Constitutional Court Law.

Presidents of district (city) courts and regional courts

The Chief Justice of a district (city) court and his deputy may be dismissed from office by the Minister of Justice, based on an opinion of the Judicial Qualification Board. (art. 33 (1) Law on Judicial Power)
The Chief Justice of a regional court can be dismissed from office by the Saiema, upon the recommendation of the Minster of Justice or the Chief Justice of the Supreme Court, on the basis of an opinion of the Judicial Disciplinary Board (art. 40 (1) Law on Judicial Power).
A deputy Chief Justice of a regional court can be dismissed from office by the Minister of Justice, based on an opinion of the Judicial Disciplinary Board (art. 41 (2) Law on Judicial Power).

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[28] OSI report 2001, p. 258-259.

Dismissal of the Chief Justice of the Supreme Court

The Chief Justice of the Supreme Court can be dismissed from office by the Saeima upon the recommendation of the Judicial Disciplinary Board, on the basis of an opinion of the Plenary session of the Supreme Court (art. 81 (2) Law on Judicial Power).

IV.8 Removal

Competence and grounds to remove a judge from office

The Saiema can remove judges of a district (city) or regional court, as well as justices of the Supreme Court. Judges of a district (city) or regional court are removed from office, upon the recommendation of the Minister of Justice, and a justice from the Supreme Court, upon the recommendation of the Chief Justice of the Supreme Court. Article 84 of the Constitution stipulates that the Saeima may remove judges from office against their will only in the cases provided for by law, based upon a decision of the Judicial Disciplinary Board or a judgement of the court in a criminal case.

According to art. 82 of the Law on Judicial Power, judges shall be removed from office in the following situations:

1) pursuant to their own request,
2) in connection with election or appointment to another office,
3) due to their state of health if it does not allow them to continue to work as a judge or
4) in connection with reaching the maximum age for fulfilling the office of a judge a specified by law

Removal of Presidents of district (city) courts and regional courts

The Chief Justice of a district (city) court and his deputy may be removed from office pursuant to their own request, by the Minister of Justice (art. 33 (1) Law on Judicial Power).
The Chief Justice of a regional court can be removed from office on his own request, by the Saiema (art. 40 (1) Law on Judicial Power). The deputy Chief Justice of a regional court can be removed from office upon his own request, by the Minister of Justice (art. 41 (2) Law on Judicial Power).

Removal of the Chief Justice of the Supreme Court

The Chief Justice of the Supreme Court shall be removed by the Saeima upon the recommendation of the Cabinet (art. 81 (1) of the Law on Judicial Power).The Plenary Session of the Supreme Court shall give an opinion concerning whether there is a basis for the removal of the Chief Justice of the Supreme Court (art. 49 (4) Law on Judicial Power).

Removal of lay judges

On the basis of a submission by a district (city) court or a Chief Justice of a regional court, the local government of the district (city) court shall decide upon removal of a lay judge from fulfilment of his duties (art. 85 (1) Law on Judicial Power). Lay judges can be removed before the expiration of their term, if they:

1) have been convicted of a crime they have committed,
2) have allowed an intentional violation of law in connection with the adjudication of a matter or
3) have committed a shameful act, which is incompatible with the status of a lay judge (art. 85 (2) Law on Judicial Power).

Removal of a justice of the Constitutional Court

Article 10 (2) of the Constitutional Court Law stipulates that a justice of the Constitutional Court is removed from office, if he is convicted of a crime and when the judgement has come into legal effect. Furthermore, art. 10 (3) of the Constitutional Court Law points out, that a justice of the Constitutional Court can be released by a decision of the Constitutional Court, if the justice: (1) is breaching the requirements of Art. 35 of the Constitutional Court Law,[29] (2) has committed a shameful act which is incompatible with the status of a judge or (3) fails to perform his duties of office and has been charged with disciplinary liability. The absolute majority of votes of the justices of the Constitutional Court is needed in order to remove a justice on these grounds (art. 10 § 3 Constitutional Court Law). Particular rules on the removal of the President of the Constitutional Court do not exist in the Constitutional Court Law.

Assessment in the OSI report

According to the OSI report 2001, a proposed constitutional amendment mentions repeated and clearly unfounded decisions as ground for removing a judge. "Even if cabined within careful procedural protections, such a rule risks chilling the very core of judicial decision-making."[30]

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[29] Art. 35 of the Constitutional Court Law concerns the fact that a justice of the Constitutional Court may not be criminally prosecuted or arrested without the consent of the Constitutional Court. The absolute majority of the justices is needed in order to decide on this matter (art. 35 (1) Constitutional Court Law). A judge of the Constitutional Court may be detained, forcibly brought in and subjected to a search with the consent of the Constitutional Court only. Three justices of the Constitutional Court will review this kind of matters (art. 35 (2) Constitutional Court Law). Finally, a justice of the Constitutional Court may be charged with disciplinary liability in cases of administrative violations (art. 35 (3) Constitutional Court Law).

[30] OSI report 2001, p. 257.

IV.9 Suspension during disciplinary actions or criminal procedures against judges

Judges from a district (city) court and a regional court

If a disciplinary action is initiated against a judge from a district (city) court or from a regional court, the Minister of Justice can suspend the judge's activities until a final decision in the disciplinary procedure is reached. The Judicial Qualification Board has to issue a recommendation on the matter to the Minister of Justice. (art. 84 (1) Law on Judicial Power)
If a judge is charged with a criminal offence, the Minister suspends the judge's activities until a final adjudication has been rendered in the criminal matter. (art. 84 (1) Law on Judicial Power).

Justices from the Supreme Court

Concerning suspension of Justices of the Supreme Court due to disciplinary actions which are initiated against him or due to criminal offences the justice has been charged with, it is the Chief Justice instead of the Minister of Justice, who can decide upon suspension. (art. 84 (2) of the Constitution).

Justices of the Constitutional Court

A justice of the Constitutional Court can be suspended by the Constitutional Court until the judgement in the relevant case comes into legal effect or until the relevant criminal case is dismissed. It is pointed out in the Constitutional Court Law that the Constitutional Court (as a condition for suspension) has to have agreed to criminal prosecution of a justice of the Constitutional Court (art. 9 (1) and art. 35 Constitutional Court Law).
If a justice of the Constitutional Court is charged with disciplinary liability because of having committed an act incompatible with the status of a justice, the Constitutional Court may suspend the authority of this justice until completion of the investigation, but not longer than for one month. (art. 9 (2) Constitutional Court Law).

IV.10 Liability and Disciplinary proceedings

General

According to art. 90 Law on Judicial Power, the framework for disciplinary liability of judges is set out in a special law, which determines also the grounds for the subjection of judges to disciplinary liability. This law on disciplinary liability for the judiciary was not available for the current research; the text on the disciplinary proceedings is thus mostly based on the OSI Report 2001.

Immunity

Judges (including lay judges) have immunity during the period he fulfils his duties in relation to adjudication in a court. Judges are exempt from civil liability for actions carried out during the performance of their functions.
A judge's property is not subject to forfeiture for damages suffered by a litigant resulting from an unlawful judgement; in such cases, as specified by law, damages are paid by the State, but no indemnification of the judge is allowed (Law on Compensation for the Damages Suffered as a Result of the Unlawful or Ungrounded Action of an Investigator, Prosecutor or Judge, adopted 28 May 1998).

Criminal Liability

A judge can be arrested or prosecuted only with the consent of the Parliament. Criminal cases against judges may be initiated only by the Prosecutor General, and decisions concerning a judge's arrest, forced appearance before a court, detention or subjection to search are made by a specially authorised justice of the Supreme Court.
A lay judge cannot be arrested or prosecuted while executing judicial duties without the consent of the local government that elected that judge. However, a lay judge is subject to disciplinary proceedings for administrative violations.

The Judicial Disciplinary Liability Law

The Judicial Disciplinary Liability Law (adopted on October 27, 1994) establishes the grounds and procedures for disciplinary proceedings against judges. The process does not appear to present any particular risks to judges' decisional independence. A judge may be charged with (art. 1 of the Judicial Disciplinary Liability Law): misconduct for intentional violation of the law during review of a case, failure to perform professional duties, dishonourable actions, administrative violations or refusal to discontinue membership in a party or political organisation. The most common cause for disciplinary procedures is intentional breach of the law during hearings.[31]

The Judicial Disciplinary Board

The Judicial Disciplinary Board reviews all disciplinary cases (art. 2 of the Judicial Disciplinary Liability Law). The Board consists of the President and Vice-President of the Supreme Court, as well as three judges of the Supreme Court, two regional court Presidents, two district court Presidents and two Heads of Land Registry Offices elected by the Conference of Judges (art. 2 or the Judicial Disciplinary Liability Law).
The President of the Supreme Court, the Minister of Justice, presidents of regional and district courts, or heads of the Land Registry Offices may initiate a disciplinary procedure against judges beneath them. Any judge against whom a disciplinary case has been initiated, has the right to review the case material, furnish explanations, and

[31] OSI report 2001, p. 260, referring to information from the Director of the Department of Courts of the Ministry of Justice, May 2001.

participate in the meetings of the Judicial Disciplinary Board. (art. 3 of the Judicial Disciplinary Liability Law).

Actions the Judicial Disciplinary Board may take

The Judicial Disciplinary Board may take the following actions: (art. 7 of the Judicial Disciplinary Liability Law) : dismiss the disciplinary case; impose disciplinary sanctions, such as a reprimand or reduction of basic salary; forward the case to the Prosecutor's Office for criminal proceedings; recommend to the Parliament that the judge be removed from office; or forward the case to the Judicial Qualification Board for a review of the judge's qualification class. Decisions of the Judicial Disciplinary Board are not subject to appeal. Three cases have been brought before the Disciplinary Board since 1 January 1999.

Code of Ethics

The Latvian Judges' Association adopted a Code of Judicial Ethics in 1995, but the Code is not applied in practice.

Justices from the Constitutional Court

A justice of the Constitutional Court may be charged with disciplinary liability in case of administrative violations (art. 35 Constitutional Court Law). Article 63 of the Constitutional Court Law points out that a justice of the Constitutional Court may be charged with disciplinary liability for:

1) violating the restrictions provided for in art. 34 of this Law;
2) failure to perform his duties of office;
3) unbecoming conduct;
4) an administrative violation.

Such a disciplinary case may be initiated by the President of the Constitutional Court, his deputy or not less than three justices of the Constitutional Court. The entire Constitutional Court, in which should participate all the judges that are not excused for health or other justified reasons, shall review a disciplinary case.
The justice against whom the disciplinary case in initiated, is not part of the court. The decision in the disciplinary case shall be adopted by a majority vote, with an exception of cases, envisaged in the third part of Article 10 of the Constitutional Court Law. In the event of a tie vote, the case shall be dismissed. In disciplinary cases the Constitutional Court may:

1) impose disciplinary punishment or
2) dismiss the disciplinary case.

The disciplinary punishments that may be imposed on a justice shall be

1) reproof;
2) admonition;
3) reduction of basic salary for a period of one year, withholding up to 20% of the basic salary;

4) removal from the office in compliance with the third part of art. 10.
Disciplinary punishment does not exclude criminal and material liability of the justice of the Constitutional Court (see on this matter art. 36 Constitutional Court Law).

IV.11 Remuneration

Remuneration of judges

The salaries of judges are fixed in relation to the salaries in the civil service by the Law on Judicial Power. The remuneration for judges consists of a basic salary and supplemental payments.

Basic salary of justices of the Supreme Court

The Chief Justice of the Supreme Court, his deputy and the other justices of the Supreme Court receive salaries equal to the maximum monthly salary of a State civil servant of the first qualification category (art. 119 (1) of the Law on Judicial Power), which includes the State Secretaries of the Ministries and the Head of he Prime Minister's Office**.**

Basic salary of judges of regional courts

The basic salary of a President of a regional court is equivalent to the basic salary of a justice of the Supreme Court. The basic salary of a Vice-President of a regional court is 90 % of the basic salary of the President of the regional court.
The basic salary of a judge of a regional court is 85% of the basic salary of the President of a regional Court (art. 119 (2) Law on Judicial Power).

Basic salary of judges of District (city) courts

The basic salary of a President of a district (city) court is equivalent to the basic salary of a judge of a regional court.The basic salary of a Vice-President of a district (city) court is 90 % of the basic salary of a President of a district (city) Court.
The basic salary of a judge of a district (city) court is 85% of the basic salary of the President of a district (city) court (art. 119 (3) Law on Judicial Power).

Additional Payments

Judges receive monthly supplemental payments in addition to their basic salary, based on their qualification class, ranging from 20 - 100 percent of the base salary (art. 120 (1) Law on Judicial Power). The Cabinet may also prescribe other supplements to the salaries of judges, according to art. 120 (2) of the Law on Judicial Power.
Furthermore, in order to stimulate the work of judges, the Minister of Justice and the Chief Justice of the Supreme Court may determine additional payment to a judge, taking into account the results of the work of this judge (art. 121 Law on Judicial Power).

Technical staff

The compensation of the technical staff is very low.

IV.12 Social Welfare

Chapter 22 of the Law on Judicial Power regulates the social guarantees for judges.

The judicial residence

According to art. 124 (1) of the Law on Judicial Power, the State has to provide judges – if necessary and within six months after the appointment of a judge to office (art. 124 (2) Law on Judicial Power) -, with living quarters (a separate flat or a residential house). Living space shall not be less than 12 square metres per family member and there shall be one additional room for the working needs of the judge (art. 124 (2) Law on Judicial Power). Such a provision is done on the basis of a recommendation by the Minister of Justice or the Chief Justice of the Supreme Court (art. 124 (4) Law on Judicial Power). Judges are entitled to request improvements of their living conditions, if their usable living quarters do not comply with these provisions; the submission by a judge has to be satisfied within a year (art. 124 (3) Law on Judicial Power).

Vacation of Judges

Annual paid vacations of not less than five calendar weeks shall be granted to judges. According to the length of service of a judge, for every five years of work completed, the annual paid vacation shall be increased by three days (art. 123 Law on Judicial Power).

Other social benefits

The other social guarantees judges are entitled to, are listed in articles 32-37, 49 and 50 of the Law on the State Civil Service, which apply to judges according to art. 125 (1) of the Law on Judicial Power. Art. 125 (2) of the Law on Judicial Power sets out that if a judge is removed from office due to a reduction in the number of judges, the judge thus removed shall, for six month counting from the day of removal until the establishment of a new employment relationship, have preserved the basic salary which he had on the day of removal.
Judges are exempted from mandatory military service, according to art. 125 (3) Law on Judicial Power.

Pension

It was reported in the OSI Report 2001, that judges' pensions are calculated on the same basis as pensions for all other pensioners, by a formula taking into account contributions to the State Social Insurance Fund and the length of service. Therefore, the pensions for

individual judges vary from one to another. On average, the amount of pensions is about 60% of the last earned income.[32]

Constitutional Court

Article 38 of the Constitutional Court Law states that the salary of a justice of the Constitutional Court, the President of the Constitutional Court and his deputy, shall be equal to the salary of a justice of the Supreme Court, the President of the Supreme Court and his deputy, respectively. Furthermore, this article states, that the President of the Constitutional Court shall receive additional remuneration for performing the duties of a president, equal to the additional remuneration set for the President of the Supreme Court for performing the duties of a president; the deputy President of the Constitutional shall receive an additional remuneration for performing the duties of a deputy president, which equals the additional remuneration set for the deputy president of the Supreme Court for performing the duties of a deputy president.

In addition to their basic salary, justices of the Constitutional Court shall receive additional remuneration provided for in legislative acts currently in effect for justices of the Supreme Court with the highest class of qualification. All social guarantees and relief provided for judges in normative acts currently in effect, shall also apply to justices of the Constitutional Court (art. 39 Constitutional Court)

It was reported that in practice few judges receive the above mentioned additional benefits they are legally entitled to.

CHAPTER V

Training and retraining of judges

Legal studies are a prerequisite for employment as a judge or a prosecutor in Latvia. Private international law, public international law and European law are part of the curriculum at the university based law schools.
The proportion of young judges is rather high. Probationary judges are, according to the Latvian comment on the inception report, appointed after a 6 months introductory course. [33]

The Latvian Judicial Training Centre

In 1995, the Latvian Judicial Training Centre was established. It is a non-governmental institution, founded by the Latvian Judges Association, the American Bar

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[32] OSI Report 2001, p. 250.
[33] See the Latvian comments on the inception report, no. 43.

Association/Central and Eastern European Law Initiative, the SOROS Foundation, the UNDP. The Ministry of Justice got involved at a later stage. The Judicial Training Centre moved to the premises of the Riga Graduate School of Law. The institutions signed a co-operation agreement, which makes it possible for the the Latvian Judicial Training Centre to use the teaching premises of the Riga Graduate School of Law as well as the computer class and the library.[34] The State pays the rent for the premises.

The Ministry of Justice has delegated the function of improvement of skills of judges and court personnel to the Judicial Training Centre.[35] To a lesser extent, training has also been provided for prosecutors, court secretaries, interpreters, other administrative court staff, bailiffs and journalists.
The Judicial Training Centre provides training of judges within the Special Training Programme. Following the latest tendencies of organised crime, in 2001 60 judges were trained on drug-related crime and 80 judges on financial crime. All judges from the local and regional courts will be trained on the new Commercial Law upon its adoption.[36]
It is foresee n that all judges should follow courses in EC law in accordance with a 3-year plan (2000-2003) drawn up by the Centre.

Attending courses at the Centre is optional for judges. However, attending training courses at the Centre is normally one of the requirements for promotion to a higher degree of qualification (and therefore a higher salary). The judges receive two one-week courses, during which their judicial knowledge is refreshed. Judges who have previously received training at the Centre usually conduct the courses.
Within the framework of the Latvian – German Phare Twining project "The Court System Reform", nine seminars on European Law have been organised for 50 judges, since July 2000. Thus one judge from each district and regional court is specialising in European Law. Those judges are subsequently enabled to provide training for other colleagues, afterwards.[37]

A number of training activities was provided by the TAIEX office and the Phare project "Developing Judicial Co-operation in Estonia, Latvia and Lithuania". The training of judges in EC Law will continue within the Phare horizontal project "Training of Judges in Community Law".[38]

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34 See the Latvian comments on the inception report, no. 29 and 46; see also EU Twinning Project Court System Reform, Report nr. 6, p. 5.
35 See the Latvian comments on the inception report, no. 29.
36 See the Latvian comments on the inception report, no. 46.
37 See the Latvian comments on the inception report, no. 47.
38 See the Latvian comments on the inception report, no. 47.

MODULE 2

THE PUBLIC PROSECUTION SERVICE

CHAPTER I

Overview of the public prosecution service in the Republic of Latvia

I.1 General

The public prosecution service is an autonomous part of the judicial power and is headed by the Prosecutor General. It has the task to supervise that the law is observed and it executes this task independently from the other branches of the State. Its competencies are mainly, but not exclusively, within the area of criminal law. The public prosecution service also carries out tasks in the fields of administrative and civil law.

The following legal instruments have been studied: the Constitution of the Republic of Latvia, The Law on the Office of the Prosecutor (as amended by Act of Parliament of 8 June 2000) and the Code of Criminal Procedure. It should be noted here that a new Code of Criminal Procedure is in the course of being drafted by a working party of the Ministry of Justice. No data about the state of play are available, nor is it known what changes will be proposed in comparison with the present Code.
The Law on the Office of the Prosecutor Office explicitly refers to a Code of Ethics for prosecutors in two articles, viz. in articles 40 (2), under 6, and 43 (1), under 5. The Latvian Code of Ethics of Prosecutors was approved by resolution no 70 of the General Prosecutor's Council on 17 June 1998.[39] In accordance with art. 43 (5) of the Office of the Prosecutor Law, a prosecutor may be subject to disciplinary liability (including the disciplinary liability as a result of failure to obey the provisions of the Code of Ethics of Prosecutors).[40]

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[39] See the Latvian comments on the inception report, Module 2.
[40] See the Latvian comments on the inception report, Module 2, no. 2.

Public accountability of the Prosecutor General

The Latvian comments on the inception report state, that the recommendations of the Council of Europe on the public accountability of the prosecution service are fully fulfilled. Report-back meetings take place each year, where the Prosecutor General and the administration of the Office of the Public Prosecutor deliver an annual report. The representatives from Saeima, the Ministry of Justice, the Ministry of the Interior and the Supreme Court take part in this report-back meeting. The press is also invited. The materials (results) of the report-back meetings are published in the "Latvijas Vestnesis" (the official Latvian newspaper) afterwards.
Moreover, the Prosecutor General meets on regular basis with the President of the Republic, as well as with mass media. The Prosecutor General informs them on the latest achievements in the work of the Office of the Public Prosecutor.[41]

CHAPTER II

Position of the public prosecutor

II.1 General

The Constitution itself does not contain direct norms concerning the structure, tasks, function and authority of the prosecution, however it regulates the legislative, executive and judicial powers. The Law on the Prosecution Office, effective as of 1 July 1994, stipulates that the Prosecution Office is a part of the judicial power that supervises independently compliance with the law (article 1(1) Law on Judicial Power).
The independent functioning of the prosecution has explicitly been stated in articles 5 and 6 of the Law on the Prosecution Office. These articles contain important provisions concerning the position and the functioning of the public prosecution service. Article 5 (1):

> "Every prosecutor when reviewing specific cases shall take his decisions independently on the basis of his conviction and the law (...)".

Article 6, paragraphs 1 and 2:

> "The prosecutor shall be independent in his activities from any influence of other public and administrative institutions or officials and shall comply only with the law. Parliament, Government, public and local government institutions, public and local government officials, enterprises and organisations of all types as well as individuals shall be prohibited from intervening into the work of the Prosecution Office in investigation of cases or during the performance of any other functions of the Prosecution Office."

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[41] See the Latvian Comments on the inception report, Module 2, no. 3.

The General JHA Expert Mission to Latvia (18 - 22 May 1998) found that that discussions took place about the idea to bring the Office of the Public Prosecutor's within the remit of the Ministry of Justice. The Latvian comments on the inception report confirm that this idea was discussed during the elaboration of the Office of the Prosecutor Law in 1993-1994. However, after consultations within the Saeima it was decided that – having regard to the fundamental principle of democracy 'the separation of powers' – the Office of the Public Prosecutor remained independent, fulfilling its main task: law enforcement.[42]

II.2 Relationship with the executive power

General

As the public prosecution service is a part of the judicial power, its relations with the executive and legislative bodies of the State must be established by law.
Normative acts of the Government are binding for the prosecution, but the Prosecutor General may request the Constitutional Court to revoke such acts if he considers them incompatible with the Constitution (article 23 (3), under 7, of the Law).
The Government formulates and submits the State budget, which includes the budget of the Prosecution Office, to Parliament (article 66 of the Constitution juncto article 50 of the Law). The Government provides the Prosecution with premises (article 51 of the Law).

The Government has the right to request the Prosecution Office to examine a specific violation of the law, but it has no right to exert any influence on the procedure of such an examination (article 16 (2), under 2, of the Law).
The Prosecutor General has the duty to report to the President and the Government on discovered violations of the law that are nationally relevant (article 23 (4), of the Law).
The Prosecutor has the right to participate in Government meetings and to express his opinion on matters dealt with there; he has however no voting right (article 23 (3), under 5, of the Law).

National Crime Prevention Council

The Prosecutor General is a member of the National Crime Prevention Council, which is a governmental institution and which further comprises representatives of the Ministries of Justice and of the Interior, and of other executive agencies.
The issue of the combat against crime and corruption is a high priority of the Office of the Public Prosecutor. On the initiative of the Ministry of Justice, the Cabinet decided on 31 July 2001 to unite the National Crime Prevention Council and the National Corruption Prevention Council.[43]

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[42] See Latvian comments on the inception report, Module 2, no. 4.
[43] See the Latvian comments on the inception report, Module 2, no. 5.

According to the Latvian comments on the inception report, a special Co-ordination Board was established by the Ministry of Justice, the Ministry of Interior and the Office of the Prosecutors General, in 1994. The Co-ordination Board consists of senior officials of the three institutions that established this Board. The main aim of the board is to maintain co-ordination between the Ministry of Justice, the Ministry of the Interior and the Office of the Prosecutor General.[44]

II.3 Relationship with the legislative power

The position, the competencies and the activities of the public prosecution service have been laid down in laws enacted by Parliament. The legislative power sets the rules for the prosecution service and defines the limits the service has to stay within when carrying out its tasks.
Parliament allocates the finances for the prosecution in the yearly State Budget Law (article 66 of the Constitution jo. article 50 of the Law).

Parliament has the right to request the prosecution to examine facts concerning a violation of the law. At the same time, however, Parliament may not interfere in the activities of the prosecution (article 16 (2), under 2, of the Law).The Prosecutor General has the right to participate in sessions of Parliament and – with the consent of Parliament – to express his opinion on issues directly related to the activities of the Prosecution (article 23 (4), of the Law).
The Prosecutor General has the duty to report to Parliament on discovered violations of the law that are nationally relevant (article 23 (4), of the Law).

The Prosecutor General has no right of legislative initiative (according to the Office of the Prosecutor Law, the main function of the Prosecutor General is law enforcement and not legislative initiative).[45] Parliamentary commissions present draft laws to the prosecution for evaluation and opinion. Furthermore, prosecutors participate in meetings of parliamentary commissions if they are requested to do so.

II.4 Relationship with the judiciary

Both judges and prosecutors are a part of the judicial power, but they do not belong to the same service, although they share many common characteristics. Prosecutors may become judges and vice versa.

The judiciary judges the actions of public prosecutors and their legality when criminal – or other – cases have been brought before the court. Judges are not involved in the decision to prosecute or not to prosecute. Judges do not direct the pre-trial investigations. These investigations are organised and conducted by a prosecutor. Normative acts of the Prosecutor General may be appealed at the Senate of the Supreme Court and the Senate can revoke such acts (article 23 (2), of the Law).

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[44] See the Latvian Comments on the inception report, Module 2, no. 17.
[45] See the Latvian Comments on the inception report, Module 2, no. 7.

The Plenum of the Supreme Court has the right to interpret the law. Its interpretations are binding for the prosecution. The Prosecutor General can ask the Plenum of the Supreme Court for an interpretation on the application of laws (article 23 (3), under 2, of the Law).
The Prosecutor General represents the prosecution service in the Plenum of the Supreme Court and has the right to initiate the review of an issue by the Plenum and to participate in its discussions (article 23 (3), under 3, of the Law).

The Chief Justice of the Supreme Court proposes a candidate for the position of Prosecutor General to Parliament and can submit a proposal to dismiss the Prosecutor General for approval by Parliament (article 38 (1), of the Law).

II.5 Relationship with the police

The police are an entity of the Ministry of the Interior and, therefore, part of the executive branch. A close – functional – co-operation exists between the prosecution and the police, as it is the task of the police to investigate criminal offences and to collect evidence for the prosecution.

In criminal cases, prosecutors supervise the investigating activities of the police and their instructions are mandatory for police officers. During a criminal prosecution, police officers must fulfil tasks given by prosecutors concerning the performance of specific activities. Prosecutors also supervise the intelligence activities conducted by the criminal police and they may give tasks concerning secret actions considered necessary.
Whereas the Minister of the Interior has the political responsibility for the effectiveness of the police and their work, it is the prosecution service that supervises the legitimacy of their investigation and intelligence activities in specific cases. It also reviews complaints against the police. Instructions and decisions of a prosecutor in a specific case are binding upon the police, but it is possible to appeal against such a decision to a senior officer

CHAPTER III

The office of the public prosecutor

III.1 General

The key functions of the public prosecution service are enumerated in article 2 of the Law. These tasks are the following:

1) to supervise the field work of investigation agencies and other institutions,
2) to organise, conduct and perform pre-trial investigations,
3) to initiate and conduct criminal prosecution,
4) to prosecute on behalf of the State,
5) to supervise the execution of penalties,

6) to protect the rights and legitimate interests of persons and the State in accordance with the procedures prescribed by law,
7) to submit claims or petitions to the court in cases prescribed by law and
8) to take part in the review of cases in court as required by law.

As far as possible, these functions shall be dealt with briefly in the paragraphs below.

III.2 In criminal law

The public prosecutor has an essential role in the field of criminal law. It is the public prosecutor who conducts pre-trial investigations and who prosecutes suspects on behalf of the State. These tasks have been elaborated in detail in the Code of Criminal Procedure. The judiciary is not involved in the decision to prosecute or not, and does not have the authority to review such a decision.

In Latvia, as the Latvian comments on the inception report explicitly state, the principle of legality prevails; art. 107, 113 and 145 of the Criminal Procedure Code indicate without any doubt that the public prosecutor does not exercise discretion in starting criminal procedures.[46] Even so, it seems that the public prosecutor can exercise some discretion in this area. See for instance article 28, paragraphs 2 and 3, of the Code of Criminal Procedure where it has been stipulated amongst others that "(...) the prosecutor may open or decline to open a criminal investigation (...)" and "(...) the prosecutor may initiate a criminal prosecution (...)."

III.3 In administrative and civil law

The competencies of the public prosecutor are not restricted to the field of criminal law. The task of the public prosecutor to protect the rights and lawful interests of persons and the State (article 2, under 6, of the Law) concerns also other legal areas and has been worked out in more detail in articles 16-21 of the Law. The public prosecutor is obliged to act in particular, when he has received information about the violation of the rights and lawful interests of persons who have a restricted ability to defend their rights, such as persons with a limited capability, disabled persons, minors and prisoners.

Examination of a violation of the rights and lawful interests of persons or the State is also carried out when the Prosecutor General considers it necessary, when such a examination has been assigned by the President of the Republic, Parliament or the Government or in other cases provided by law. Carrying out this task, the prosecutor has certain competencies that have been laid down in the articles just mentioned.
The prosecutor himself has not the power to terminate an action considered unlawful by him by means of -for instance- police enforcement. When an unlawful situation has not been terminated upon a warning, protest, or petition from the prosecutor, he can take the matter to court or, if applicable, start a criminal proceeding.

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[46] See the Latvian comments on the inception report, Module 2, no. 9.

It should be noted here that the prosecutor has also the right to submit a protest against legal acts of the Government, ministries, departments and other public institutions on national and local level that, in his opinion, do not comply with the law (article 19 of the Law). The prosecutor has the right to go to court when his protest has been rejected or when he has not received any answer from the institution concerned.

III.4 Secondary tasks and supervisory functions

The prosecution has two important supervisory functions. The supervision over the police has already been dealt with in paragraph 1.4 of this chapter.
According to article 2 under 5 of this Law, the public prosecution service has also the supervision over the execution of penalties. There have been laid down a number of provisions concerning the execution of penalties and the supervising role of the public prosecutor in the code of Criminal Procedure (articles 487-503). [47]

III.5 International tasks

The Republic of Latvia is a party to the European Convention on Extradition and the European Convention on Mutual Assistance in Criminal Matters, including their additional Protocols (see also paragraph 2.1 of this review).
Provisions on the mutual assistance in criminal matters have been laid down in articles 244-249 of the Criminal Procedure Code. They are of a rather basic nature.
According to articles 247 and 249 it is the Prosecutor General who submits a request to a third State for the extradition of an individual and who decides on the extradition of an individual to a third State.

The Prosecutor General also decides on a request from a third State to start a procedure against a person residing in the Republic of Latvia for a crime committed in that third State (article 246 of the Code of Criminal Procedure).
Other requests for assistance from or to third States can go through the Ministry of Justice, the Ministry of the Interior or the Prosecutor General and are decided on by one of these organs (articles 244 and 245 of the Code of Criminal Procedure).

Within the Office of the Prosecutor General a Division for International Relations has been established.[48]

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[47] In the General JHA Expert Mission to Latvia Report (1998) it is read on page 59 that the responsibility for penal institutions will probably be transferred from the Ministry of the Interior to the Ministry of Justice on 1 January 1999. It has not become clear from the available documents whether this transfer has actually taken place.

[48] Latvia 2000 – Regular report from the Commission on Latvia's progress towards accession, p. 17.

CHAPTER IV

The legal status of the public prosecutor

IV.1 Working conditions

The legal status and the working conditions of the prosecutors have been laid down in the Law on the Office of the Prosecutor, in particular in Chapter 4 "Prosecutors" (articles 30-45) and Chapter 7 "Remuneration and Guarantees" (articles 52-58).
There are approximately 660 prosecutors throughout the country (against about 350 judges), backed up by 400 administrative staff. Public prosecutors receive approximately 90-95% of corresponding judges' salaries. Although in line with salaries paid to high-ranking civil servants and greatly improved in relation to other civil servants, compared to other e.g. private legal professions, the salary is still low.

IV.2 Independence and impartiality within the organisation of the public prosecution service, centralised and decentralised

The Prosecution Office is organised in a centralised three-tier system that is headed by the Prosecutor-General (article 4 of the Law). Besides the Prosecutor-General and his Office, there are five regional Prosecution Offices (article 26 of the Law) and thirty-eight district/city Prosecution Offices (article 27 of the Law), which are each administered by a chief prosecutor.

Prosecutors receive mandatory normative acts of the Prosecutor General, which, when considered unlawful, may be appealed to the Senate of the Supreme Court.
A senior prosecutor may give instructions to a prosecutor in a specific case and has the right to take over a case. However, he has not the right to instruct a prosecutor to perform actions that are contrary to his conviction (article 6 (4), of the Law). Apart from a prosecutor's independence in this respect, prosecutors are accountable to their seniors who supervise their work. Disciplinary measures can be taken against them on certain grounds (article 43 of the Law; see paragraph 3.7). Of course the legality of the activities of the prosecutor is also judged by court when reviewing an individual case submitted to it.

IV.3 Promotion or downgrading of prosecutors

The Prosecutor General decides on the promotion of prosecutors, taking into consideration the results of their work, the in-service time and the evaluation given by the qualifications commission. In articles 34 and 35 of the Law, some rules have been laid down regarding the appointment to the position of chief prosecutor of a judicial region or district, as well as to the position of prosecutor at the Prosecutor General's Office. Prior to a promotion of a public prosecutor, the qualifications commission shall give its opinion on the capability of the prosecutor concerned for the new occupation.

Downgrading is possible as a result of a disciplinary action (article 44, under 5 and 6, of the Law; see under paragraph 3.7.).

IV.4 Possibility of dismissal

Articles 39 and 40 of the Law contain provisions concerning the resignation respectively the dismissal of a prosecutor.A prosecutor shall be relieved from his position at his request, when elected or appointed to another function, when his health condition does not allow him to continue his work, or upon the expiration of his term of office.
Article 40 of the Law mentions the grounds on which a prosecutor shall (paragraph 1) or may (paragraph 2) be dismissed by the Prosecutor General. Apart from the grounds mentioned there, a prosecutor cannot be dismissed.
As regards the Prosecutor General, the grounds for and the procedure of his dismissal have been laid down in articles 41.1 and 41.3 of the Law. The Prosecutor General may be dismissed by Parliament after the Supreme Court has given its opinion that there is a ground for dismissal as mentioned in article 41.1.

IV.5 Possibility of exercising fundamental freedoms and rights

According to article 10 of the Law, prosecutors are prohibited to be a member of a political party. Apart from this restriction, no other constraints in the exercise of fundamental freedoms and rights are known of.

IV.6 Safety

According to article 56 of the Law, a prosecutor has the right to protection of himself, his family, his property and the property of his family. He is entitled to have a service weapon. As regards the procurement, storage, carrying or use of such a weapon, the provisions laid down in the Law on firearms and special means for self-protection are applicable.

IV.7 Disciplinary proceedings

A prosecutor may be subject to a disciplinary action "in accordance with labour legislation", in the case of an intentional violation of the law while performing his official duties, of intentional non-performance of his official duties, of disgraceful acts that are not compatible with the position of a prosecutor, of an administrative violation, and of failure to comply with the Prosecutors' Code of Ethics (article 43 of the Law). The disciplinary penalties are a notice, reprimand, reduction of salary, demotion in service rank, demotion in position and dismissal (article 44 of the Law).

The Prosecutor General may impose any disciplinary penalty on any prosecutor, whereas chief prosecutors may only impose a notice or a reprimand on prosecutors subordinate to them. If they consider that a more severe penalty is appropriate, they can submit a proposal to that effect to the Prosecutor General (Article 45 (1) of the Law).

A prosecutor who has received a disciplinary penalty can appeal against it in court (article 45 (7) of the Law).

CHAPTER V

Recruitment and Education

V.1 Selection of public prosecutors

According to article 38 of the Law, prosecutors are appointed by the Prosecutor General for an indefinite term. Chief prosecutors are appointed for a term of five years. Before an appointment of a (chief) prosecutor, the qualifications commission gives its opinion on the capability of the candidate for the occupation

Candidates for the function of prosecutor must be at least twenty-five years of age. They must have a law degree of the University of Riga or must have followed other higher legal education at an institute recognised by the University of Riga. Furthermore, they must have experience of at least two years in a legal profession, have followed an in-service training and have passed a qualification examination before being appointed (article 33 of the Law). Additional requirements apply when the occupations of Prosecutor-General or chief prosecutor are at issue (articles 34-36 of the Law).
Since Latvia's independence 80% of public prosecutor posts have been filled with new appointees. Therefore, the proportion of young public prosecutors is (relatively) high and may cause difficulties due to a lack of experience.[49]

V.2 Initial training

As has just been said, candidates must follow an in-service training and pass an examination before being appointed as a prosecutor. The Prosecutor General determines the rules in this respect.
The report of the General JHA Expert Mission to Latvia (1998) concludes that the State does not have an organised structure for judicial training. The provides training for prosecutors, but to a lesser extend than for judges.

The Office of the Prosecutor General has delegated the function of improvement of qualification of public prosecutors to the Judicial Training Centre.
As was mentioned already in the section on the judiciary (Module 1) the Judicial Training Centre makes use of the computer classroom and the library of the Riga Graduate School of Law.
Regular training of public prosecutors takes place in groups, based on the length of service and on the relevant level. Within the scope of foreign assistance projects, public

[49] See the General JHA Expert Mission to Latvia Report (1998), page 65.

prosecutors have been given opportunities to attend seminars in Latvia and also abroad. Another opportunity that is offered within this scope is to take a tour of duty in some foreign judicial institution.

MODULE 3

COURT PROCEDURES AND EXECUTION OF JUDGEMENTS

CHAPTER I

Access to justice

I.1 Access to courts

Article 1 of the Law On Judicial Power grants each person the right to have court cases tried in accordance with the rules of legal procedure prescribed by law. According to Article 3 of this law, a person has the right to court protection against threats to his or her life, health, personal freedom, honour, reputation, and property. Each person has a guaranteed right to have the rights and obligations of such person, or the validity of charges brought against him or her, determined on the basis of complete equality, by an independent and impartial court adjudicating the matter in open court and having regard to all the requirements of justice. Article 4 states that all persons are equal before the law and the court, and they have equal rights to the protection of the law.

Moreover, a court shall adjudicate a trial irrespective of the origin, social and financial status, race or nationality, sex, education, language, attitude towards religion, type and nature of occupation, place of residence, or the political or other views of a person. According to the Latvian Ministry of Justice, the access to justice is not as bad as it is presented by various reports, since the court fees are low and a large amount of applications are submitted each year.[50]

I.2 Free legal aid

In criminal cases suspects have a right to a public defence, but the system for legal aid does not work well. At times it is impossible for the courts to appoint a defence lawyer, even though this is prescribed by law. Legal aid is free, but is only granted in criminal cases if, after an evaluation, it is considered necessary.
Qualified lawyers try to avoid these assignments. However, according to the Latvian comment on the inception report, everyone who needs a lawyer can get one, even if a

[50] See the Latvian comments on the inception report, no. 1.

person has a low-income or no income at all. Qualified lawyers have no possibility to avoid public defence assignments, because all lawyers-advocates are periodically mandatory assigned to the public defence cases.[51]
In addition to delays and slow procedures, there are other problems. For instance, the accused does not receive a copy of the protocol of the investigation. However, the implementation of the new Criminal Code, which has entered into effect on 1 April 1999, has improved some of these aspects.

According to the Latvian comments on the inception report, everyone can (in accordance with the article 41 of the Law on Administrative Procedure) take part in the administrative procedure with the help of an lawyer (when a person does not have the financial capacity, the state pays the costs for legal aid). The same principle of guaranteed legal aid is established in the draft Law on administrative procedure.[52]

Even though the criminal law stipulates that courts must provide interpreters free of charge, this is extremely difficult due to a lack of resources. In civil cases, a party has to pay for interpreter itself. The working language of the court can in practice be Russian, if all parties agree. However, according to the Constitution, and in particular to article 4 thereof, the Latvian language is the official language in the Republic of Latvia. Accordingly, all legislation is officially published in Latvian.

CHAPTER II

Fair trial and due process in civil and criminal matters

II.1 Undue delay

The basic law that regulates court procedures in civil cases, is the Civil Procedure Law. It is a relatively new law, which came into force on 1 March 1999. It replaced the Civil Procedure Code. In accordance with the provisions of the Civil Procedure Law, upon receipt of a claim application in court, a judge shall take a decision within three days regarding: acceptance of the claim application and initiation of a matter; refusal to accept the claim application or leaving the claim application without examination. After the initiation of a civil case, the court sends the claim application and copies of the documents appended to it without delay to the defendant. Another way to ensure the speedy adjudication of the case is the restriction of the right of a court to postpone the adjudication of the case more than once, if the plaintiff or defendant, who has been informed of the day and time of the court session, does not appear due to an unknown reason.[53]

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[51] See the Latvian comments on the inception report, no. 60.
[52] See the Latvian comments on the inception report, no. 16.
[53] See the Latvian comments on the inception report, no. 4.

A new Law on Criminal Procedure is still in the drafting stage. The elaboration of this new Law on Criminal Procedure was started, in order to shorten the duration of court proceedings.

Considerable delays in court proceedings continue to exist. In mid-2000, the total number of pending criminal court cases amounted to 5.516 and of pending civil cases to 24.940, compared to 5.837 criminal and 26.232 civil cases in mid-1999. The slow procedures at the courts is reported to be a major problem. It is easy to obtain a postponement. Attempts at conciliation are normally not made. Equipment and working methods are not up-to-date. Administration is centralised and delegation of decision making limited. Some courts have a shortage of staff, for example assistants to judges.

However, delays are not frequent in all the courts. Many provincial courts decide cases promptly, mostly within three months. But there are backlogs in Riga. On average, it could take two years in Riga to try a criminal case without a detainee and six months with a detainee; a civil case would be tried within 12 to 18 months.
The worst situation is in Riga Regional Court, which is currently scheduling hearings for late 2003[54], and has been compelled to disregard the one-month time limit for beginning review of filed cases (art. 241 of the Criminal Procedure Code). Appeals in criminal cases are sometimes reviewed after the appellants have served their sentence and have been released.

II.2 Pre-trial detention

The proportion of pre-trial detainees increased and pre-trial detention periods continue to be long. The situation is particularly serious for juveniles, who are sometimes not accommodated separately, and where the length of pre-trial detentions is not always in accordance with international standards. For instance, there is a lack of education for those minors during the time of pre-trial detention. However, considerable attention in the recent years was given to the social rehabilitation programs, in particular for juvenile delinquents. Also project aiming education of minors during the time of pre-trial detention is currently in operation in one of the biggest prisons of Latvia.[55]

In order to speed up the trial of cases against young offenders, the new draft Law on Criminal Procedure includes provisions for giving such cases a priority and setting time-frames for their trial. Furthermore, conceptual suggestions on alternative penal system in the Criminal Law have been elaborated with a goal to improve the court proceedings regarding the minors. The alternative penalties are aimed to extend the possibility to apply penalties other than imprisonment.

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54 See the Latvian comments on the inception report, no. 6 and also no. 64.
55 See the Latvian comments on the inception report, no. 5.

CHAPTER III

Execution of judgements

III.1 System of bailiffs and the enforcement of judgements

Court bailiffs are currently regarded as officers of a public institution within the Ministry of Justice. The Department of Court Bailiffs is supervised by the Ministry of Justice and the Ministry is also responsible for the training of court bailiffs. Bailiffs can consult the Department on legal problems, and it deals with complaints from individuals. A high number of complaints are lodged every month (20 to 30, a third of which go to court) which has put a strain on the department.

Bailiffs are appointed by the Minister of Justice. The profession of a bailiff is hampered by a lack of sufficient resources, lack of legal training and lack of transport and equipment. Basic salaries are minimal and it is a general view that corruption is widespread. The prestige is very low. In 1996, a reform of the court bailiffs' profession was started in co-operation with the National Court Bailiffs Chamber of France. During this reform, the court bailiffs might be transformed into a free legal profession. A Law on Sworn Bailiffs is in preparation.
There are currently 260 bailiffs. The court bailiffs are responsible for the enforcement of judgements. The current system lacks sufficient enforcement mechanisms. Of all court decisions, 70% are not enforced, for various reasons.

Lithuania

This report is based on information gathered up to February 8th 2002

Table of Contents

MODULE I

AN INDEPENDENT JUDICIARY

CHAPTER I

Overview of the judicial system in Lithuania

The Constitution of the Republic of Lithuania (1992) provides that in Lithuania, the courts shall have the exclusive right to administer justice. Pursuant to the Constitution, while administering justice, judges and courts shall be independent and while investigating cases, judges shall obey only the law.[1]

The court system of Lithuania consists of the Supreme Court, the Court of Appeal, county courts and district courts. These are the courts of general jurisdiction. Article 111 of the Constitution provides that for the investigation of administrative, labour, family and other litigation, specialised courts may be established pursuant to law. Administrative courts were established by the Law on the establishment of administrative courts, which was adopted on 14 January 1999. These courts started to function from 1 May 1999.[2] On 1 January 2000 the reform of the administrative court system was completed with the entry into force of the new Law on Administrative Courts and a new Law on Administrative Proceedings. In accordance with the new legislation, the Higher Administrative Court and the Administrative Division of the Court of Appeal were merged into the General Administrative Court. As a result, there is now a two-tier administrative court system that consists of the five County Administrative Courts, which serve as courts of first instance, and the General Administrative Court, which has an appeal function. The General Administrative Court also has a judicial review function and is in charge of the formulation of uniform judicial practice[3].

The formation and competence of courts shall be determined by the Law on Courts of the Republic of Lithuania. Courts with special powers may not be established in Lithuania in times of peace. According to the provisions laid down in the Constitution for the judicial system, there is no competence for the Minister of Justice or another authority to establish or dissolve tribunals.

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1 Art. 109 of the Constitution of the Republic of Lithuania, 6 November 1992.
2 Information obtained from Mr. V. Valancius, 15 March 2002.
3 Additions to the inception report by the Ministry of Justice of the Republic of Lithuania, 10 November 2001.

Lithuania is divided into 54 court districts. Each court district has one district court. The district court is the first instance court for:
- civil cases;
- criminal cases;
- cases related to the execution of judgements or sentences;
- imposition of coercive measures provided by law;
- investigation of complaints against activities of the inquirer, investigator or prosecutor in the cases provided by law.

The county court is:
- the first instance court for civil cases of more than 100.000 Litai (approx. 25.000 USD), except in cases related to the division of family property by spouses, which are heard in the district courts, cases involving intellectual property rights, company bankruptcy, cases in which a foreign state is a party, and other cases provided by law;
- the first instance court for criminal cases provided by law, e. g. high treason, espionage, attempted assassination of a state official or a representative of a foreign country, instigation of war, genocide, illegal transportation of persons;
- appeal instance for the judgements, sentences, decisions and resolutions of district courts.

There are five county courts.

The Code of Civil Procedure provides for exclusive competence of the Vilnius county court. The civil cases falling only within the jurisdiction of Vilnius county court are cases:
- concerning patenting of inventions and their use, as provided in the Patent Law of the Republic of Lithuania;
- following applications of foreigners to adopt a citizen of the Republic of Lithuania, also following applications of citizens of the Republic of Lithuania to adopt a foreign citizen who is living in the Republic of Lithuania;
- pursuant to the Law on Trade Marks – concerning decisions of the Appeal Division of the State Patent Bureau; invalidation of a mark registration; revocation of a mark registration; protection of the interests of the proprietor of the mark; recognition of a mark as well known in the Republic of Lithuania;
- other civil cases which, pursuant to the effective laws, have to be heard by Vilnius county court as the first instance court, also cases which, prior to enforcement of the Law on Courts, fell within the jurisdiction of the Supreme Court of Lithuania.[4]

The Court of Appeal in Vilnius is the appellate instance court for cases heard by the county courts. The Court of Appeal hears also other cases, which the law assigns to the competence of the court.

The Supreme Court in Vilnius is the only cassation instance for decisions, judgements and rulings of the other courts of general jurisdiction. There is no cassation procedure in administrative cases. In addition, the Supreme Court provides unification of court

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[4] Additions to the inception report by the Ministry of Justice of the Republic of Lithuania, 10 November 2001.

practice in the field of law application. The court periodically publishes the bulletin "Judicial Practice (Teismu praktika)", which contains proposed and approved rulings by the chambers of judges or the plenary session of the Supreme Court. In addition, the bulletin contains overviews of judicial practice in specific categories of cases, which are approved by the Senate of the Supreme Court.

Administrative courts are equal to the courts of general jurisdiction of the respective level. Their jurisdiction and proceedings are regulated in the Law on Legal Proceedings of Administrative Cases.
Administrative courts are competent to decide cases concerning:

- validity of legal acts adopted by public administration entities and their actions, as well as lawfulness and validity of the refusal by such entities to carry out actions falling within their competence or delays to carry out such actions;
- validity of legal acts adopted by municipal administration entities and their actions, as well as lawfulness and validity of the refusal by such entities to carry out actions falling within their competence or delays to carry out such actions;
- recovery of property and non-property (moral) damage inflicted to a natural person or organisation by illegal actions or omission to act by a state or municipal institution, establishment or service and their employees in the field of public administration;
- payment, repayment or recovery of taxes, other mandatory payments and duties, application of financial operation, and tax disputes;
- disputes where one party of the dispute is a public servant or municipality employee having the powers of public administration (including officials and heads of institutions);
- decisions of the Chief Official Ethics Commission and addresses by the Commission regarding discontinuance of relations in the service with public servants;
- disputes between public administration entities with no insubordination over the competence or violations of laws, with the exception of civil disputes falling within the competence of general jurisdiction courts;
- violation of laws on elections and the Law on Referendum;
- appealing a decision in case of an administrative infringement;
- validity of decisions adopted by public institutions, enterprises and non-governmental organisations having the powers of public administration and their actions, as well as lawfulness and validity of the refusal by such entities to carry out actions falling within their competence or delays to carry out such actions;
- lawfulness of acts of general character adopted by public organisations, associations, political parties, political organisations or associations;
- appeals by foreigners regarding refusal to issue a residence or work permit in Lithuania or repeal of such permit, and appeals regarding the refugee status.

Other cases can be attributed to the jurisdiction of administrative courts by law.[5]

There are no lay judges nor is there trial by jury in Lithuania.

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[5] Additions to the inception report by the Ministry of Justice of the Republic of Lithuania, 10 November 2001.

CHAPTER II

State of affairs in practice

Lithuania is in the process of drafting and adopting new legislation. To name a few examples, a new Civil Code, Civil Procedure Code, Criminal Code and Criminal Procedure Code have been adopted, as well as a new Law on Courts.[6]

II.1 De jure and de facto division of competencies between judiciary, executive and Parliament

The division of competencies between the judiciary, the executive and Parliament is laid down in the Constitution and is elaborated in various laws and regulations. For example, article 114 of the Constitution prohibits any interference in the work of a judge by government authorities and institutions, Members of Parliament and other officers, political parties and public organisations or individuals. This interference is penalised by article 298 of the current Criminal Code.[7]

Judicial reform and the independence of the judiciary

Since the independence of Lithuania (1990), the judicial reform in Lithuania has focused on the strengthening of courts' administration and the increase of the self-dependence of the courts. The establishment of the Department of Courts at the Ministry of Justice is one example of practical steps that were taken towards the actual implementation of the outlined reforms. This institution was chosen as an intermediate body in the process, with the ultimate aim to achieve a complete autonomy for the courts. In the past, all courts were financed through the Ministry of Justice. The Ministry was in charge of the budget with regard to the courts and allocated means to the courts.

The Law on the Amendments to the Law on Courts, adopted on 8 April 1998, established a system of administration of the work of courts. In order to implement this law, the Government established the Department of Courts under the Ministry of Justice on 15 June 1998 and approved its statutes. The Department of Courts, enjoying the status of an independent unit, started its work on 1 August 1998. Its principal tasks were:
- to plan the location of court institutions and the number of judges in courts;
- to implement the organisational measures on the supervision of courts' activities;
- to ensure technical and material provisions of courts;
- to inspect and audit the economic and financial activities of local courts, county courts and

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6 English translations of these new laws may be available after they have entered into force. The Internet site of the Legal Information Centre: www.litlex.lt/Litlex/Eng/Frames/Laws/Fr_laws.htm.

7 OSI report on the Judicial Independence in Lithuania (2001), p. 281.

- the Court of Appeal of Lithuania;
- to control the administrative and organisational performance of courts, except for the Supreme Court of Lithuania.

The organisations of self-government of courts and judges were engaged in the activities of the Department of Courts.

In July 1998, the Minister of Justice approved the structure of the Department of Courts, which comprised the Board of Courts and Court Bailiffs, the Finances and Control Board and the Investments and Services Board. In addition, the above mentioned amended Law on Courts contained more explicit definitions of the functions, rights and duties of the chairpersons of courts as administrators. It also established their relationship with the Department of Courts and defined their responsibility in the administration of courts.

The introduction of the above mentioned amendments to the Law on Courts concluded the judicial reform, which in its first stage enforced the principle of practical independence of courts, and in the second stage ensured operative and efficient performance of courts in the administration of justice.

In May 1999, two new divisions (Economy and Personnel) were established at the Department of Courts. The Division of Personnel was responsible for setting up the reserve of judges and court bailiffs, selecting candidates, establishing the Judicial and Bailiffs' Training Strategy and organising the examinations and judicial and bailiffs' certification. The Division of Economy was responsible for the analysis of financial needs.

Ruling of the Constitutional Court and the new Law on Courts

However, on 21 December 1999, the Constitutional Court of the Republic of Lithuania issued a ruling on the compliance of the Law on Courts with the Constitution. The Constitutional Court judged that the possibilities for the Minister of Justice to propose appointments and dismissals of judges in the courts were not in conformity with the Constitution. Furthermore, the financial dependence of the judiciary on the Ministry of Justice was ruled unconstitutional. As a consequence of this ruling, parts of the Law on Courts were declared null and void. The drafting of a new Law on Courts has taken several years, and in January 2002 a new Law on Courts was adopted by the Seimas.

In the period after the ruling of the Constitutional Court, a judicial vacuum existed. In reports of the European Commission and the Open Society Institute, concern was raised about this situation, mainly because the administrative authority within the judiciary was an unregulated matter.[8]
When the new Law on Courts enters into force on 1 May 2002, this judicial vacuum will be filled in.

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[8] OSI report on the Judicial Independence in Lithuania (2001), p. 274 and the 2001 Regular Report on Lithuania's Progress towards Accession, European Commission, p. 18.

The principles of the independence of the courts and the independence of the judiciary are enshrined in the new Law on Courts. The law grants extensive rights of self-government to the Council of Courts.[9] The Parliament was well aware of the doctrine of the Constitutional Court when considering the new law. Important premises like the self-government of the judiciary, in particular regarding the funding of the courts, and the (social) guarantees for judicial independence have been incorporated in the new law.[10]

Council of Courts

Under the new Law on Courts, the Council of Courts will be the main body of self-government. It will consist of 24 members: 18 members from the judiciary and 6 other members. Among the judicial members, there will be the Presidents of the Supreme Court, the Court of Appeal, the Superior Administrative Court and the Regional Courts. The other members will include representatives of the Ministry of Justice, the Ministry of Finance, the President's Office and the Parliament. The main functions of the Council of Court are advisory tasks to the President on the appointment of judges, the establishment and administration of the Court of Honour, the administration of the National Court Administration[11] and other functions, which are provided for in the Charter of Judges.

Financial independence

In the ruling of 1999, the Constitutional Court stressed that the independence of the judiciary requires that the courts are financially independent from the executive. Therefore, funds must be assigned to each court directly, instead of through the Ministry of Justice. This system was put into practice in 2001: every court presented a budget estimate directly to the Ministry of Finance, which included it in the overall budget estimate.[12]

It is stipulated in the Law on Approval of Financial Indexes of the National Budget and Budgets of Municipalities (2000 and the draft for 2001) that each court itself manages the budget allocated to it. There are two major kinds of allocations: so-called simple expenditure and extraordinary expenditure. The courts can independently decide on the allocation of the simple expenditure. These include the salaries of the staff (including judges) and any other expenditures which are not related to acquisition of long-term or short-term property and less than 500 Lithuanian Litai (125 USD). For example, the courts can decide on the costs of electricity, heating, telephone, smaller reparations, costs

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9 Remarks made by Mr. Svedas, Vice-Minister of the Ministry of Justice during the meeting in Vilnius on 4 February 2002.

10 Comments made during the meeting with judges of the Constitutional Court (Vilnius, 6 February 2002).

11 A National Court Administration (under the Council of Courts) would be responsible for day to day administration of the court system on a national level. OSI report on the Judicial Independence in Lithuania (2001), p. 275.

12 OSI report on the Judicial Independence in Lithuania (2001), p. 289.

of business trips etc. The extraordinary expenditure may only be used for the acquisition of long-term or short-term property, like renovations of the buildings, centralised computer acquisition etc., of which the value exceeds 500 Lithuanian Litai. These allocations are still financed centrally through the Ministry of Justice.

Under the new Law on Courts (art. 127), the courts will submit proposals as to their draft budgets to the Council of Courts for consideration. Following the approval thereof, the Council of Courts submits them for the Government's consideration. The Supreme Court, the Court of Appeal and the High Administrative Court, after preparing their draft budgets, submit them directly for the Government's consideration.
The Parliamentary Commissions discuss the budget. The Commission for the Judiciary will be able to obtain all necessary information from the courts to assess the financial needs. The economical situation of Lithuania will set limits to the amount available for the judiciary, but the ordinary funds for courts (the simple expenditure) are guaranteed by Parliament.[13]

There is a lack of funds for extraordinary expenses, for instance to improve the state of the court buildings. Under the new Law on Courts, the Ministry of Justice has the duty to draft an investment programme for these extraordinary expenses, which must be approved by the Council of Courts and adopted by Parliament.
The expenditure of the courts will be controlled by the State Control Institution.

II.2 De jure and de facto division of competencies within the judiciary

Constitutional Court

The Constitution of the Republic of Lithuania provides for the establishment of the Constitutional Court. The Constitutional Court is not a part of the Lithuanian judicial system. Its status and the procedure for the execution of its powers are defined in the Law on the Constitutional Court of the Republic of Lithuania (1993).
The Court consists of nine judges appointed for a non-renewable term of nine years. Every three years, one-third of the Court is reconstituted. In fulfilling their duties, judges of the Constitutional Court act independently of any other state institution, person or organisation and observe only the Constitution of Lithuania.
The Constitutional Court decides whether the laws and other legal acts adopted by the Seimas are in conformity with the Constitution and whether the legal acts adopted by the President and the government are in compliance with the Constitution or laws. The Constitutional Court shall not perform preliminary review of laws and shall examine a case only when appropriate persons address the Constitutional Court with a petition to examine the constitutionality of concrete legal acts.[14] Natural persons do not have the right to apply to the Constitutional Court.

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[13] Ibidem.

[14] Information in the brochure 'The Constitutional Court of the Republic of Lithuania', issued by the Constitutional Court during the meeting in Vilnius on 6 February 2002.

In addition, the Court presents conclusions concerning the violation of election laws during Presidential elections or elections to the Seimas, whether the health of the President of the Republic is limiting his or her capacity to continue in office, the conformity of international agreements of the Republic of Lithuania with the Constitution, and the compliance with the Constitution of concrete actions of the members of the Seimas or other state officers against whom impeachment proceedings have been instituted.

Judges are obliged to suspend the court proceedings when there are grounds to believe that the law or the legal act applicable in the case, contradicts the Constitution. In such cases the judge must appeal to the Constitutional Court to decide whether the law or the legal act in question complies with the Constitution.[15]
The decisions of the Constitutional Court on issues assigned to its jurisdiction by the Constitution are final and may not be appealed.

Supreme Court

The functions, competence as well as the internal organisation of the Supreme Court are defined in the Statute of this court, which was adopted on 18 April 1995.[16]

The judgements of the Supreme Court that are passed by the cassation procedure must be taken into account by courts and other State institutions when applying the same laws. In its function of issuing summary reviews of judicial practice regarding the application of laws, the Supreme Court visits county courts and the Court of Appeal to provide consultation to judges.
The OSI report on the judicial independence in Lithuania mentions that there is discussion among judges and lawyers concerning the impact of the Supreme Court's consultations on the independence of individual judges of lower courts.[17]

Article 12 of the Statute of the Supreme Court specifies that the President of the Criminal Division of the Supreme Court may submit cassation petitions regarding particular judgements of lower judges. This provision may raise doubt about the objective impartiality of the Supreme Court in such cases, as was decided by the European Court of Human Rights in the case of Daktaras v. Lithuania. In this case a breach of article 6.1 of the European Convention on Human Rights was found.[18]

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15 Information obtained during the meeting with judges of the Constitutional Court (Vilnius, 6 February 2002).
16 Comment on the inception report by the Ministry of Justice of the Republic of Lithuania, 10 November 2001.
17 OSI report on the Judicial Independence in Lithuania (2001), p. 303.
18 OSI report on the Judicial Independence in Lithuania (2001), p. 303, and the Final Judgment of the European Court of Human Rights in the case of Daktaras v. Lithuania, 17 January 2001.

CHAPTER III

The independent functioning of the Judiciary

III.1 Incompatibilities

Article 113 of the Constitution stipulates that judges may not hold any other elected or appointed posts, and may not be employed in any business, commercial, or other private institution or company. They are not permitted to receive any remuneration other than the salary established for judges as well as payments for educational, scientific or creative activities.
Judges may not participate in the activities of political parties and other political organisations.

III.2 A judge should not be subject to any authority

The media

The role of the mass media is defined in the Law on the Provision of Information to the Public, which was adopted on 2 July 1996. A new version of this law came into force on 1 October 2000. This law establishes the procedure of obtaining, processing, and disseminating public information and the rights and responsibility of public information producers, disseminators, the owners thereof and journalists.[19]

It was reported that the relation between the media and the legal institutions used to be rather complicated. Previously, if the court decided contrary to the wish of the prosecutor's office, the prosecutor would turn to the media. Nowadays the situation is improving. Today, for instance, the prosecutor would use the proper means, like the possibility of appeal, to question the judgement.[20]

Public opinion

According to a survey done by "Baltijos tyrimai" in September 1999, the confidence of the public in the courts is poor. However, according to a survey made by the Public Opinion and Market Research Company "Vilmorus" in the beginning of 1999, 67,8% of the respondents had never even attended the a court session and their opinion was based on the information by mass media (67,5% of the respondents). The mass media mostly describe negative aspects of the activities of the courts. This was also stressed in the

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[19] Addition to the inception report by the Ministry of Justice of the Republic of Lithuania, 10 November 2001.

[20] Comment made during the meeting with the representatives of the Parliamentary Commission for the Judiciary (Vilnius, 4 February 2002).

meeting with the Lithuanian Association of Judges, that took place in Vilnius in February 2002.

III.3 Supporting facilities

In the discussions held during the fact finding mission to Lithuania (4 - 8 February 2002), it was said that the working conditions in the courts vary. Generally, the district courts deal with a lack of technical equipment, including computers, insufficient material conditions and a shortage of space.[21] For example, in the second district court in Vilnius there are 20 judges and only two court rooms. A lot of cases are therefore heard in the offices of the judges. Since each court has its own budget, a lot depends on the efficiency of the president of the court in managing the available funds. Very few district courts have a library. However, the jurisprudence of the Supreme Court is available and there is access to the Internet and databases, although not always sufficiently available. For instance, the third district court of Vilnius has only one computer to access the LITLEX legal information system.

As far as the supporting staff is concerned, it was mentioned that only at the Supreme Court every judge has an assistant.[22] There is a need for more legally trained staff, especially for judges in the lower courts. Judges have technical, administrative secretaries, like the hearing secretaries, but there are no legal assistants to the judge. Under the new Law on Courts more staff will become available.[23] Furthermore, an amendment to the Law on Public Service introduced new posts for advisors and assistants to judges in all court levels.[24] However, this amendment is only a draft, which has not been adopted by the Seimas to date.[25]

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[21] Comments made during meetings at the District Court of Moletai/ Judicial Training Centre Moletai (7 February 2002); the Lithuanian Association of Judges (Vilnius, 8 February 2002) and the second district court of Vilnius (8 February 2002).

[22] Comments made during meetings at the Court of Appeal of Lithuania (Vilnius, 4 February 2002); the District Court of Moletai/Judicial Training Centre Moletai (7 February 2002) and the Lithuanian Association of Judges (Vilnius, 8 February 2002).

[23] Remark made during the meeting with judges of the Court of Appeal (Vilnius, 4 February 2002).

[24] Information obtained during the meeting with the representatives of the Parliamentary Commission for the Judiciary (Vilnius, 4 February 2002).

[25] Information obtained from Mr. V. Valancius, 15 March 2002.

CHAPTER IV

The status of judges

IV.1 General

In 1993, the Association of Judges of the Republic of Lithuania was established. Approximately 90% of the judges are a member of this Association.[26] According to the regulations of the Association, its objectives are to protect the professional and social rights of judges; to co-operate with lawyers' organisations; to increase the prestige of the profession of judges and to retain the traditions of the judges' corps; and to provide assistance in organising professional training for judges by co-operating in the activities of the Lithuanian Judicial Training Centre.[27]
The Lithuanian Association of Judges is a member of the International Association of Judges.

IV.2 Selection

In accordance with article 112 of the Constitution, only citizens of the Republic of Lithuania may be judges. In the Law on Courts there were provisions that gave rights to the executive to influence the selection of judges. After the ruling of the Constitutional Court in 1999, these provisions were declared unconstitutional.

In the new Law on Courts, the criteria for the selection and appointment of judges are well defined.[28] The selection of judges will take place according to regulations adopted by both the Ministry of Justice and the President of the Council of Courts. Apart from general requirements, the main criterion for selection is an examination. Under the new Law, the Examination Committee will consist of seven members, of which at least four are judges.[29] The new Law on Courts stipulates that the examination can only be taken by people with a minimum of five years working experience in the legal field. As a result, the minimum age of beginning judges will be around 29 years. The Council of Courts will present a list of candidates for a position to the President of the State.[30] The examination takes one day and is mainly a written exam. The questions cover the whole legal

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26 Information obtained during the meeting with Board Members of the Lithuanian Association of Judges. (Vilnius, 8 February 2002).
27 OSI report on the Judicial Independence in Lithuania (2001), p. 285.
28 Comments made during the meeting with the President and judges of the Supreme Court of Lithuania (Vilnius, 7 February 2002).
29 OSI report on the Judicial Independence in Lithuania (2001), p. 295.
30 Information obtained during the meeting with the President and Justices of the Supreme Court of Lithuania (Vilnius, 7 February 2002).

programme taught at university. So far, no psychological test or personality assessment is included in the examination.[31]
The position of candidate judge will be abolished under the new Law on Courts.[32]

IV.3 Appointment and dismissal

Article 112 of the Constitution regulates the appointment and dismissal of judges in Lithuania:
- Supreme Court judges, as well as the Chairman of the Supreme Court, shall be appointed and dismissed by the Seimas upon the recommendation of the President of the State;
- Judges of the Court of Appeal, as well as the Chairperson, shall be appointed by the President of the State upon the approval of the Seimas;
- Judges and chairpersons of county courts, district courts and other specialised courts shall be appointed and, if necessary, transferred to other places of office by the President of the State.

A special institution of judges provided by law shall submit recommendations to the President concerning the appointment of judges, as well as their promotion, transference or dismissal from office. This institution is currently the Council of Judges. Under the new Law on Courts, this will be the Council of Courts. For the implementation of the function of advisory body to the President on the appointment of judges, the Council will set up the Selective Commission.[33] The role of the Minister of Justice in the appointment, transfer or removal of judges has been minimised in accordance with the decision of the Constitutional Court in December 1999.[34]

District Court judges are initially appointed for a five-year period; after that they receive life tenure. All other judges are appointed for life. The mentioned five-year period is meant as a "testing period".

In accordance with article 115 of the Constitution, judges shall be dismissed from office according to the procedure established by law in the following cases:
- at their own will;
- upon expiration of their powers or upon reaching pensionable age as determined by law;
- for reasons of health;
- upon appointment to another office or upon voluntary transference to another place of office;

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[31] Information obtained during the meeting at the second district court of Vilnius (8 February 2002).
[32] Ibidem.
[33] Addition to the inception report by the Ministry of Justice of the Republic of Lithuania, 10 November 2001.
[34] Comment on the inception report by the Ministry of Justice of the Republic of Lithuania, 10 November 2001.

- if their behaviour discredits their position as a judge; and
- when judgement imposed on them by court comes into force.

IV.4 Promotion

Any judge will start working at the lowest instance court. A judge can be promoted from the district court to the county court after five years. Law professors with five years of experience of scientific and pedagogical work in law universities can also become a judge in the county court. They are not required to have previous working experience in a court and do not have to take the examination. The higher the level of the court, the higher the number of required years of working experience.
Prosecutors who want to become a judge must take the examination and they must start their career at the lowest level, the district court.

Since the performance assessments of judges are conducted by the Department of Court, the judges are not dependent on the president of the court in this respect. Nor does the court president decide in cases of benefits or promotions.[35]
Under the new Law on Courts, the Council of Courts will play an important role in the promotion of judges.

IV.5 Remuneration

As far as the remuneration of judges is concerned, it should be noted that the decision of the Constitutional Court of 12 July 2001 recognised that Article 7(3.1) of the Law on Wages of State Politicians, Judges and Public Servants[36], Article 7(5)[37], the provision of Article 7(6) providing for a transitional period and Section II of the Annex of the present law "Office Wages of Judges" (to the extent that it reduces the wages of judges who earn more than the present law states) contradict Articles 5, 109, 114(1) of the Constitution of the Republic of Lithuania and the principle of the Rule of Law enshrined in the Constitution of the Republic of Lithuania.

The Constitutional Court was also of the opinion that Article 7(4) of the Law on Wages of State Politicians, Judges and Public Servants contradicts Articles 5, 109, 114(1) of the Constitution of the Republic of Lithuania and the principle of the Rule of Law enshrined in the Constitution of the Republic of Lithuania, to the extent that it stipulates that in the course of the transitional period, wages of persons designated to the position of judge are determined and calculated pursuant to provisions and formulae providing for the reduction of the wages of judges set out in Article 7 of the present Law.

Therefore the Constitutional Court has established that the reduction of wages of judges is in contradiction with the Constitution and such action infringes the independence of the judiciary. On 25 September 2001 the Government approved the draft law on changes

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35 OSI report on the Judicial Independence in Lithuania, (2001), p. 299.
36 Versions 29/8/200, 17/102000, 27/03/2001.
37 Versions 29/08/2000 and 27/03/2001.

and amendments of the Law on Wages of State Politicians, Judges and Public Servants, which would bring the rate of the wages of the judges to that of before the reduction.[38]

With the new Law on Courts, a stable system of remuneration will be introduced. Furthermore, the pension for judges will be raised from the current 8% to 45% of the last earned salary. This is the highest rate for pensions in Lithuania.[39] However, the pensions are bound to a maximum amount.[40]

It is reported that the salaries of court employees (like secretaries and registrars) are very low.[41] In the meeting with representatives of the Parliamentary Commission for the Judiciary it was said that the supporting staff of the courts will be included in the list of public officials, which means that they will receive a corresponding salary.[42]

IV.6 Disciplinary proceedings

To ensure the independent and competent work of the judiciary, the Rules of Ethics of the Judges of the Republic of Lithuania were adopted by the general meeting of the Lithuanian judges on December 18, 1998. The Court of Honour of Judges was established in 1998 to deal with the issues of judicial accountability. In 1999, the Constitutional Court ruled that the powers of the Minister of Justice in the disciplinary proceedings against judges were unconstitutional. In 2000 the Council of Judges adopted new regulations of the Court of Honour.[43]

Under the current Law on Courts there are two Courts of Honour: one for actions brought against judges of the Supreme Court and one for actions brought against all other judges. This court consists of two judges appointed by the President of the State and three judges appointed by the Ministry of Justice. The Court of Honour examines cases of judges who are accused of violating judicial ethics.
From 1 May 2002, when the new Law on Courts enters into force, there will be just one Court of Honour. This Court will consist of seven judges, who will sit in panels of three judges. Besides their work for the Court of Honour, they will also work as judges in the regular courts.[44]
The Council of Courts will be responsible for the establishment and the administration of the Court of Honour.

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38 Additions to the inception report by the Ministry of Justice of the Republic of Lithuania, 10 November 2001.
39 Information obtained during the meeting with representatives of the Parliamentary Commission for the Judiciary (Vilnius, 4 February 2002).
40 Information obtained during the meeting with several judges at the District Court of Moletai/Judicial Training Centre in Moletai (7 February 2002).
41 OSI report on Judicial Independence in Lithuania (2001), p. 294.
42 Information obtained during the meeting with representatives of the Parliamentary Commission for the Judiciary (Vilnius, 4 February 2002).
43 OSI report on Judicial Independence in Lithuania (2001), p. 301.
44 Information obtained during the meeting at the Court of Appeal (Vilnius, 4 February 2002).

CHAPTER V

Training and Retraining of judges

V.1 Continuous education[45]

The Judicial Training Centre (JTC) was established in 1997. It was founded by the Ministry of Justice, the Lithuanian Judges' Association, the Supreme Court, the United Nations Development Programme (UNDP), the Lithuanian Open Society Foundation and the American Bar Association. It is an independent, non-profit institution devoted to ensuring the highest possible standard of excellence and service within the Lithuanian judiciary.

The JTC organises continuous training for judges and court personnel. Included in the training programme are courses in foreign language and computer skills. The JTC has training facilities in Vilnius and an additional centre (with computer room) in Moletai. The course programme is composed by the Curriculum Committee. The programme is revised every year, when priorities are set. During the last years, the draft and newly adopted codes were the most important topic of the training of judges.
The Meeting of Founders and the Board determine the overall strategy of the Centre.

The courses for judges are divided into categories:
- training for newly appointed judges;
- training for judges' candidates;
- training for judges with up to 5 years working experience;
- training for judges with over 5 years working experience;
- training on court administration;
- training for administrative courts;
- training for the various staff: clerks, accountants, bailiffs, hearing secretaries.

Training on human rights is included in the basis training programmes. This topic is also dealt with in international seminars organised in co-operation with the Council of Europe and the British Embassy. European Union law and European Community law are mainly covered in EU Twinning projects (with Germany and Sweden) and other international training activities. Most Twinning programmes are organised by the Ministry of Justice, but the JTC tries to assist.

The lecturers in the regular courses organised by the JTC are justices from the Supreme Court, lower court judges and members of the law drafting working groups.

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[45] Information obtained during the meeting with the director of the Judicial Training Centre, Ms. A. Buikute (Vilnius, 6 February 2002).

Training is not compulsory for judges, but the judges are willing to attend training courses. The JTC tries to accommodate for all judges, so when there is a high demand for a certain course, the course will be repeated in order to enable all judges to attend.

The Prosecution Service has its own training centre and the JTC is not involved in the training of prosecutors. Generally, there is no joint training for judges and prosecutors, but on certain topics of criminal law, training courses are organised in which prosecutors, judges and the police participate together. The JTC does organise commercial seminars for advocates and notaries. However, this is not a priority.

V.2 Funding

The training for judges and court personnel is financed by the state. However, the money received from the Ministry of Justice for these training activities is by no means enough to cover the costs. The JTC relies highly on foreign donors for funds (some of which have stopped their funding), which makes it impossible to develop a sustainable training programme.
Since the training of judges is the obligation of the State, the JTC addressed the Ministry of Justice, Parliament and the President in the past years to ask for more funds, but without any results.

Under the new Law on Courts, 1,5 percent of the grand total of the salaries of judges will be spent on training. Another consequence of this new law is that the Council of Courts and the Ministry of Justice will be responsible for the training of judges. It is envisaged that some training courses will be organised by the University/Law Faculty and others by the Judicial Training Centre.[46] However, to be able to function under the new law, the structure of the JTC will have to change, as well as its status.[47]

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[46] Addition to the Gaps and Needs Analyses and Recommendations by Mr. Svedas, Vice Minister of the Ministry of Justice of Lithuania, as discussed with him in Vilnius on 20 February 2002.

[47] Information obtained during the meeting with the director of the Judicial Training Centre, Ms. A Buikute (Vilnius, 6 February 2002).

MODULE 2

STATUS AND ROLE OF THE PUBLIC PROSECUTOR

CHAPTER I

The Prosecutor's Office and the position of the public prosecutor

According to the Law on the Prosecutor's Office, the prosecutor's office of the Republic of Lithuania forms an independent part of the judiciary.[48] It is structured hierarchically.[49] The Statute of Service at the Prosecutor's Office of the Republic of Lithuania contains the main regulations regarding the Office of the Prosecutor.[50]
There are more posts for prosecutors than for judges. The definition "officers of the prosecutor's office", which is used in certain laws, encompasses prosecutors of all the levels and their deputies, as well as the investigators and their deputies. At the moment there is no such office of the investigator in the prosecution system.[51]

I.1 Relationship with the executive power

There are legislative guarantees and measures in place to ensure that public prosecutors can perform their duties without unjustified interference by executive powers and bodies. The Law on the Prosecutor's Office states the independence of the prosecutor's office and forbids interference from the institutions of state power and government and their respective officers.[52] Attempts to influence an officer of the prosecutor's office with the aim of inducing him to adopt an unlawful decision shall be considered as interference with the activities of the prosecutor's office and shall incur liability under law.

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48 Article 1 of the Law on the Prosecutor's Office (13 October 1994). The status of the prosecutor's office as independent part of the judiciary is not laid down in the Constitution. During the meeting with representatives of the Prosecutor General's Office is was said that the Prosecutor General's Office would like to see the Constitution amended in this respect.

49 See also Module 2, chapter III.2 of this report.

50 Unfortunately, this document is not available as a source for this report.

51 Comment on the inception report by the Prosecutor General's Office, 3 August 2001.

52 Articles 4(1), 4(2) and 4(5) of the Law on the Prosecutor's Office, 13 October 1994.

However, there are certain relations between the government and the prosecutor's offices established by law. For instance, the government and executive bodies of local governments shall provide the prosecutor's offices with office premises and facilities for communication, and shall guarantee the supply of other materials.[53]

The above mentioned prohibition of interference with the activities of the prosecutor's office is one of the indications of the high degree of independence of the Prosecutor General. The independent position vis-à-vis the Government has consequences for the execution of the criminal policy of the Minister of Justice (and the Government). In Lithuania, the separation of powers is strictly observed in this issue. The Minister of Justice can in no way direct or give instructions to the Prosecutor General.[54]

The Minister of Justice has several indirect ways to have the prosecution service co-operate in the execution of criminal policies.

First of all, the Minister can discuss the matter with the Prosecutor General. The relation between the Minister of Justice and the Prosecutor General is based on partnership, and the Prosecutor General is generally willing to co-operate with the Minister.[55] The Minister of Justice and the Prosecutor General meet frequently to discuss the implementation of criminal policy. In case this co-operation is problematic, Parliament and the President of the Republic can interfere. The Parliamentary Commission for Legal Affairs is responsible for the supervision of the Prosecutor General. This commission can ask the Prosecutor General how certain issues will be dealt with, and can give binding recommendations and decisions.[56]

Secondly, the Minister of Justice can influence the implementation of criminal policies by the prosecutor's office by drafting new legislation, which is binding for the Prosecutor General. Furthermore, the special investigation services can be ordered – through the Ministry of the Interior – to execute certain government policies.[57]
Lastly, the Prosecutor General (like all prosecutors) is a public official. Therefore, he must obey the policies and international obligations of the Government.[58]

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53 Ibidem, Art. 42.

54 Information obtained during the meeting with representatives of the Parliamentary Commission for the Judiciary (Vilnius, 4 February 2002).

55 Remarks made during the meeting at the Prosecutor General's Office (Vilnius, 4 February 2002), which were confirmed during the meeting with the Vice-Minister of the Ministry of Justice, Mr. Svedas (Vilnius, 5 February 2002).

56 Information obtained during the meeting with representatives of the Parliamentary Commission for the Judiciary (Vilnius, 4 February 2002) and with the Vice-Minister of the Ministry of Justice Mr. Svedas (Vilnius, 5 February 2002).

57 Information obtained during the meeting with the representatives of the Parliamentary Commission for the Judiciary (Vilnius, 4 February 2002).

58 Remark made during the meeting with the legal advisors of the President of the Republic of Lithuania (Vilnius, 6 February 2002).

I.2 Relationship with the legislative power

Legislative guarantees and measures are in place to ensure that public prosecutors can perform their duties without unjustified interference by the legislative power. For instance, the prohibition of interference of the Law on the Prosecutor's Office that is mentioned in paragraph 5.1 also refers to the legislative power.

Furthermore, the law ensures that public prosecutors do not have legislative competence. The Prosecutor General's Office has no initiative right in the legislation procedure. Article 33 of Law on the Prosecutor's Office provides the right of the Prosecutor General to participate in the sessions of the Seimas as well as of the Government. However, this right is a nominal one as far as final decisions are made by voting by members of the Seimas and the Government. The right of the prosecutors to attend the sessions of the local government councils is described in the same way.[59]

The prosecutor's office shall be financed from the State budget and shall have a separate budget of expenditure. The expenditures of the prosecutor's office shall be approved by the Seimas.[60]
The Prosecutor General is accountable to Parliament.

I.3 Relationship with the judicial power

Legislative measures and guarantees ensure that public prosecutors do not have judicial competence.
The Constitution gives the courts the exclusive right to administer justice and guarantees the independence of the courts.[61] Furthermore, article 7 of the Law on the Prosecutor's Office states that an officer of the prosecutor's office may not take up other elective or appointive duties.
The principle of the independence of prosecutors is provided by article 65 of the Law on Courts. Relations between the court and the prosecutor are based on the provisions of the Criminal Procedure Code.[62] The new Code of Criminal Procedure[63] will introduce the institution of the pre-trial judge and as a result, introduce a new form of co-operation between the prosecutors and the judicial powers.

Article 33(3) of the Law on the Prosecutor' Office provides that the prosecutor seeing that the court does not take all the necessary measures in order to decide a case rapidly,

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59 Comments on the inception report by the Prosecutor General's Office, 3 August 2001.
60 Article 41 of the Law on the Prosecutor's Office, 13 October 1994.
61 Article 109 of the Constitution of the Republic of Lithuania.
62 Comment on the inception report by the Prosecutor General's Office, 3 August 2001.
63 During the meeting with representatives of the Parliamentary Commission for the Judiciary (Vilnius, 4 February 2002) it was said that the new Code of Criminal Procedure is expected to be adopted in February/March 2002 and to enter into force on 1 January 2003.

shall have the right to inform the competent authorities that exercise control of the administrative activities of the judges (according to Art. 73 of the Law on the Courts).[64]

The laws of the Republic of Lithuania do not provide a possibility of interchange of the offices of a prosecutor and a judge. Prosecutors who want to become a judge must pass the judge's examination. They must start their career at the district court level.

I.4 Relationship with the police

The Law on the Prosecutor's Office and the Criminal Procedure Code state the competencies of the prosecutor in the investigation of crimes. For instance, the prosecutor shall control and direct the investigations undertaken by the bodies of investigation. He may also conduct preliminary investigations himself. The prosecutor may suspend the investigator from the investigation of a certain crime or request to remove him from office or that another disciplinary penalty be applied to the investigator.[65]

The co-ordination between the various investigation services (like the Special Investigation Service, the tax police, and others) is regulated by (procedural) laws. According to the Law on the Prosecutor's Office, the Prosecutor General and chief prosecutors of territorial prosecutor's offices shall co-ordinate the actions against crime of the bodies of preliminary inquiry and preliminary investigation. They can call meetings to which the heads of other interested institutions may also be invited. The prosecutor has the right to request information on the implementation of co-ordinated actions.[66] This latter provision of the Law on the Prosecutor's Office is being put into practice.[67]
The new Code of Criminal Procedure will give the prosecutor more powers with regard to the preliminary investigation. In the future, the prosecutor will lead and organise the pre-trial investigation and as such, it can be considered a major reform of the position of the prosecutor.[68]

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64 Addition to the inception report by the Prosecutor General's Office, 3 August 2001.
65 Articles 26 and 27 of the Law on the Prosecutor's Office, 13 October 1994.
66 Ibidem, Art. 30.
67 Comment on the inception report by the Prosecutor General's Office, 3 August 2002.
68 Information obtained during the meeting with representatives of the Prosecutor General's Office (Vilnius, 4 February 2002).

CHAPTER II

The office of the public prosecutor

II.1 In criminal law

The tasks, responsibilities and competencies of the public prosecutor in the criminal process are established by law. The following major legislation provide the legal grounds for the activities of the prosecution:
- the Constitution of the Republic of Lithuania;
- international treaties and agreements;
- the Criminal Procedure Code;
- the Law on the Prosecutor's Office;
- the Law on the Approval of the Statute of Service at the Prosecutor's Office;
- other standard laws.[69]

The main function of the prosecutor is to conduct the criminal prosecution. The Criminal Procedure Code provides that the procedural investigation of particular crimes can only be carried out by the prosecutor. It also defines the crimes of which the procedural investigation is carried out by police officials.[70]

Article 2 of the Law on the Prosecutor's Office states the following functions of the prosecutor:
- to initiate and conduct criminal prosecution;
- to control the activities of the agencies of preliminary inquiry;
- to conduct preliminary investigation;
- to pursue a public charge;
- to control the execution of a sentence;
- to co-ordinate the actions of the agencies of preliminary investigation directed against crime.

As is stated above, the new Code of Criminal Procedure will give the prosecutor more powers with regard to the preliminary investigation.

In Lithuania, the legality principle applies. This can be deduced from article 5 of the Law on the Prosecutor's Office, which states that a complaint may be lodged with the superior prosecutor or, in the manner established by law, with a court against the actions of an officer of the prosecutor's office or his failure to act.[71]
The prosecutor's office is not free to choose which crimes to prosecute and which crimes not. However, exceptions to the obligation to prosecute can be made in criminal cases of

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[69] Addition to the inception report by the Prosecutor General's Office, 3 August 2001.
[70] Ibidem.
[71] Comment on the inception report by the Prosecutor General's Office, 3 August 2001.

low importance, like crimes involving very small amounts of money. The annual report of the Prosecutor General' Office, which is sent to Parliament, contains statistics about these low importance crimes. Currently, a discussion takes place about the question whether an exception to the obligation to prosecute can be made in cases where the expenses for investigation would seriously exceed the damages. The Prosecutor General is not in favour of this ground for non-prosecution.[72]

II.2 In administrative and civil law

Article 255 of the Administrative Code provides the prosecutor's rights in the administrative law.[73]

The Law on the Prosecutor's Office stipulates the responsibilities and functions of the prosecutor in civil law. The prosecutor's office shall defend, in the manner established by law, the lawful interests of the State and the violated rights of persons, prepare material for instituting civil proceedings in a law court and participate during the examination of the case in court.[74] The prosecutor can prepare material and institute civil action when there is a violation of:

- interests of legally incapable persons or persons with limited capability, or disabled persons or minors or other persons who have limited possibilities to protect their rights;
- proprietary interests and other legitimate interests of the state, insofar other officials fail their duties.[75]

Article 32 of this law gives the prosecutor extensive rights to co-operation and investigation in preparing this civil action, as well as the obligation to bring action and file applications in court, and appeal against unlawful or unjustified judgements, decisions or rulings of the court.
These articles are formulated in a compelling way and seem to leave no discretionary room.

In addition to these articles, the Civil Code provides the prosecutor's rights in civil law.[76]

II.3 International tasks

The prosecutor's office shall maintain links with the prosecutor's offices and other law enforcement institutions of other states.[77] In international co-operation the Prosecutor General's Office handles all requests in the pre-trial stage.

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72 Information obtained during the meeting with the representatives of the Prosecutor General's Office (Vilnius, 4 February 2002).
73 Addition to the inception report by the Prosecutor General's Office, 3 August 2002.
74 Article 2 of the Law on the Prosecutor's Office, 13 October 1994.
75 Ibidem, Art. 31.
76 Addition to the inception report by the Prosecutor General's Office, 3 August 2001.
77 Article 44 of the Law on the Prosecutor's Office, 13 October 1994.

Two main directions of the Prosecutor General's Office can be distinguished in the field of international co-operation: co-operation in the field of mutual legal assistance and institutional co-operation.
The institutional framework for co-operation in the field of mutual assistance (national legislation) is established by the Criminal Procedure Code and the Criminal Code.[78] The Prosecutor General's Office is one of the central authorities in judicial co-operation with foreign judicial institutions.

In the field of institutional co-operation the Prosecutor General's Office of Lithuania and Sweden signed an agreement on 24 April 2001 for strengthening the legal and institutional role of prosecutors. One of the activities will be to hold an enquiry during judicial trial with a view to implementing the requirement of a fair trial (article 6 European Convention for the Protection of Human Rights and Fundamental Freedoms). The agreement aims also to improve the efficiency of managing and directing the Prosecutor's Office. In addition, training and improvement of the skills of the Lithuanian prosecutors will be carried out on the basis of this agreement.
In the field of co-operation in the fight against organised crime, the Prosecutor General's Office and the Italian National Anti-Mafia direction signed an agreement for co-operation on 27 September 1999.

The Prosecutor General's Office pays special attention to the development of direct international co-operation between the bodies of procedural investigation. On 20 December 1994, the Prosecutor General of the Republic of Lithuania and the Prosecutor General of the Republic of Poland signed the agreement "Co-operation between the Prosecutor's Offices". This agreement allows direct co-operation in the field of legal assistance between the county prosecutor's offices of both countries. The Prosecutor General's Office has signed agreements of co-operation and judicial assistance with the prosecutor's offices of the Republic of Armenia, Azerbaijan, China, Estonia, Kazachstan, Kyrgystan, Latvia, Moldova, the Ukraine and Uzbekistan. However, Lithuania has not yet reached direct co-operation with these countries.
The prosecutors' training is essential in the process of development of direct international co-operation. This includes training in the field of legal terminology in foreign languages (English and German).[79]

II.4 Ethical code/statute for prosecutors

The Ethical Code for Prosecutors has not been adopted.[80] However, ethical rules are incorporated in various laws and regulations, like the Law on the Prosecutor's Office and

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78 Articles 21, 21(1), 22, 22(1), 22 (2), 22(3), 22(4) of the Criminal Procedure Code and Artt. 6 and 7(1) of the Criminal Code.
79 Additions to the inception report by the Prosecutor General's Office, 3 August 2001.
80 Comment on the inception report by the Prosecutor General's Office, 3 August 2001.

the Statute of Service at the Prosecutor's Office. Furthermore, there are separate ethical commissions within the prosecutor's offices.[81]

CHAPTER III

The legal status of the public prosecutor

III.1 Working conditions

Remuneration

Recently a new law on the remuneration of prosecutors was adopted by Parliament.[82] As a result, the salaries of judges and prosecutors are more or less comparable, whereas before, the prosecutors earned less than judges.
The pensions of the prosecutors were higher compared with the pensions of judges. However, with the new Law on Courts this difference has been eliminated.

Workload

In the first six months of 2001, the county and district prosecutor's offices in five major towns of Lithuania have been reorganised in order to improve the work organisation and efficiency of the prosecution service. The number of internal subdivisions has been reduced, which allowed the reallocation of manpower to operational work in the above mentioned territorial prosecutor's offices.[83]

III.2 Independence and impartiality within the organisation of the public prosecution service, centralised and decentralised

All the prosecutors of the Republic of Lithuania belong to the uniform centralised system of the prosecutor's office which consists of the Prosecutor General's Office at the Supreme Court of Lithuania; county prosecutor's offices at the county courts (5); district prosecutor's offices at the district courts (51).

The Prosecutor General's Office directs and controls the activities of all prosecutor's offices. The Prosecutor General establishes county and district prosecutor's offices and determines their competence. Officers of the Prosecutor's Office fulfil the powers that are within their competence as established by the Prosecutor General in the entire territory of the Republic of Lithuania. Officers of county and district prosecutor's offices

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[81] Information obtained during the meeting with representatives of the Prosecutor General's Office (Vilnius, 4 February 2002).
[82] See also Module 1, Chapter IV.5 of this report.
[83] Addition to the inception report by the Prosecutor General's Office, 3 August 2001.

fulfil the powers within their competence in the territory of the county or district assigned to them and corresponding to the territory of the respective court.[84] Directives and instructions of the Prosecutor General shall be mandatory to all officers of the prosecutor's office.[85]
Higher prosecutors can and must correct their inferiors.[86] Only the Prosecutor General has the authority to bring an administrative action against an officer of the prosecutor's office or dismiss him/her from office.[87]

III.3 Appointment and dismissal of prosecutors

Officers of the prosecutor's office shall be appointed and dismissed by the Prosecutor General. The employment and dismissal from the service shall be regulated by the Statute of Service at the Prosecutor's Office.[88] Articles 33 - 40 of the Statute of Service at the Prosecutor's Office establish the dismissal procedure of the officers of the prosecutor's office.[89]
Upon committing a gross violation of official duties or office-related crime, an officer of the prosecutor's office may be suspended from duty on the order of the Prosecutor General until the passing of a relevant decision. The procedure for the suspension from duty is established by the Statute of Service at the Prosecutor's Office.[90]

The Prosecutor General shall be appointed by the Seimas for the term of seven years and shall be removed from office by the President of the Republic. The cases in which the Prosecutor General may be removed from office are stated in the Law on the Prosecutor's Office.[91]
Deputies of the Prosecutor General shall be appointed and removed from office by the President of the Republic on the nomination of the Prosecutor General.

III.4 Promotion or downgrading of prosecutors

Article 41 of the Statute of Service at the Prosecutor's Office establishes the procedure of certification of officers of prosecutor's offices. Such certification is used for verification of qualification. Downgrading as a disciplinary measure may be brought against an officer of the prosecutor's office. The legal framework for downgrading is established in the Statute of Service at the Prosecutor's Office.[92]

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84 Ibidem.
85 Article 11 of the Law on the Prosecutor's Office, 13 October 1994.
86 Article 28(3) of the Law on the Prosecutor's Office, 13 October 1994.
87 Addition to the inception report by the Prosecutor General's Office: Art. 8(2) and Art. 19 of the Law on the Prosecutor's Office, 13 October 1994.
88 Art. 18 of the Law on the Prosecutor's Office, 13 October 1994.
89 Addition to the inception report by the Prosecutor General's Office, 3 August 2001.
90 Art. 19 of the Law on the Prosecutor's Office, 13 October 1994.
91 Ibidem, Art. 11.
92 Addition to the inception report by the Prosecutor General's Office, 3 August 2001.

The College of the Prosecutor's Office advises the Prosecutor General on the promotion of prosecutors. The Assembly of Prosecutors will nominate the candidates for promotion.[93]

III.5 Possibility of exercising fundamental freedoms and rights

The institutional status of the prosecutor's office partially stipulates the possibility of exercising fundamental freedoms and rights by the officers of the prosecutor's offices. Article 6 of the Law on the Prosecutor's Office provides that an officer of the prosecutor's office is not allowed to participate in the activities of political parties or political organisations, and must observe the principle of political neutrality in his work. An officer of the prosecutor's office cannot take up other elective or appointive duties, or be employed in business, commercial or other private institutions or enterprises. Article 24 of the Law on the Prosecutor's Office prohibits strikes of officers of prosecutor's offices.[94]

III.6 Safety

Article 9 of the Law on the Prosecutor's Office permits officers of the prosecutor's office to carry firearms and "special means of defence". Articles 78-91 of the Statute of Service at the Prosecutor's Office establish the procedure of the issue, keeping and preservation of means of personal defence (firearms, special means).[95]

III.7 Disciplinary proceedings

The Statute of Service at the Prosecutor's Office (Chapter "Stimulating and disciplinary proceedings of officers") provides the procedure of disciplinary proceedings.[96]

CHAPTER IV

Recruitment and education

IV.1 Selection of public prosecutors

The requirements for the officers of the prosecutor's office are stipulated in the Law on the Prosecutor's Office.[97] Citizens of the Republic of Lithuania, who have command of

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93 Information obtained during the meeting with representatives of the Prosecutor General's Office (Vilnius, 4 February 2002).
94 Addition to the inception report by the Prosecutor General's Office, 3 August 2001.
95 Ibidem.
96 Ibidem.
97 Article 20 of the Law on the Prosecutor's Office, 13 October 1994.

the state language and possess the educational and physical qualifications and moral qualities necessary to the profession, may be appointed officers of the prosecutor's office.
Article 6 of the Statute of Service at the Prosecutor's Office establishes particular grounds for refusal to appoint.[98]

IV.2 Initial training

Persons who have no practical experience of work in the legal profession shall undergo a one-year probationary work period as officers of the prosecutor's office.[99]
The initial training of prosecutors is organised through the Training Methodology Division of the Prosecutor General's Office. However, the (limited) financial resources of the Prosecutor General's Office and the end of the programme of the American Department of Justice for Central and Eastern Europe in Lithuania, which rendered initial training from 1997, conditioned the work of the Training Methodology Division in 2000. As a result of these circumstances, the Training Methodology Division has had to change the direction of work, provide less seminars for training of prosecutors from county and district prosecutor's offices and pay more attention to the preparation of methodological means.[100]

IV.3 Continuous education

The Prosecutor Generals' Office is also responsible for the continuous education of prosecutors. Training courses are organised within the financial possibilities. In the courses, both the practical work and the theoretical knowledge of the prosecutors are tested.[101] As was already mentioned in this report[102], joint training activities with judges are rarely organised. However, there will be joint training on the new Codes.
Training courses on the new Code of Criminal Procedure are being organised in co-operation with the Prosecution Service of Sweden. The Prosecutor General's Office is also engaged in a project with Germany, in which internships and exchanges will be organised.

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98 Addition to the inception report by the Prosecutor General's Office, 3 August 2001.
99 Article 20 of the Law on the Prosecutor's Office, 13 October 1994.
100 Addition to the inception report by the Prosecutor General's Office, 3 August 2001.
101 Information obtained during the meeting with representatives of the Prosecutor General's Office (Vilnius, 4 February 2002).
102 See Module 1, chapter V.1 of this report.

MODULE 3

COURT PROCEDURES AND THE EXECUTION OF JUDGEMENTS

CHAPTER I

Access to court

I.1 Efficiency of the court system and regional accessibility

Access to justice in general is guaranteed in Lithuania. Given the number of district courts and county courts, it is assumed that the regional accessibility is provided for.

I.2 Provision of legal aid

In order to improve the system of legal aid, a new Law on the State Guaranteed Legal Aid was adopted on 28 March 2000. The law entered into force on 1 January 2001. The law prescribes the state guaranteed legal aid to persons who, by reason of their low financial status, cannot adequately defend their rights and interests protected by law. The law extends the scope of free legal aid. It will be available not only in criminal, but also in civil and commercial cases.[103]

Under the Law on the State Guaranteed Legal Aid, the system of legal aid is divided into three categories:
Representation before court or during a pre-trial investigation: legal aid by a (private) practising lawyer or their assistant. If it concerns a criminal pre-trial investigation, the prosecutor will decide whether the defendant is eligible for free legal aid. In civil cases the judge decides.[104]
The budget of the State is not sufficient to pay for the services provided by a private lawyer.
However, lawyers have a professional duty towards the State to provide the services. The lawyers who have an agreement with the State to provide free legal aid are placed on a list.

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[103] Memorandum of the Minister of Justice of the Republic of Lithuania presented at the 23rd Conference of European Ministers of Justice (London, 8-9 June 2000).

[104] Information obtained during the meeting with representatives of the Lithuanian Bar Association (Vilnius, 5 February 2002).

Based on this list, a work schedule is made.[105]

Before trial: primary legal aid organised by the municipality. The municipality establishes the eligibility of the person for free legal aid, refers the person to a private lawyer and arranges the payment. The services offered by the private lawyer are limited to a maximum of one hour.[106]

Before trial: legal advice from public institutions, like NGO's or law clinics at a university.[107] This form of legal aid is mostly used by the socially weak.[108]

Already in 1998, a legal clinic was established at Vilnius University. Law students provide legal counselling in civil and labour disputes, free of charge, to persons entitled to social support.[109]
When applying for free legal aid, a person has to submit an income declaration and hand over supporting documentation and forms. Since the implementation of the law in January 2001, it has become clear that the procedure to qualify for receiving free legal aid is complicated and may prevent people from applying for it.[110]

The Open Society Foundation in Lithuania has initiated a project in co-operation with the Lithuanian Bar Association and the Ministry of Justice to assist the Ministry of Justice in creating a system of state-guaranteed legal assistance to socially-needy persons by establishing a Public Defender's office. As a pilot project, two Public Defender's offices were set up, in Vilnius and in Šiaulai. This system aims to ensure more effective and better quality defence of human rights in criminal proceedings by supplementing/diversifying the current system of ex officio representation in criminal proceedings. The project was established to demonstrate that free compulsory legal assistance, provided by the state in the form of public defender's institution, is more cost-effective and of higher quality than the current system based on private lawyers.[111]

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[105] Ibidem.
[106] Information obtained during the meeting with Mr, Sesickas of the Lithuanian Open Society Foundation (Vilnius, 7 February 2002).
[107] Ibidem.
[108] Comment made by the representatives of the Lithuanian Bar Association (Vilnius, 5 February 2002).
[109] Memorandum of the Minister of Justice of the Republic of Lithuanian presented at the 23rd Conference of European Ministers of Justice (London, 8-9 June 2000).
[110] Comments made by representatives of the Lithuanian Centre for Human Rights (Vilnius, 6 February 2002), and Mr. Sesickas of the Lithuanian Open Society Foundation (Vilnius, 7 February 2002).
[111] Information obtained during the meeting with Mr. Sesickas of the Lithuanian Open Society Foundation (Vilnius, 7 February 2002) and from the COLPI website: www.osi.hu/colpi

CHAPTER II

Fair trial and due process in civil and criminal matters

II.1 Compliance with article 6(1) ECHR: the right to a fair and public hearing within reasonable time by an independent and impartial tribunal established by law

In November 1998, the Ministry of Justice and the Department of Courts have taken organisational measures to prevent delays in court. Every quarter, all Lithuanian courts, with the exception of the Supreme Court, have to report to the Department of Courts on specific cases that are being heard for a period exceeding six months in district courts and for a period exceeding twelve months in county courts. The information, for both statistical and control purposes, is used by the Department of Court and the Judicial Council. It has proved to be a valuable tool for focusing on specific cases, investigating and eliminating reasons for delay as well as assessing efficiency of individual judges and courts.[112]

It is expected that the adoption and implementation[113] of the new Codes of Civil and Criminal Procedure will contribute to the speeding up of court proceedings.[114] Such measures include inter alia: the duty of the court to prevent delays, to hear a case within a shortest possible time and dispose of a case in one proceeding, provided the case has been adequately prepared; a possibility of holding a preliminary hearing prior to the main hearing in order to reach a peaceful settlement, to determine claims of the parties, circumstances of the case and to assess evidence; a possibility of disposing cases that do not involve dispute, such as an obligation to pay for services, by issuing a court order which comes into effect unless disputed by the debtor. Moreover, the responsibility of defence counsels and parties to the case for wilful delay of the proceedings is made stricter.[115]

II.2 Compliance with art 5 ECHR: right to liberty and security

Recent rulings by the European Court in Strasbourg have illustrated that the law which governs the order and conditions of pre-trail detention in Lithuania, is not always applied in accordance with Article 5 of the European Convention on Human Rights. The period of pre-detention is five months on average. However, in accordance with the law,

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[112] Memorandum of the Minister of Justice of the Republic of Lithuania presented at the 23rd Conference of European Ministers of Justice (London, 8-9 June 2000).

[113] The Code of Civil Procedure will enter into force on 1 January 2003. It is expected that the Criminal Procedure Code will also enter into force at that date.

[114] 2001 Regular Report on Lithuania's Progress towards Accession, European Commission, p. 16.

[115] Memorandum of the Minister of Justice of the Republic of Lithuania presented at the 23rd Conference of European Ministers of Justice (London, 8-9 June 2000).

it may reach 18 months, and in practice it can last even longer. The new Criminal Code provides for a reduction of pre-trial detention time.[116]

CHAPTER III

Execution of judgements

III.1 General remarks

As a rule judicial decisions are respected.[117] Judicial decisions are enforced effectively in the criminal sphere, but the enforcement of decisions in civil cases can be problematic.[118] In order to tackle these problems, the new Code of Civil Procedure will provide for procedural regulations on the execution of judgements. A system of private bailiffs will be introduced. The bailiff will execute administrative and civil verdicts, fines and compensation for victims.[119]

III.2 System of bailiffs[120]

A new Law on Bailiffs has been drafted and is being discussed in Parliament. It is estimated to be adopted in the first quarter of 2002. This new law reforms the essence of the system of bailiffs.

In the current situation, the court bailiffs are public officials. In recent years, it became clear that the qualifications of and the work done by the court bailiffs were not sufficient. Several years ago, partial measures were introduced to reform the system and in October 1999 the Law on Bailiffs was adopted. As a result of this law, the bailiffs' offices were separated from the courts.

In co-operation with the International Association of Bailiffs (IUHJ) and the French Chamber of Bailiffs, the system was reformed more fundamentally and a new law has been drafted. The State will delegate the functions of the court bailiffs to private persons. The execution of judgements and other legal services offered by the bailiffs will be done in conformity with the Law on the Bar and the Law on the Notaries. These private persons will receive no financial aid from the State. In this new law the self-government of the bailiffs is envisaged and there will be little interference from the Ministry of

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[116] 2001 Regular Report on Lithuania's Progress towards Accession, European Commission, p. 21.
[117] OSI report on the Judicial Independence in Lithuania (2001), p. 306
[118] Ibidem and Nations in Transit report (2001), p. 253
[119] Information obtained during the meeting with representatives of the Court of Appeal of Lithuania (Vilnius, 4 February 2002).
[120] Information obtained during the meeting with representatives of the Ministry of Justice and the Department of Courts (Vilnius, 5 February 2002).

Justice. The Ministry of Justice will retain functions to ensure that the system develops satisfactorily: free competition will be introduced in the territories of the district courts and creditors can choose a bailiff and buy the services.
A Lithuanian Chamber of Bailiffs will be established. Amongst other functions, this Chamber will maintain the contacts with the State institutions. In addition to the Ministry of Justice and other organs, it will be responsible for the supervision of the bailiffs. It will be able to propose disciplinary actions against bailiffs and it will propose candidates for the Court of Honour for Bailiffs. The highest body of self-government will be the general meeting of bailiffs.

There will be strict requirements for the bailiffs. In order to qualify, one must have a law degree from university, have an irreproachable reputation and pass the exam for court bailiffs. This exam must also be taken by the court bailiffs already in office (about 300 people). It is expected that only a small number of these court bailiffs (about 10%) will be able to qualify to work under the new system.

In the draft Law on Bailiffs, free legal aid for the execution of judgements is foreseen. There will be compensation funds that can be used to pay for the services of bailiffs.

The bailiffs' offices are well equipped with computers, cars and funds to execute the judgements.

Poland

This report is based on information gathered up to March 15th 2002

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Module 3; Court Procedures and Execution of Judgements

MODULE 1

AN INDEPENDENT JUDICIARY

CHAPTER I

Overview of the judicial system in Poland

The independence of the judicial system is guaranteed in the Constitution (article 173: The courts and tribunals shall constitute a separate power and shall be independent of other branches of power) and safeguarded by the National Council of the Judiciary (article 186). The Constitution also prescribes the various kinds of courts (article 175: The administration of justice in the Republic of Poland shall be implemented by the Supreme Court, the common courts, administrative courts and military courts).
Article 176 stipulates that court proceedings shall have at least two stages and that the organizational structure and jurisdiction as well as the procedure of the courts shall be specified by statute.

Poland has a three-tier common court system.
The lowest level is that of the 296[1] district courts (Sad Rejonowy). They have jurisdiction in all criminal, civil, family and juvenile, labour and commercial law cases, except in those which in the first instance are within the jurisdiction of regional courts and in those cases reserved to the competence of special courts. The district courts also have jurisdiction in cases concerning land and property registers.

Misdemeanor boards were affiliated with the district courts. They adjudged cases on petty offences (not considered criminal offences). There were 344 misdemeanor boards. The Constitution of 1997 does not provide for misdemeanor boards and therefore they were to be abolished within four years from the day the Constitution came into force; this happened on 17 October 2001.[2] Cases considered by them have been transferred to the jurisdiction of the courts of the lowest level.

On the next level 41[3] regional courts (Sad Okregowy) deal with first instance cases of higher stakes or review in appeal the judgements of the regional courts.

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1 Polish comments of January 2002.
2 Polish comments of January 2002.
3 Polish comments of January 2002.

Courts of Appeal (Sad Apelacyjny) were established in 1990. They constitute the third tier of the common court system. They consider appeals of the judgements of the regional courts. There are 10 courts of appeal.

The Supreme Court (Sad Najwyzszy) is the highest court authority in the Republic of Poland. This court exercises judicial supervision over all other courts, ensuring the consistency of interpretation of laws and of judicial practice. It is not part of the common courts system and has its own budget.
The Supreme Court considers appeals in cassation and other appeals against court judgements; it adopts resolutions aimed at clarifying legal provisions which raise doubts or the application of which cause disparities in judicial decision-making.

The High Administrative Court (Naczelny Sad Administracyjny) finds its basis in article 184 of the Constitution. Poland was the first communist country to establish such a court, together with a Code of Administrative Procedure, already in 1980. The court is a judicial body. It acts in Warsaw, but it also has branches in main big cities, established for one or more provinces. The court decides about citizens' claims in almost all individual administrative cases and it controls the performance of public administration. The court has one instance and takes action on the claim of an individual, and only in relation with acts of central administrative or territorial organs of governmental administration, communes and other organs of public administration. It also issues replies to questions as to the law submitted for its consideration by local government appellate bodies. Supervision over its adjudication activities is exercised by the Supreme Court.
Parliament currently considers a profound reform of the administrative court system, see below module 3 chapter 3 § 3.

There is a High Court of Medicine, specialized in medical liability cases.
Military courts are special courts operating in the Armed Forces. They are mainly devoted to cases involving military personnel, but may sometimes hear cases involving individuals who are not members of the armed forces according to art. 648, 650 Code of Penal Procedure.[4] (See below chapter II.)
The military courts include garrison and regional military courts. The Garrison Court is the first instance court and adjudges in all cases which are not allocated explicitly to the jurisdiction of the regional courts.

The Regional Military Court adjudges in cases of offences committed by military personnel with the rank of major and higher, which in common courts are within the jurisdiction of the regional courts, cases of armed assault on a superior and cases of collective insubordination. The Regional Military Court also adjudicates appeals against judgements issued in the first instance by the Garrison Court.
The Military Chamber of the Supreme Court is the ultimate appeal body. The Military Chamber considers in particular appeals against judgements issued in the first instance by the Regional Military Court and appeals in cassation.
At present there are 2 district military courts and 8 garrison courts.

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[4] Polish comments of January 2002.

CHAPTER II

State of the legislation

Within the framework of the rule of law and human rights, practically all the main human rights instruments have been ratified. Poland is a member of the Council of Europe and has ratified the ECHR and its Protocols 1-6 and 8-11. It has signed Protocol 7 (ne bis in idem), but not yet No. 12.

The new constitution of Poland of October 1997 guarantees its status as a rule of law state and gives good grounds to fulfil the first Copenhagen condition The independent institutions of the executive and legislative powers have acquired the authority they need to act as guardians of the rule of law.

In order to reduce the reported chronic delays and backlog of cases, a new layer of jurisdiction was introduced to deal with petty cases using a simplified procedure. The Ordinance of the Minister of Justice of 7 December 1999 about the designation of district courts, in whose seats local civil and criminal divisions are to be created for the hearing of certain types of fiscal (up to 2 years of imprisonment), criminal and civil offences (civil claims below 5000 Zloty), came into force on 1 January 2000. It designated the district courts where the first 201 civil and criminal divisions were created (aim: +/- 400). These separate divisions are within the lower rungs of the civil judicature (the so-called 'borough court' concept). Their rulings would be subject to appeal to the regional court as a court of higher instance.

The military courts currently judge not only offences committed by military personnel on active service, but also ordinary criminal law offences committed by such personnel. The judges of these military courts are all magistrates. The transfer of jurisdiction over members of the armed forces in general criminal matters from the military to the civilian courts provided for in the new Code of Criminal Procedure, has been suspended for five years. This provision will come into force on 1 January 2003.[5] In certain cases military courts also have jurisdiction over civilians. Apart from cases specified by law, this concerns mainly the extension of jurisdiction in cases in which not all accused persons/all alleged crimes are under the jurisdiction of the military courts.[6]

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[5] Polish comments of January 2002.

[6] Article 648. The judicial decisions of courts-martial shall also extend to cases concerning:
1) instigating and aiding offences defined in Chapters XXXIX through XLIV of the Penal Code,
2) offences described in Artt. 239, 291 through 293 and 294 of the Penal Code with regard to Art. 291 § 1 of the Penal Code – if the act is related to the offence defined in Chapters XXXIX through XLIV of the Penal Code,
3) other offences, if so stipulated by special provisions.
Article 650. § 1. If in a case against two or more accused persons the court-martial should not have jurisdiction to hear the whole of such case, either by reason of the nature of one of

A separate military criminal code does not exist, the Code of Criminal Procedure devotes a special section to military issues.
The military courts are subject to the control of the Supreme Court, and education and training are the same as that of other judges. They also have a representative within the National Council of the Judiciary.[7]

The Act amending the Code of Civil Procedure, the Act on Pledges by Registration and the Act on the Register of Pledges, came into force on 1 July 2000. This act introduces significant changes in civil procedure, both in terms of organization and procedure. It foresees the creation of a separate and new simplified procedure, which is applied in the so-called petty cases which are heard by the civil and criminal divisions (see above). Changes which aim to simplify the criminal procedure are also being prepared. They are as important as the changes in the civil procedure, especially since the courts will have to take over several hundred thousand petty offences cases from the quasi-judicial bodies of misdemeanour boards.

CHAPTER III

State of affairs in practice
The creation of a true balance of power

III.1 De jure and de facto division of competencies between judiciary, executive and Parliament

Article 10 of the Constitution stipulates:

> The system of government of the Republic of Poland shall be based on the separation of and balance between the legislative, executive and judicial powers.
> Legislative power shall be vested in the Sejm and the Senate, executive power shall be vested in the President of the Republic of Poland and the Council of Ministers, and the judicial power shall be vested in courts and tribunals.

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the acts, or of the person of one of the accused, and the ends of justice so require, the court-martial may hear the case jointly or refer it to a common court of law for this purpose.
§ 2. In the course of preparatory proceedings, the state military prosecutor shall be granted corresponding rights.
§ 3. The case cannot be referred if it concerns an offence listed in Art. 647 § 1 subsection (1)(a) or subsection (2) or in Art. 648 subsection (1).
(Note: Art. 650 § 3 will come into force on 1 January 2003.)
§ 4. The referral of a case pursuant § 1 and 2 shall be subject to interlocutory appeal. The ruling of the state prosecutor shall be considered by the court-martial having jurisdiction over the case.

7 Comments on the Inception Report by the EC Delegation, 1.

Article 173 of the Constitution stipulates:

> The courts and tribunals shall constitute a separate power and shall be independent of other branches of power.

The National Council of the Judiciary (NCJ; Krajowa Rada Sadownictwa) was set up in 1989 to safeguard the independence of the judicial system in the new republic. It finds its basis in articles 186 and 187 of the constitution. Its organizational structure, the scope of activity and procedures for work, as well as the manner of choosing its members, shall be specified by statute.

The Council consists of the Chief Justice of the Supreme Court, the Minister of Justice, the President of the High Administrative Court (all of them *ex officio*), a person appointed by the President of the Republic, 15 judges chosen from amongst the judges of the Supreme Court, common courts, administrative courts and military courts, 4 members chosen by the Sejm from amongst its Deputies and 2 members chosen by the Senate from amongst its Senators. The term of office of those chosen as members of the Council is four years.

The National Council of the Judiciary considers nominations for the posts of judges of the Supreme Court, the High Administrative Court, common courts and military courts, and submits to the President of the Republic motions for their appointments. It also considers and decides motions on moving a judge to another post, expresses its opinion on rules of professional conduct of judges, takes position on proposals to amend the law on the Common Courts, acquaints itself with draft regulatory acts concerning courts; gives its opinion on training programs for trainees and the examination requirements for prospect judges. The Council may apply to the Constitutional Tribunal as to the constitutionality of regulatory acts to the extent that they concern the independence of the judiciary.

The NCJ is by its composition neither part of the executive nor of the judiciary. Representatives of the NCJ are invited to take part in the meetings of parliamentary committees, which is the prerogative of the parliamentary committee chairman rather than an obligation imposed upon him. NCJ representatives taking part in the work of parliamentary committees *de facto* play the role of a representative body for judges. The NCJ has the right to present opinions on all bills concerning the judiciary. According to the Constitutional Court's decision of June 24, 1998, it is the duty of Parliament to request such an opinion, it is not allowed to proceed without. However, the opinion (in its substance) is not binding upon the parliament.[8]

The Council forms an important part in the Polish legal system, since it prevents politics to become too involved in the judiciary. It has been successful in the last ten years, but its influence is nevertheless limited, because the Council cannot initiate the procedure to appoint a new judge. Nevertheless, the Council has become the representative and the

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[8] Polish comments of January 2002, referring to the OSI Report (this is always the OSI-EU Accession Monitoring Report of 2001), 6.

mouthpiece of the judges, especially in matters of remuneration and recruitment of new judges.

Formally speaking, the courts can act autonomously without the interference of the executive. However the budget for the courts is attributed by the Ministry of Justice. In 2000, the expenses for the administration of the justice system accounted for 3.02 % of the total budget of the State and was higher than in the previous years.
The new Constitution on Common Courts of Justice (CCCJ) of July 2001 provides for a separate budget for the judiciary (art. 176).[9] The CCCJ has entered into force on 1 January 2002, but not all provisions. The new budgetary procedure will be applicable from 2003. It has been introduced too late to use it already for the adoption of the 2002 budget. Another law on budgetary autonomy concerns the National Council of the Judiciary. Both laws were reviewed by parliament at the same time and fully synchronized.[10]

The new law provides for incomplete budgetary autonomy[11]. There will be a separate item on common courts in the state budget, which will be untouchable; legislation would be necessary to increase or decrease it. In addition, the judiciary will have more influence in the budget drafting process. Courts of appeal will transmit the proposals of lower courts under their jurisdiction to the National Council of the Judiciary, which will forward the formal application to the Ministry. The Ministry will balance the proposal in the light of the budgetary capacity of the state budget as a whole. Thus, the Ministry develops the final version of the budget proposal. According to the new act, the Ministry of Finance is obliged to accept the budget proposal of the Ministry of Justice without being able to change it. It can only give comments and review the budget in relation with the balance of the whole state budget. This is the only special budget the Ministry of Finance cannot change.[12]
After submittal to parliament, members of parliament and the National Council of the Judiciary directly discuss the budget proposal, without the Ministry of Justice acting as intermediary.[13]

Until now, the judiciary's budget has been part of the budget of the Ministry of Justice.[14] The Ministry drafted the budget proposal on the basis of suggestions transmitted by the appellate courts, after taking into consideration remarks put forward by the National Judiciary Council.[15] The judiciary did not have much input into the budgetary procedure.[16] Past budgets did not fully reflect the judiciary's needs, resulting in

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9 Polish comments of January 2002.
10 Oral statement (Ministry of Justice representatives) during expert mission 11-15/03/02.
11 The Supreme Court, the Supreme Administrative Court and the Constitutional Tribunal enjoy budgetary autonomy.
12 Oral statement (Ministry of Justice representatives) during expert mission 11-15/03/02.
13 Oral statement (Ministry of Justice representatives) during expert mission 11-15/03/02.
14 Oral statement (Ministry of Justice representatives) during expert mission 11-15/03/02.
15 Polish comments of January 2002.
16 OSI Report 2001, Judicial Independence in Poland (pdf version), 310.

insufficient investments. In particular, salaries of court clerks and investments have been underfunded due to budget reductions imposed by the Ministry of Finance.[17]

The distribution of budget resources amongst individual courts is carried out by the Ministry of Justice on the basis of requirements submitted by court presidents. At the lower level, court presidents/directors make the distribution.[18]

The funds of the courts consist of the state budget shares and additional revenues, e.g. court fees and registration fees.[19]

The President of the court is the integral administrative and financial manager of the court. He disposes of the budget, attributed to him by the Ministry of Justice. With regard to the expenses of his budget, the President enjoys wide powers. He is assisted in his management tasks by an administrative and financial office of the court.

One of the recently introduced proposals to improve the functioning of the courts is a draft bill on the statute of civil courts, adopted by the Government on 30 December 1999. The law is in force since January 2002.[20] The bill contains a whole package of proposals for change of, amongst other areas, the judicial structure as a whole, the courts' organizational model, the supervisory powers of the Minister of Justice and presidents of the court, the appointment of judges and the career of judges. In particular, the bill provides for the creation in regional courts and courts of appeal of the position of Court Director, who is competent in all financial and business cases, and will thus relieve the court presidents, division chairpersons and judges from having to attend to numerous non-adjudicative tasks (art. 176 – 179). The bill also consolidates the position and increases the supervisory powers of presidents of the courts and of the Minister of Justice. The Court Directors are appointed by the Minister of Justice on the recommendation of the president of the court.

As for financial decisions and executing the budget of the court, appellate court directors are subordinated to the Minister of Justice, regional court directors are subordinated to appellate court directors, and heads of financial units (in bigger district courts) are subordinated to regional court directors[21].
Due to the short period since the law has entered into force, there is not yet much experience with the new court director position. Judges have expressed their hesitations on this matter as in that way the Ministry might partly control the administration of justice. On the other hand, the aim of the law was to increase the independence of court presidents who so far have been responsible to the Ministry of Justice in financial matters, which was seen not to be in line with their status of independence. Also, court directors can work more independently than a judge who has to rely on his/her

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17 Oral statement (Ministry of Justice representatives) during expert mission 11-15/03/02.
18 Oral statement (Ministry of Justice representatives) during expert mission 11-15/03/02.
19 Oral statement (Ministry of Justice representatives) during expert mission 11-15/03/02.
20 Oral statement (Ministry of Justice representatives) during expert mission 11-15/03/02.
21 Polish comments of January 2002.

colleagues.[22] Although court directors are responsible to the Ministry, this shall not mean that they are not loyal to the court; court presidents propose the persons to be appointed.[23]

Court directors enjoy only limited freedom in deciding on expenditures, because budget positions relating to adjudicating are distributed in advance in the state budget. Court presidents and court directors might have different opinions only inasmuch as investment and equipment are concerned. It is therefore hardly imaginable that the court director would try to influence the policy of court presidents in adjudicating matters. Their relation can be compared to the situation at universities, where financial directors take care of budget and administrative issues, but presidents are responsible for the overall policy.[24]

As to the rules for the assignment of cases, criminal cases are assigned according to the sequence of dates and the list of judges. In the most serious cases (up from 25 years imprisonment or life sentence), prosecutors may request to determine the composition of the bench by ways of drawing lots.
There are no rules for the assignment of civil cases. The annual review by the boards of courts of appeal and regional courts decides this on the basis of 2 criteria; the sequence of dates (registration numbers) and territorial aspects (so as to allow for a judge who knows the region to decide a case). Discretionary powers of court presidents are limited to emergency cases (illness etc.).[25]

Administrative supervision over the courts falls within the purview of the Minister of Justice. Article 183 of the Constitution provides that the Supreme Court exercises supervision over the judgements of ordinary and military courts. The responsibilities of the National Council of the Judiciary are confined to areas related to safeguarding the independence of judges; it does not exercise responsibilities in the area of administrative supervision.[26]
According to the new Constitution on Common Courts of Justice, the Minister of Justice performs this function personally or through the office of appropriate supervision organs, namely judges seconded to the Ministry of Justice, and through court presidents.[27]

Judges are under administrative supervision because they perform many administrative functions related to the proceedings. Efforts are made to relieve judges of these administrative tasks by organizing the work differently (which is provided for in the CCCJ), but judges do still decide e.g. on timing and the total costs of a case. As long as

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[22] Oral statement (Ministry of Justice representatives) during expert mission 11-15/03/02.
[23] Oral statement (court presidents) during expert mission 11-15/03/02.
[24] Oral statement (Ministry of Justice representatives) during expert mission 11-15/03/02.
[25] Oral statement (Ministry of Justice representatives) during expert mission 11-15/03/02.
[26] Polish comments of January 2002, referring to the OSI Report, 9-10.
[27] Polish comments of January 2002.

judges perform administrative tasks, supervision of these activities is considered to be necessary. Supervision shall only extend to these tasks, not to judicial decisions.[28]

Inspections or investigations are carried out by judges employed at the Ministry of Justice or judges from different courts. The reports of the visiting judges are sent to the Ministry of Justice, to the president of the affected court, and in some cases to the National Council of the Judiciary. A negative report can lead to the recall of the president of the court or disciplinary proceedings against anyone deemed responsible for infractions.[29]
The Ministry's supervision does not directly relate to the activities of individual judges, but to the supervisory tasks of court presidents. A detailed case to case supervision is not feasible in practice.

The judges working at the Ministry continue to be members of the judiciary and to adjudicate in court though not often, on the average once a month. Judges may even become department directors though retaining their status of judge and continuing to adjudicate in court at the same time. They consider this to be a valuable experience in order not to loose contact to the judicial work.[30] Also, the delegation period as such does not count for the professional work record so adjudicating is in the interest of the delegated judges[31], though a position at the Ministry is supposed to have a positive effect on the career too. Conflict of interest shall be prevented by judges having to step back in such cases, also parties can refuse them. In practice, a judge working at the Ministry would be excluded right from the start in a case involving any suspicion of conflict of interest.[32]

Court presidents manage the day-to-day activities of courts. Court presidents supervise the administrative activities of courts in the judicial districts under their jurisdiction. The presidents may appoint visiting judges to conduct supervisory inspections. In consultation with a court's college they may also designate an adjudicating judge without visiting-judge status to carry out *ad hoc* inspection visits or investigations. Visiting judges fulfil their tasks by conducting problem-related and thematic inspection visits or investigations, sitting in on court proceedings, examining the validity of complaints and suggestions, and instituting clarification and disciplinary proceedings by authorized individuals and organs.[33]

The court system is quite hierarchical and court presidents dispose of considerable means to supervise or influence judges in the court or in lower courts.[34] But there is no evidence of their attempting to influence judges' adjudication directly.[35]

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28 Oral statement (Ministry of Justice representatives) during expert mission 11-15/03/02.
29 OSI-EU Accession Monitoring Report of 2001, 10.
30 Oral statement (delegated judges) during expert mission 11-15/03/02.
31 Oral statement (Ministry of Justice representatives) during expert mission 11-15/03/02.
32 Oral statement (delegated judges) during expert mission 11-15/03/02.
33 OSI-EU Accession Monitoring Report of 2001, 10.
34 OSI Report 2001, Judicial Independence in Poland (pdf version), 347.
35 OSI Report 2001, Judicial Independence in Poland (pdf version), 312, 347.

Court presidents report up the chain of district, regional and appellate court presidents to the Minister of Justice on matters of administration. The Minister and presidents of higher courts may demand that steps be taken in case of infractions affecting efficiency and organization of judicial proceedings, or overturn administrative ordinances issued by lower court presidents.[36]

In the view of the courts, it is preferable that judges employed by the Ministry perform the supervision, since they know and understand the situation of judges.
The visitation divisions at courts concerned with the administrative supervision of the lower courts are not considered as instruments of the Ministry of Justice but as judges of the court, in spite of them being subordinated to the Ministry.[37] The divisions are supervised by the Ministry once every 3 years, and the Ministry will then issue binding recommendations. Instructions are never given to the visiting judges, only to court presidents.[38]

Some judges have doubts about the situation, with a view both to the independence of the visiting judges in their adjudicating activity and to the independence of courts. It had thus been discussed to transfer the responsibility for administrative supervision to the National Council of the Judiciary. But, since the Council is not politically responsible and has politicians as participants, this was not seen as appropriate in the end.[39]

The Minister of Justice has the competence to establish or dissolve judicial tribunals, art. 20 CCCJ.[40] This is explained by historical, territorial and political reasons. The division of the courts is not compatible with the territorial division of the country. There are now 42 regional courts of different sizes (from 12 to 200 judges per court). The ministerial power results from the impossibility in parliament to decide where to locate the courts. This power is limited by procedural (ordinance procedure, publication obligatory) and substantial rules for the establishment or dissolution of courts. The Minister must seek the advice of the NCJ and must strive to equalize courts of the same organizational level in order to create units with optimal efficiency. For political reasons, dissolution of courts (combination of several courts into one) did not happen often. These cases did not meet with criticism from the NCJ.
Judges who used to work at the courts that are dissolved are either transferred or would retire.[41]

The legislature cannot take decisions invalidating judicial decisions retroactively. Only courts are empowered to adjudicate on the invalidation of judgements.[42]

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36 OSI Report 2001, Judicial Independence in Poland (pdf version), 328.
37 Oral statement (president Court of Appeal Warsaw) during expert mission 11-15/03/02.
38 Oral statement (president Court of Appeal Warsaw) during expert mission 11-15/03/02.
39 Oral statement (judges and Ministry representatives) during expert mission 11-15/03/02.
40 Polish comments of January 2002.
41 They would be entitled to full remuneration but this has never happened, oral statement (Ministry of Justice representatives) during expert mission 11-15/03/02.
42 Polish comments of January 2002.

III.2 De jure and de facto division of competencies within the judiciary

The Constitutional Tribunal was established in December 1985. According to the Polish Constitution, the Court has jurisdiction regarding the following matters:
- the conformity of statutes and international agreements to the Constitution;
- the conformity of a statute to ratified international agreements whose ratification required prior consent granted by statute;
- the conformity of legal provisions issued by central State organs to the Constitution, ratified international agreements and statutes;
- the conformity to the Constitution of the purposes or activities of political parties;
- complaints concerning constitutional infringements.

Moreover, the Constitutional Tribunal settles disputes over authority between central constitutional organs of the State. The decisions of the Court are binding.

The relationship between the Constitutional Tribunal and the judiciary is the following.
The First President of the Supreme Court and the President of the High Administrative Court may make an application to the Tribunal regarding matters specified above.
The National Council of the Judiciary may make an application to the Tribunal regarding the conformity with the Constitution of normative acts to the extent to which they relate to he independence of courts and judges.
Any court may refer to the Constitutional Tribunal a question of law concerning the conformity of a normative act with the Constitution, ratified international agreements or statute, if the answer to such question of law will determine an issue currently before such court (a preliminary ruling procedure).
As indicator for the impact of the decisions of the Constitutional Tribunal counts that references to the Constitution have become standard practice in the reasoning of court decisions and in the legal literature.

The position of the Supreme Court in the judicial system is very important. The Supreme Court is the highest court in Poland. It has jurisdiction over all common courts. It adopts resolutions aimed at clarifying legal provisions which raise doubts or the application of which cause disparities in judicial decision-making. It adopts resolutions containing settlements of legal questions referred to it in connection with specific cases. Within the Supreme Court the Judicature Reports Office prepares and publishes collections of Supreme Court judgements containing settlements of major legal questions and resolutions entered into the register of interpretation rules.

The appeal rules were changed in 1996. Now appeal leads to a definite decision of the case by the appellate court without sending it back for review (with some exceptions, if evidence is not sufficient). At the same time, cassation was introduced as a measure of appeal in the next instance (Supreme Court).
Appeal is possible against all first instance judgements without exception, and both as to the facts and the law. Following the parties' written statements, an oral session will be held (no trial without oral statements). Oral sessions are recorded.[43]

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[43] Oral statement (president Court of Appeal Warsaw) during expert mission 11-15/03/02.

A court of higher instance may overturn the ruling of a court of lower instance in its entirety. The higher court also provides direction as to which changes should be made upon retrial if the case is sent back.[44]
There is no system of formal consultation between higher and lower court judges.[45]
Higher courts organize training programs and may hold conferences for judges from the entire judicial district, including judges of lower rank. The prerogatives of the presidents of higher courts in relation to lower courts have been clearly defined.[46]
The practice of delegating the judge of a lower court to a higher court in order to permit him to perform higher court duties prior to his formal promotion to the post also exists. This provides the judge an opportunity to become acquainted with the judicial posts of the higher court. The delegated judge is also subject to evaluation by judges of the higher court. There is no practice of consulting with judges of higher courts on individual matters.[47]

CHAPTER IV

The independent functioning of the Judiciary

IV.1 Incompatibilities

Article 178 of the Constitution stipulates that a judge shall not belong to a political party, a trade union or perform public activities incompatible with the principles of independence of the courts and judges. Article 103.2 states that a judge or prosecutor may not hold a parliamentary mandate.[48] The constitutional ban came later than the statutory regulation. Until recently, the legislative norm was less rigorous than the constitutional norm and provided for a leave of absence without pay for the duration of the term in office in the event a judge would obtain a parliamentary mandate, but this has been clarified with the new CCCJ.[49]

Judges cannot perform other political or administrative functions. They are not employed in the State administration with the exception of the Ministry of Justice. A judge nominated, appointed or elected to perform a function in a State organ, provincial

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44 OSI-EU Accession Monitoring Report of 2001, 20.
45 OSI Report 2001, Judicial Independence in Poland (pdf version), 346.
46 OSI-EU Accession Monitoring Report of 2001, 20.
47 Polish comments of January 2002.
48 Polish comments of January 2002.
49 Art. 98 CCCJ provides for the obligation to resign from the post, inter alia in the case of being elected as a member of Parliament; after parliamentary mandate expiry the judge does not automatically come back to his post, he has to apply for it; Polish comments of January 2002.

government, diplomatic or consular service, or in the organs of international organizations is obliged to resign from his post.

Judges are not permitted to engage in any activity which is lucrative or which would be detrimental to their dignity or impartiality. They may not accept other employment that would impede the exercise of the judicial duties, undermine judicial prestige, or weaken confidence in their impartiality.[50] In order to take up other employment, a judge has to request the consent of the president of the regional court, and the president of the regional court has to request the consent of the Minister of Justice.[51] An exception is made for employment in an academic teaching job, research position, or scholarly post if such employment does not impede the exercise of judicial duties.[52]
A special anti-corruption provision requires that judges must make an annual written disclosure of their assets.[53]

IV.2 A judge should not be subject to any authority

It is mentioned that the Polish media regularly attack the new Criminal Code for being excessively and prematurely liberal in view of the considerable rise in crime in Poland. In particular, abolition of the death penalty is very far from being approved by the population of Poland. Criticisms of a judicial system which allows sharks to go scoot free and only catches small fry are also recurrent, and tend to crop up whenever there are sensational cases.

Justice in Poland functions under permanent scrutiny of the media. Every day the most serious daily papers report about what is happening in the courtroom, comment the situation of justice or do their bit in criticizing the functioning of justice.
Media criticism mainly involves the extended time period required by legal proceedings, the growing backlog of cases, and excessively 'lenient' verdicts, especially in relation to offences against life and limb.[54] The constant media criticism and corruption investigations have led to a drop in the public approval ratings enjoyed by judges.[55]
Judges have not been used to dealing with the media, but have traditionally expressed themselves through their judgements only. Judges have difficulties with the media because they perceive them as not objective. The Ministry of Justice has created a public relations office and press spokespersons have also been appointed at courts and prosecutor's offices.[56] The regional court in Piotrkow Trybunalski, for instance, has one spokesman for the whole region under the jurisdiction of the court (including 5 district

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50 Law on the Ordinary Courts, Art. (86) paras. 1 and 2.
51 Additional employment in such a case might include, for example, employment in a foundation or in the editor's office of a trade journal. This kind of employment, however, is very rare in practice.
52 Polish comments of January 2002.
53 OSI Report 2001, Judicial Independence in Poland (pdf version), 325.
54 Polish comments of January 2002; referring to the OSI Report p. 3.
55 OSI Report 2001, Judicial Independence in Poland (pdf version), 315.
56 Oral statement (Ministry of Justice representatives) during expert mission 11-15/03/02.

courts). The Ministry of Justice organizes annual 3-days meetings with court and prosecutor's offices' spokespersons.[57]

There are no instances of political blackmailing of judges reported. The Vetting or 'Lustracja' process, based on the 1997 Vetting Law, provides for the vetting of Government members, senior officials, officers of the state and members of the judicial system regarding the nature of their involvement with the former communist regime. Although subject to judicial review, there is no automatic requirement for resignation. However, in practice the implementation of the law has resulted in the resignation of a number of ministers and high ranking members of the judiciary.

Besides career judges, Poland also has lay judges who sit as referees on the bench of penal courts for more serious crime, in social and labour courts, and in family law proceedings. Lay judges participate only in first instance proceedings.[58] Lay judges for regional and district courts are chosen by the councils of municipalities covered by the jurisdiction of those courts. The term of office of a lay judge is four years. Regional court lay judges are designated by the presidents of courts of appeal to consider labour and social security law cases in courts of that instance.

Panels consists of 1 career, 2 lay judges (both criminal and non-criminal proceedings), or in criminal proceedings dealing with serious crimes 2 career, 3 lay judges. A lay judge – as a rule – may not preside over a trial or session nor perform the functions of a career judge outside a trial. But in adjudicating, lay judges are independent and have the same vote as career judges, so they may outvote them.[59]
The general tendency is to reduce the participation of lay judges.[60] The number of persons willing to perform the function of a lay judge is dramatically diminishing. The proportion of pensioners within the group of lay judges has substantially increased (to about 40%); they receive a small compensation of about USD 10 per session.[61]

IV.3 Supporting facilities

As of 30 September 2001, 8763 judges and 20188 administrative staff worked in courts.[62]

The equipment and facilities of courts are not sufficient but a lot of progress has been made over the past 3 years, thanks to increased budgetary means.[63] However, the

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57 Oral statement (spokesman of Piotrkow Tryb. regional court) during expert mission 11-15/03/02.
58 Oral statement (Ministry of Justice representatives) during expert mission 11-15/03/02.
59 Oral statement (Ministry of Justice representatives) during expert mission 11-15/03/02.
60 Oral statement (Ministry of Justice representatives) during expert mission 11-15/03/02.
61 Oral statement (Ministry of Justice representatives) during expert mission 11-15/03/02.
62 Polish comments of January 2002.
63 Comments on the Inception Report by the EC Delegation, 1.

differences between different regions, and between Warsaw and the rest of the country are still considerable, involving difficult working conditions for many judges.[64]

Past documents reported on insufficient physical resources and support staff of the courts; outdated working conditions; inadequate essential services (lack of rooms; electronic typewriters, furnishings, libraries, electronic access to national and international legal documentation, even lack of paper) (International Helsinki Federation (IHF) for Human Rights 1999: 199).

The new Supreme Court building in Poland, however, tells a different story. There, each judge has a modern, new, fully equipped and computerized office. But the lower courts, in particular outside of Warsaw, have many needs. Overcrowding is also a problem. Court buildings lack office space for judges and secretarial staff. Small offices must accommodate three judges or six to seven secretaries. It is suggested that 600 000 square meters of office space is needed to improve matters. Secretaries have often no word-processing equipment. Judgements and minutes are often written by hand and then typed up by secretaries on mechanical typewriters.

The shortage of computer equipment, in addition to other inefficiencies, means that judges cannot track the evolving legislative framework on the computer databases that are commercially available in Poland. However, the paper version of laws and regulations in the form of the Official Journal are available at the courts.[65]

As to the necessary computerization of the courts and improvement of equipment, the Ministry of Justice has prepared the 'Plan for Computerization of the Justice Sector', which sets out strategic tasks (which have already started to be implemented) in the field of information technology – to be carried out in the coming years within the structure of the administration of the justice system, particularly in the courts. One of the tasks is to provide the courts with access to electronic legal databases. At present the Ministry of Justice provides courts and offices of public prosecutors with commercial electronic legal databases LEX and Temida. Those bases cover the provisions of Polish law, the judicial decisions of the Supreme Court and high courts as well as a selection of the most important EU legal instruments. They have partly been made available to users by means of the justice department communications network.[66] Further plans include the creation of a legal information service as an integral part of the internet service of the Ministry of Justice.

Information technology is also used in a direct way to improve the effectiveness of the functioning of the common courts of law through the All-Poland Centre of Court Registers-project. It takes into account the needs of those organizational units of the courts whose efficient operation determines to a substantial degree the security of legal transactions, and thus the proper development of economic life in Poland.

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[64] OSI Report 2001, Judicial Independence in Poland (pdf version), 332.
[65] Polish comments of January 2002.
[66] Oral statement (Ministry of Justice representatives) during expert mission 11-15/03/02.

Court registries include the pledge register (registration of assets in national and foreign currencies), the commercial register, and the judicial land and mortgage register (integrated cadaster system). The courts have been tasked with these registration functions because the legislator tends to transfer socially important tasks to the judiciary.[67]

The On the Court Information System aims to make the work of other courts divisions more efficient through a computerized system dedicated to their needs. This system will first be used and verified in the newly created civil and criminal divisions.

Details on computerization:[68]
Activities aimed at further upgrading of technical equipment at courts and public prosecutor's offices are continued. In particular, the amount of computer hardware used in courts and public prosecutor's offices has increased. In January 2001 courts had 8627 computers and public prosecutor's offices had 2029 computers. The number of computers in courts has tripled since 1998.[69] In 2002, 9167 computers shall be at the disposal of courts. The purchases are made both at the central level – by the Ministry of Justice – and by courts and public prosecutor's offices themselves from allocated funds.

Simultaneously several 'topical' IT projects are implemented in the judiciary:
- Project 'All-Poland Centre of Court Registers' (CORS)
- National Court Register (computerized system for registration of all business entities, insolvent debtors and other entities obliged to disclose their data in the register): as of 1 October 2001, 30 additional branches of Central Information Unit of the National Court Register which provides information from the Register (duplicates, excerpts, testimonials)
- The New Land and Mortgage Register (computerized system of real estate registers): works are near completion on specifications of an IT system for running virtual real-estate registers. Work is underway to computerize office requirements for real estate register divisions
- Project 'Public prosecutor's offices IT System' (SIP)
- The tender procedure for purchase of computer hardware was completed for public prosecutor's offices covered by SIP project – from Phare assistance funds (to be supplied to units before the end of 2001)
- Projects for the establishment and implementation of IT systems for jurisdiction divisions of courts
- Computerization of hearing rooms
- In 5 subsequent court regions (in 10 regions in 2000); to improve the efficiency of procedures by taking minutes of hearings with personal computers provided with an office software package and customized set of record formats TABULA.
- E-court.

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67 Oral statement (Ministry of Justice representatives) during expert mission 11-15/03/02.
68 Polish comments of January 2002; oral statement (Ministry of Justice representatives) during expert mission 11-15/03/02.
69 Oral statement (Ministry of Justice representatives) during expert mission 11-15/03/02.

Since May 2001 the Ministry of Justice has participated in the EU research project e-Court. This project, coordinated by the Ministry of Justice of the Italian Republic, constitutes an element of the Fifth Framework Programme of the European Commission and is financed by the European Commission under the framework of the programme Information Society Technologies (IST). The main objective of the e-Court project is to develop a customized system based on information technology, which could help solve certain negative trends within the EU judiciary system, and in particular help improve the efficiency of the operations of civil courts (records of hearings and proceedings, making information on the course of judicial proceedings available to the parties concerned, searching and browsing through judicial documents and acts). In line with the assumed work schedule, the Ministry of Justice performed an analysis of the needs and requirements of future users of e-Court system.[70]

The current priorities of the computerization program of the Ministry of Justice are the full computerization of all courts of appeal and the provision of software and legal databases to courts and the prosecution service, including international databases (e.g. Celex).[71]

IV.4 Workload

Poland acknowledges that the effectiveness of its national justice system, especially the ability to hear each case within a 'reasonable' time leaves a lot to be desired. In 1999, the average number of cases dealt with by every judge on a yearly basis was as high as 500. In 2001, the average number of cases per judge at the regional court of Piotrkow Trybunalski was 1007 (including land and mortgage registry).[72]
Also, there is still a big gap between Warsaw – where the situation is still very critical in terms of overburdening of judges and long delays – and the rest of the country. The average duration of a criminal procedure is 5 months nation-wide but reaches 12 months in Warsaw. With 40000 criminal cases in Warsaw, it is almost impossible to prevent 'undue delay'. Civil cases take twice as long in Warsaw as the Polish average. The situation is similar for commercial cases and transactions associated with the land register. Delays for the latter can be up to 1 year in Warsaw, compared to 2-3 months in the country.[73]

However, although the situation at Warsaw courts is more complicated than in other courts in the country, in recent years some progress has been achieved there as well. Some Warsaw courts have obtained new premises. In some categories of cases also statistical data show that the situation is getting better, e.g. the average duration of

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70 Polish comments of January 2002.
71 Oral statement (Ministry of Justice representatives) during expert mission 11-15/03/02.
72 Oral statement (president Piotrkow Tryb. regional court) during expert mission 11-15/03/02.
73 Figures according to Ministry of Justice representatives during expert mission 11-15/03/02.

proceedings in commercial matters decreased from 22,2 months in 1999 and 20,1 months in 2000 to 10 months in 2001.[74]
Several factors contribute to the problems of Warsaw courts: Commercial activities in particular are concentrated in the Warsaw region so these courts have to cope with more cases. Also, the conditions in Warsaw courts with regard to premises, equipment and staffing are more difficult, but the Ministry of Finance opposes further investments. The Ministry of Justice, aware of the problems, has plans to reorganize the Warsaw judiciary and to split large management units in smaller ones and have neighbouring courts taking over part of the caseload. But again, the support of the Ministry of Finance would be necessary to finance the reform.[75]

It is argued that the general upsurge in litigation is linked to the fact that a) the private business sector has increased very much since 1989 and that disputes which used to be settled administratively now go to court; b) the changes in the law also slowed down the settlement of cases; and c) many tasks which judges are performing are not strictly judicial. It appears the number of judges as such would be sufficient if they were not losing time on too many non-judicial issues[76], especially in public law registration matters.[77] E.g. at the regional court of Piotrkow Trybunalski, land and mortgage registration accounted for a share of 39.9 per cent of all cases in 2001, and they may be more time-consuming and complex then they are supposed to be.[78] The introduction of the referendarz profession (see below) which will now deal with this, combined with computerization, has already helped to reduce the backlog.[79]

Also the above mentioned tendency of parliament to endow courts with new tasks, and the lack of alternative methods of conflict settlement contribute to the high workload of courts.[80] The Ministry of Justice is working on a modification of the civil procedure code with regard to arbitration, especially commercial arbitration, in order to reduce the workload of judges.[81]

One of the most significant factors affecting the functioning of the courts is the quality of its cadres, including the administrative personnel. The low salaries, poor education, and the high turnover rate of the administration staff have had a negative impact upon the effectiveness of courts. However, administrative clerks have to undergo one year of

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74 Polish comments of January 2002.
75 Oral statement (Ministry of Justice representatives) during expert mission 11-15/03/02.
76 Poland has twice as many judges as e.g. Spain; Comments on the Inception Report by the EC Delegation, 2; in this sense also J. Baconin, Crise de la justice en Pologne, 2000, 8.
77 OSI Report 2001, Judicial Independence in Poland (pdf version), 318 et seq.; see also J. Baconin, Crise de la justice en Pologne, 2000, 8.
78 Oral statement (president Piotrkow Tryb. regional court) during expert mission 11-15/03/02.
79 Comments on the Inception Report by the EC Delegation, 2.
80 Oral statement (Ministry of Justice representatives) during expert mission 11-15/03/02.
81 Oral statement (Ministry of Justice representatives) during expert mission 11-15/03/02.

training at the courts, ending with an exam. The training includes lectures as well as practical work in all court divisions.[82]

Steps aimed at raising the professional and financial status of the staff working in the courts and in the office of the public prosecutor were initiated some time ago. Clerks of the court (referendarzy), patterned on the German and Austrian 'Rechtspfleger', were introduced in 1997 with the aim of relieving judges of responsibilities that are not adjudication in the strict sense of the word. The responsibilities of the clerks of the court are limited to proceedings concerning land and property registers and commercial registration proceedings. In these areas, referendarzy work independently, they do not only prepare decisions but decide themselves.[83] Until there is a sufficient number of clerks of the court, judges are to deal with such matters. A decision issued by a clerk of the court can be challenged by a complaint to the court. The Act of 1997, establishing the post of clerk of the court, sets high professional competence standards to be met by candidates for the position of clerk of the court. These persons need to have a university degree in law. A specialized period of training, recently extended from 6 months to 1 year, is followed by an exam. After 6 years of professional experience, referendarzy may apply for the exam to become a judge.[84] The first 27 clerks of the court were appointed in 1998, over 200 were appointed in 1999 and 403 by the end of 2001.[85]

The experiences with the new referendarzy have been very positive so their status and independence have been strengthened in the new CCCJ. Courts as well as the Ministry would like to employ more referendarzy but budget allocations and training capacities are not sufficient.[86] The new CCCJ provides also for the position of court assistant (a lawyer taking over administrative tasks from judges), but in practice there are not any of them so far.[87]
Thus, judges in Poland continue to have an excessive workload, mainly because tasks which could be delegated to court clerks and secretaries are carried out by the magistrates themselves.

Corruption among the judiciary has been mentioned in some reports. The very long wait for routine court decisions in commercial matters, including in terms of contract enforcement constitutes an incentive for bribery and corruption. Also there are reports on corruption in connection with a speedier handling of certain criminal cases. The steps that have been taken recently to reduce the duration of court proceedings may have positive effects on this. Combating corruption, also within the judiciary, is one of the priorities of the Ministry of Justice, which applies for the commencement of disciplinary and criminal proceedings if allegations are justified.[88]

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[82] This gives the staff the possibility for promotion in the future and also for using them in other court divisions if such a need arises; Polish comments of January 2002.
[83] Oral statement (Ministry of Justice representatives) during expert mission 11-15/03/02.
[84] Oral statement (Ministry of Justice representatives) during expert mission 11-15/03/02.
[85] Polish comments of January 2002.
[86] Oral statement (Ministry of Justice representatives) during expert mission 11-15/03/02.
[87] Oral statement (Ministry of Justice representatives) during expert mission 11-15/03/02.
[88] Polish comments of January 2002.

CHAPTER V

The status of judges

V.1 General

The independence of magistrates is protected by the Constitution and the law.
Judges at the Supreme Court and judges of common court laws are appointed for life by the President of the Republic upon a proposal from the National Council for the Judiciary (article 179 of the Constitution).
The Constitution (articles 180 and 181) also guarantees judicial immunity of judges, their disciplinary accountability, their immovability and irremovability. Judges are irremovable except for cases enumerated in the Law, such as illness, disability or age over 65 or 70.
A judge retires at the age of 65 unless he requests to be retired at the age of 70, or – alternatively – (on the request of a judge) at the age of 55 (a female judge) or at the age of 60 (a male judge) having served for respectively 25 or 30 years on the post of a judge.[89]

The criteria for approving or refusing an extension of service are not very clear.[90] A decision of the National Council of the Judiciary not to consent to extend employment may be challenged with the Supreme Court.
Also the National Council of the Judiciary may take a decision on the retirement of a judge due to illness etc.
Transfer to another post requires consent, apart from disciplinary transfer or certain organizational reasons.[91]

Judges are guaranteed the freedom of association but they are not allowed to hold trade-union membership. The strongest nation-wide association is *IUSTITIA*, the association of judges, with its regional branches. The organization is active in making proposals to the Ministry of Justice and organizing training programs, e.g. on how to deal with the media, and conferences (e.g. on corruption in the judiciary, in cooperation with the World Bank). Activities are partly financed with funds provided by foreign institutions.

V.2 Selection

Judges must: be Polish citizens; be of good character; be in full possession of their civil and political rights; be at least 29 years of age; have passed the entrance examination and the final examination at the end of the traineeship and have professional experience as an assessor (deputy judge).[92]

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89 Polish comments of January 2002.
90 OSI Report 2001, Judicial Independence in Poland (pdf version), 339 et seq.
91 OSI Report 2001, Judicial Independence in Poland (pdf version), 340 et seq.
92 It appears judges can also be recruited from experienced law practitioners.

The main requirement for becoming a judge (or a public prosecutor) is to have completed a five-year law course. On leaving university, candidates sit on an entrance examination organized by all regional courts.[93] The examination consists of an essay on a set subject (the candidate can choose between civil, criminal or public law). Successful candidates then sit an oral examination organized by a panel at each appeal court. Passing the examination opens the way to a traineeship in the courts the duration of which has recently been extended from two-and-a-half-year to three years.[94] A national training plan drafted by the Ministry of Justice contains detailed provisions on subjects and scheduling of the training so as to ensure homogenous levels of training all over the country.[95]

The training is followed by a final examination organized by the appeal courts. The panel of examining judges at a given court is appointed by the Ministry of Justice. The final examination consists of written and oral tests drafted by the Ministry. Thus, all candidates pass the same exam though in different parts of the country. The central drafting of the examination tests has proved to lead to more objective examination results and shall prevent that training levels diversify.[96] The written examination requires the examinee to study documents based on a real case and reach a reasoned decision. The judgement is marked by the panel, which then examines successful candidates orally. Those who pass this examination are recruited according to the number of posts available, first as assessors and then as judges at a court in the judicial district concerned. As a whole, the system of judicial training is largely decentralized, which may leave room for disparities between different judicial districts. The impartiality of the marking is guaranteed solely by the judicial independence of the examiners, not by procedural rules.

The personnel situation of the judiciary is difficult not only because there are too few judicial and administrative posts, but also because many judges leave the courts to find jobs in other legal professions which are more attractive in respect of remuneration. Since 1991, more than 450 judges have been recalled as the result of their resignation. Recently, the judiciary seems to have acquired a more attractive image again and the exodus into the advocates' profession appears to be halted.[97]
The new candidates for judicial posts are mainly court trainee judges. In consequence, young judges without sufficient professional experience adjudicate in courts of first instance, which examine a very wide range of complex cases. In the district courts the most numerous group of judges includes persons up to 35 years of age (more than 45%), with job seniority up to 5 years (more than 35%).
The process of feminization of the judiciary has been growing. At present there are more than 62% women judges, and in some courts this number approaches even 80%.

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93 Polish comments of January 2002.
94 Polish comments of January 2002.
95 On the basis of the CCCJ, a new detailed regulation of these issues has been set up, which is currently in the procedure of governmental approval and shall enter into force within 2-3 months; oral statement (Ministry of Justice representatives) during expert mission 11-15/03/02.
96 Oral statement (Ministry of Justice representatives) during expert mission 11-15/03/02.
97 Oral statement (Ministry of Justice representatives) during expert mission 11-15/03/02.

V.3 Appointment

Judges are appointed by the President of the Republic upon the motion of the National Council of the Judiciary.
The Minister of Justice decides about the number of vacancies for individual courts. Candidates apply to presidents of appellate or regional courts. The presidents verify the candidates and present them to the judiciary board and the general assembly. After being assessed by those two bodies candidates are presented to the National Council of the Judiciary through the Minister of Justice, along with his opinion and information received from the Police organs. The Minister's opinion is not binding. The Council reviews the nominations, decides through a vote and submits its recommendations to the President of the Republic. The Minister may on his own initiative propose judicial candidates to the National Council of the Judiciary after consulting with the college of the relevant court. The proposal is subject to the same rules as other nominations.[98]
The President of the Republic has the power to block an appointment put forward by the National Council of the Judiciary (he has not done so thus far), but may not appoint a judge who has not been put forward by the NCJ.

Prior to being appointed as judge, candidates must serve as court assessors (for now 3 years). The institution of court assessor effectively appears to be a probationary judge.[99] Appointment as court assessor is not automatic after passing the examination. The results of the examinations and the opinion of the judges' self-government body constitute the basis of the decision of the Minister of Justice. If the number of available vacancies is limited, only the candidates who passed their examinations with high marks stand a chance of being nominated. The college of the regional court must accept the Minister's decision. Assessors have the same responsibilities as judges and can hear cases. After an assessor's initial term has elapsed, he is either nominated to a judgeship or his employment is terminated.[100]

Lay judges for regional and district courts are chosen by the councils of municipalities covered by the jurisdiction of those courts. The function of lay judge may be performed by a person who, *inter alia,* is at least 26 years of age and has been employed or has resided in the place of nomination for at least a year. Regional court lay judges are designated by the presidents of the courts of appeal.

V.4 Promotion

The additional requirement for the post of appellate court judge is at least five years of professional experience as a judge; for the post of a Supreme Court judge the requirement is ten years of such experience, or as a public prosecutor, or counselor at law, or performance of the profession of attorney at law, or work in state administration

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98 Polish comments of January 2002, referring to the OSI Report, 16.
99 OSI Report 2001, Judicial Independence in Poland (pdf version), 337 et seq.
100 Polish comments of January 2002, referring to the OSI Report, 16.

at an independent position connected with legal practice. A professor or an associate professor of law may also be appointed to the post of a judge.

The National Council of the Judiciary decides on promotions of judges. Nominations to judgeships in appellate and regional courts are submitted by general assemblies of judges, with two candidates proposed for each vacancy. Both in the case of initial appointments to district judgeships and promotions to higher posts, the nominations proposed by judicial organs are submitted to the Council with the Minister of Justice acting as an intermediary. Efficient performance and the number of rulings overturned by a higher court as well as experience are considered in assessing a judge's performance. A visiting judge designated by the court president makes evaluations. The decision to promote a judge is taken by the National Council of the Judiciary through a vote.[101]

The Minister of Justice appoints and recalls court presidents following consultation with the general assembly. The general assembly, through voting procedure, can express its opinion on the Minister's proposal. If the result is negative, the Minister can apply to the NCJ. If the general assembly does not object (no opinion), this is regarded as positive.[102]

V.5 Remuneration

Past reports mostly referred to the low remuneration of magistrates as posing a risk to the efficiency of justice in Poland. With regard to the remuneration and social welfare of the judges the World Bank report on Corruption in Poland (1999) stated that consideration should be given to the status, training and pay of the judicial profession. Rather than being seen as the crown of the legal profession and an essential arm of the state, judges were said to be low-paid and ill-respected, which creates incentives for corruption.

Poland recognizes the need to strengthen the status of the judge by making the remuneration more attractive. Budgetary limitations make it impossible to solve this problem immediately, but meanwhile the salaries of some judges correspond to the highest level in the administration. This has helped to reduce defections for the private sector.[103]

At present the basic salaries of judges of courts of the same rank are equal and are a multiple of the average projected yearly salary in the public sector. The multiplication factor of the salaries of magistrates is determined by presidential directive, on the basis of constitutional and statutory norms. In practice, the directive is prepared by the Minister of Justice with the opinion of the National Council of the Judiciary.[104] The salary levels of judges of equally ranking courts differ only according to the length of employment and the functions performed.

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[101] Polish comments of January 2002.
[102] Oral statement (Ministry of Justice representatives) during expert mission 11-15/03/02.
[103] Comments on the Inception Report by the EC Delegation, 2.
[104] OSI Report 2001, Judicial Independence in Poland (pdf version), 334.

In 2001, the base amount has been set at 1,303 zl.[105] The 2001 indexes are as follows: The base amount is multiplied by 4.4 for appellate court judges, by 3.6 for regional court judges and by 3.1 for district court judges.[106] The basic monthly salary of an appellate court judge was about Eur 1860.[107]

The additional function benefits (functional allowances) are also determined by presidential directive. The highest of them are awarded to court presidents, e.g. between 0.8 and 1.1. for the president of an appellate or regional court. In determining the exact amount the executive enjoys discretionary powers.[108]

As compared with the other branches of State power, judges' salaries vary the widest due to the different levels of judgeships. While judges of the lowest rank earn less than representatives of the legislative or executive branches, the salary of a judge of the Constitutional Tribunal is equivalent to that of the marshal (speaker), and thus higher than that of an ordinary member of Parliament.[109]
On the basis of Article 178.2 of the Constitution stating that judges shall be granted remuneration consistent with the dignity of their office and the scope of their duties, controversies about proper remuneration have occurred in the course of which judges have lodged individual pay claims. A regional court also issued a judgement arguing that ordinary courts are not bound by a decision of the Constitutional Tribunal regarding the presidential directives, as this would violate the principle of judicial independence.[110]

A judge's salary may not be decreased, with the exception of a disciplinary court suspending a judge for the duration of penal or disciplinary proceedings against him.[111]

Judges do not receive assistance from their provincial governments to cover housing needs but, like prosecutors, they are entitled to preferentially taxed loans.[112]

A retired judge receives a pension equal to 75 % of his most recent remuneration while in service. This entitlement encompasses family members as well.[113]

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[105] 1,211 zl. was approximately Eur 350; OSI Report 2001, Judicial Independence in Poland (pdf version), 334.
[106] The latest presidential directive of 16 April 2001 raised the multiplication factor for judges at all levels by 0.3.
[107] OSI Report 2001, Judicial Independence in Poland (pdf version), 334.
[108] OSI Report 2001, Judicial Independence in Poland (pdf version), 334.
[109] Polish comments of January 2002, referring to the OSI Report, 13.
[110] OSI Report 2001, Judicial Independence in Poland (pdf version), 334.
[111] Polish comments of January 2002, referring to the OSI Report, 13.
[112] Polish comments of January 2002, referring to the OSI Report, 13.
[113] Polish comments of January 2002, referring to the OSI Report, 13.

V.6 Rules of conduct

There is no written code of ethics for judges. Judges take an oath implying ethical standards when appointed.[114]
Disciplinary proceedings against judges may take place in the case of professional offences, flagrant contempt of legal regulations, or undermining the dignity of the office. Also, a judge may not be tried by a penal or administrative court without the consent of the relevant disciplinary court.[115]

According to the new CCCJ, appellate courts act as disciplinary courts of first instance and the Supreme Court as second instance disciplinary court. Panels for individual cases are composed of three judges selected by drawing lots, from among all of the judges of a court of appeal.[116] They adjudicate cases of judges of other court districts, not of the same.[117]

Disciplinary proceedings are instituted by the disciplinary spokesman, a judge elected by the NCJ, or by one of his 51 deputies from the regional and appellate courts, elected by the colleges of the respective courts. The disciplinary spokesman is bound by the instructions of an organ entitled to request the institution of disciplinary proceedings, i.e. the Minister of Justice, the president of an appellate court or regional court, or the college of such a court. The Minister may not institute disciplinary proceedings independently, but can only submit a request to that effect to the disciplinary spokesman. The disciplinary court reviews the motion by the disciplinary spokesman and may decide to institute disciplinary proceedings.[118]

Until the entry into force of the CCCJ, disciplinary proceedings took place behind closed doors but the new rules provide that they are open to the public.[119] The defendant may designate a defense counsel from amongst the judges. Both the defendant and the disciplinary spokesman have the right to appeal against the verdict of a disciplinary court of first instance. The disciplinary court may decide to make its ruling public after it becomes legally binding.
Disciplinary sanctions include admonition, reprimand, removal from a functional post, transfer to another post, and expulsion from judicial service. An extraordinary review of legally binding disciplinary rulings may be instituted by the NCJ, the First President of

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[114] OSI Report 2001, Judicial Independence in Poland (pdf version), 344.
[115] According to the report of the European Commission, JHA assessment mission report in Poland 26 Feb-2 March 2001, Draft No. 2 SM (3 May 2001), 27, this is a very protective mechanism which may affect public confidence in judges and encourage those few abusing this very broad concept of immunity.
[116] Previously, panels were elected for four-year terms (by general assemblies of appellate court judges and representatives of regional court judges). The former provisions still apply to proceedings initiated prior to the entry into force of the new CCCJ.
[117] Oral statement (president Court of Appeal Warsaw) during expert mission 11-15/03/02.
[118] Polish comments of January 2002, referring to the OSI Report, 19.
[119] Cf. Twinning Report (Huitième rapport trimestriel POL/IB/JHA/01 (1 April-30 June 2001), 3.

the Supreme Court and the Minister of Justice. The relevant provisions of the Code of Penal Procedure are applied to disciplinary proceedings.[120]

CHAPTER VI

Training and Retraining of judges

At present there is not a national judicial training center. Training of judges is conducted in the courts; 36 local centers, situated in 23 courts and 13 public prosecution offices, provide training for legal trainees (aplikant).[121] This system is generally considered to be very costly compared to a would-be centralized system of initial and continued training.

Judges continue to need additional training and information. One Polish judge reportedly said that the biggest problem for the courts is 'tracking the changes in the law. New regulations come out, but the judges do not even have the text of the law.' New laws are initially implemented and interpreted at the lowest levels of the courts, where the judges are least prepared to handle them. One Polish lawyer reportedly noted that junior judges are appointed without practical experience, after only law school and an apprenticeship, and so they 'do not understand the underlying business considerations'. Whereas these are isolated and subjective statements, the importance of training is generally acknowledged, in particular with a view to the substantial legislative changes in civil, commercial and penal law (including the procedural codes) that the legal system has experienced in recent years. In order to prevent a rupture between the state of the positive law and that of the society, the training of those who are to control the application of law is very important.[122] The necessity of the training and retraining of the judiciary is not restricted to judges, but relates also to administrative and legal staff.

European law is an obligatory subject of training for legal trainees[123], although there is still a need for deepening and widening professional knowledge in this field. Judicial training should include skills training: how to write opinions, interacting with the public and the press, and judicial independence.

The main problem of the current training system is that the decentralized structure of magistrates' training may harm the homogeneity of knowledge and skills of the trainees.[124] It may thus result in diverse levels of quality of the administration of justice throughout Poland. In order to counter such tendencies, the Ministry of Justice centrally

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[120] Polish comments of January 2002, referring to the OSI Report, 19.
[121] Polish comments of January 2002.
[122] European Commission, JHA assessment mission report in Poland 26 Feb-2 March 2001, Draft No. 2 SM (3 May 2001), 24.
[123] Polish comments of January 2002.
[124] European Commission, JHA assessment mission report in Poland 26 Feb-2 March 2001, Draft No. 2 SM (3 May 2001), 25.

drafts the national training plan on the subjects and scheduling of training in the courts and the examination tests to be passed by trainee judges (see above chapter 5 II).[125] The Ministry organizes regular meetings with trainer-judges and provides information and materials to them, but they do not undergo special (central) training.[126] As to the contents of training, in addition to proposals put forward by courts, the NCJ also provides its opinion, though it plays no major role in training issues.[127]

There have been plans to create a national school for judicial personnel which should have been established in the beginning of 2002 but this could not be implemented due to a lack of financial means.[128] The concept and a draft bill for the establishment of the school shall be finalized by the end of 2002, although there will not be sufficient funds for creating the school in the foreseeable future. Current plans thus focus on centralizing training through a more precise division of local training courses.[129]

The responsibility for permanent training is divided between the Ministry of Justice and the courts. In this field, the focus is on training a limited group of trainers (judges and prosecutors) to transmit their knowledge in local centers. [130]
Training programs for judges are organized by the Department of Personnel and Training of the Ministry of Justice and by judges' associations.[131] There are several bilateral programs under which seminars, conferences (both central and regional) and study visits, devoted to European law and legal cooperation in civil and criminal matters, are organized.[132] Also appellate courts and regional courts organize training programs. In 1999, under the Phare 97 program, seventeen training programs were conducted, and in 2000 nine programs have been launched under the Phare 98 program.[133] The late delivery of Phare funds is reported to be a recurrent problem. There has been a lag time of 2-3 years in EU Phare funding.[134] Thus, in 2000, training programs were carried out under Phare 98 assistance.

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[125] Oral statement (Ministry of Justice representatives) during expert mission 11-15/03/02.
[126] Oral statement (president Court of Appeal Warsaw) during expert mission 11-15/03/02.
[127] Oral statement (Ministry of Justice representatives) during expert mission 11-15/03/02.
[128] Oral statement (Ministry of Justice representatives) during expert mission 11-15/03/02
[129] Oral statement (Ministry of Justice representatives) during expert mission 11-15/03/02
[130] Oral statement (Ministry of Justice representatives) during expert mission 11-15/03/02.
[131] Polish comments of January 2002, referring to the OSI Report, 11.
[132] Polish comments of January 2002.
[133] Polish comments of January 2002, referring to the OSI Report, 11.
[134] Oral statement (Ministry of Justice representatives) during expert mission 11-15/03/02.

MODULE 2

STATUS AND ROLE OF THE PUBLIC PROSECUTOR

CHAPTER I

Overview of the public prosecution in Poland

In Poland, in the early eighties already, a profound reorganization of the prosecution service was undertaken.

Public prosecutors (or state attorneys[135]) are hierarchically subordinated to the Minister of Justice. The Minister of Justice performs the function of the highest public prosecutor, the Prosecutor General[136], including the right to indirectly give orders to lower ranked public prosecutors (see below chapter III.1) These orders do not only concern the general criminal policy, but also individual criminal cases.

The public prosecutor's service is charged with the responsibility to guard the observance of the rule of law and to enforce the prosecution of crimes.
Public prosecutors also perform other functions (see also chapter III.2), namely, inter alia, they institute civil law actions in criminal cases (i.e. civil actions decided upon within the framework of criminal proceedings) and may join civil cases to act as auxiliary claimants. Their other duties entail inter alia the following:
Appealing to the court against administrative decisions which violate the law.
Coordinating prosecution by other state authorities. In principle, prosecutors have the monopoly to prosecute. A limited number of minor cases may be transferred to e.g. customs or forest authorities, however to be taken up again by prosecutors if it comes to a court trial.[137]

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[135] Terminologically, the term 'state attorney' might more adequately reflect the Polish concept comprising some useful and legitimate public functions beyond' public prosecution' in the strict sense of the word; M. Jankowski, Institute of Justice, Comments to the Desk Research, 1. For practical reasons, however, the term 'public prosecutor' will be used in this text.

[136] M. Jankowski, Institute of Justice, Comments to the Desk Research, 2.

[137] Oral statement (National Prosecutor's Office representatives and Warsaw prosecutors) during expert mission 11-15/03/02.

The Public Prosecution service consists of the following units. The National Public Prosecutor's office headed by the National Public Prosecutor, being one of the three deputies of the Minister of Justice. The National Public Prosecutor's office is a separate unit, subordinated to the Prosecutor General's office.[138]
Subordinated to the national level are at the regional level in a hierarchical relation to each other public prosecutor's offices at the levels of the courts of appeal (10), the level of the regional courts (courts okregowa, formerly the courts voivoda) (42[139]) and district courts (323). Prosecutor's offices are independent from the courts, the structure reflects their vertical organization.[140]

Within the above mentioned National Public Prosecutor's office in the Ministry of Justice, there is a specialized Bureau of Organized Crime. Also at the level of the regional public prosecutor's departments, there are such specialized divisions.

Military prosecutor's offices are attached to the military courts. There are 2 regional military prosecutor's offices and 16 garrison military prosecutor's offices.[141] Military prosecutors are subordinated to the Prosecutor General. Military prosecutors are all magistrates.[142]

CHAPTER II

State of the legislation

With regard to the state of signature, ratification and implementation of conventions which are part of the Council of Europe standards, Poland has signed, ratified and implemented:
- the European Convention on mutual assistance in criminal matters
- the Europe Convention on extradition
- the European Convention on the transfer of sentenced persons.

Poland has not signed, ratified and implemented:
- the European Convention on the transfer of proceedings in criminal matters
- the European Convention on the international validity of criminal judgements.

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[138] M. Jankowski, Institute of Justice, Comments to the Desk Research, 3.
[139] From 1 April 2002.
[140] M. Jankowski, Institute of Justice, Comments to the Desk Research, 3.
[141] Polish comments of January 2002.
[142] Oral statement (National Prosecutor's Office representatives and Warsaw prosecutors) during expert mission 11-15/03/02.

CHAPTER III

Position of the public prosecutor

III.1 Position of the public prosecutor

Relationship with the executive power

According to a historical tradition, the Minister of Justice, who is a member of the government and may also represent a political party, performs the function of the highest public prosecutor with full possibilities to exercise hierarchical powers. The Minister may give orders on criminal policy and also in individual cases. He cannot take final decisions but can give instructions to prosecutors[143], within the hierarchical structure provided by the law. His authority relates also to staffing, finances and administration.

The difference between the Minister 'being' and 'functioning as' Prosecutor General is that the Minister is not a career prosecutor.[144] The Minister's deputy, the National Prosecutor, is a professional prosecutor. The National Prosecutor's Office is part of the Ministry and superior to prosecutor's offices. It has been created in order to address concerns relating to the political position of the Minister and serves as an intermediary link, to separate the political and purely professional functions.[145]
In practice, the degree to which the Minister ensures the necessary distance between political and prosecutorial tasks depends also on his personality.[146]

The status of prosecutors is constituted as impartial and independent[147], with the restriction however of hierarchical subordination[148], i.e. binding instructions issued by superiors. Orders shall not concern the way of concluding preparatory proceedings or court proceedings, i.e. the final motion[149], but they can concern individual cases and

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143 Oral statement (National Prosecutor's Office representatives and Warsaw prosecutors) during expert mission 11-15/03/02.
144 Oral statement (National Prosecutor's Office representatives and Warsaw prosecutors) during expert mission 11-15/03/02.
145 M. Jankowski, Institute of Justice, Comments to the Desk Research, 1.
146 Oral statement (National Prosecutor's Office representatives and Warsaw prosecutors) during expert mission 11-15/03/02.
147 Terminologically, there are two different words in Polish with the notion of 'independence', one largely associated with judicial independence, another one which is used for public prosecutors, implying a limited independence due to their different role; M. Jankowski, Institute of Justice, Comments to the Desk Research, 1.
148 Article 8 paragraph l of the Act of 20 June 1985 on public prosecutor's office (Official Journal of 1994 No. 19, item 70 as amended).
149 M. Jankowski, Institute of Justice, Comments to the Desk Research, 3.

superiors may prescribe to start or stop investigations.[150] However, orders can only be issued by direct superiors, and have to be in writing.[151]
Public prosecutors are obliged to obey such orders and instructions, or they can object to orders, or request to be excluded from certain measures or cases. A final decision is taken by the immediate superior of the prosecutor who gave the order. The procedure is formalized and transparent.[152]

The Minister of Justice is a member of this hierarchy, being the highest ranked public prosecutor. It is thus possible that orders come from high above going down the hierarchical chain to the individual prosecutor. The Minister cannot give an order to stop investigations, but a direct superior may give such an order. Accordingly, this way also an order to stop investigations might be passed down the chain to the individual prosecutor.[153]

The public prosecutor does not have a monopoly to prosecute. Also other state organs have this power, such as the State Security Bureau (Urz¹d Ochrony Pañstwa)[154], border guard and organs of fiscal control (see also above chapter 1). This concerns cases of minor offences and fiscal issues.[155] Private persons also do have this right in certain less serious criminal offences.

Relationship with the legislative power

The highest public prosecutor, i.e. the Minister of Justice has, as a member of the government, the same relation with the legislative as all cabinet ministers.
The prosecution service provides opinions on draft bills to parliament.

Relationship with the judicial power

The public prosecution service is a separate power from the judiciary.
The public prosecutor initiates court proceedings by lodging the bill of indictment. The court may in some instances instruct the public prosecutor, when the court returns the files for supplementation.

Relationship with the police

There are no organic links with the police.
Preparatory proceedings may be conducted in the form of police inquiry supervised by the public prosecutor. The police are subordinated to the public prosecutor in

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150 Oral statement (National Prosecutor's Office representatives and Warsaw prosecutors) during expert mission 11-15/03/02.
151 Polish comments of January 2002.
152 M. Jankowski, Institute of Justice, Comments to the Desk Research, 3.
153 Oral statement (National Prosecutor's Office representatives and Warsaw prosecutors) during expert mission 11-15/03/02.
154 Polish comments of January 2002.
155 Comments on the Inception Report by the EC Delegation, 2.

conducting investigations. Usually, prosecutors give instructions and advice, supervise their execution and sometimes participate during the investigation carried out by the police. In urgent cases, the police are authorized to act beforehand and inform the prosecutor later on.[156] Some investigative measures are reserved for prosecutors[157] or, in serious cases, investigations will be carried out by the public prosecutor in person.

III.2 The office of the public prosecutor

In criminal law

The public prosecutor and the police follow the principle of legality. Yet, some aspects of the use of the principle of opportunity are possible.
Art. 1 of the Penal Code states that a prohibited act the social consequences of which are insignificant shall not constitute an offence.[158] This is not a specific power of prosecutors, but an element of the definition of crime; a crime in the formal sense is not regarded as a crime if its weight is negligible[159]. Not only prosecutors, but also courts or defendants must or can have recourse to this provision.[160] The instituting of and the refusal to institute preparatory proceedings are regulated by art. 305-307 of the Criminal Procedure Code.[161]

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156 Oral statement (National Prosecutor's Office representatives and Warsaw prosecutors) during expert mission 11-15/03/02.

157 Oral statement (National Prosecutor's Office representatives and Warsaw prosecutors) during expert mission 11-15/03/02.

158 Polish comments of January 2002.

159 E.g. theft of 1 cent.

160 M. Jankowski, Institute of Justice, Comments to the Desk Research, 7, 8.

161 Article 305. § 1. Having received notice of an offence, the agency authorised to conduct the preparatory proceedings shall be obligated to issue immediately, an order on instituting or the refusal to institute an investigation or inquiry.
§ 2. An order on the institution, refusal to institute or on discontinuance of an investigation shall be issued by the state prosecutor.
§ 3. An order on the institution of an inquiry shall be issued by the Police who then immediately forward a copy of the order to the state prosecutor. An order on refusal to institute or on discontinuance shall be issued by the state prosecutor or the Police; the order issued by the Police shall be approved by the state prosecutor.
§ 4. The person, the State, local government or community institution which submitted a notice of an offence, and the injured disclosed shall be notified of the institution, refusal to institute or on discontinuance of investigation or inquiry. The suspect shall also be notified of the discontinuance – along with a notification of their rights.
Article 306. § 1. The injured person and the institution specified in Art. 305 § 4 shall have the right to bring interlocutory appeals against an order refusing to institute an investigation or inquiry, and the parties shall have such right with respect to the order on discontinuance. Those having right to bring an interlocutory appeal shall have the right to inspect the files of the case.
§ 2. The interlocutory appeal shall be brought to a state prosecutor superior to the state prosecutor who has issued or approved the order. If the superior prosecutor does not grant the appeal it shall be brought to the court.

Prosecutors have 30 days from the moment they receive the information about a crime by damaged persons to decide whether to start investigations.[162] If not, the damaged person has to be informed and may complain.[163] The damaged person may also complain if the prosecution service remains inactive.

Prosecutors do not have the possibility to take a decision on the conditional discontinuation of criminal proceedings. Since a recent change of the law, only courts have the power to conditionally discontinue criminal proceedings, also at the pre-trial stage,[164] according to art. 66-67.[165] Prosecutors can only decide that a case be

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§ 3. A person or institution which submitted a notice of offence and who has not been notified within 6 weeks about the institution or refusal to institute the investigation or inquiry shall have a right to bring an interlocutory appeal to the superior state prosecutor or one authorised to supervise the agency to which the notice has been submitted.
Article 307. § 1. If necessary, it may be demanded that the data contained in the notice of the offence committed shall be completed within a specified time-limit, or a verification of the facts in the matter may be ordered. In that case the order instituting the investigation or inquiry, or refusing the institution should be issued within 30 days of the day on which the notice was received.
§ 2. In the verifying proceedings no evidence from an expert opinion or actions requiring records are undertaken, except for taking an oral notice of the offence or a motion for prosecution and the action specified in § 3.
§ 3. The data contained in the notice of offence may also be completed by examining the notifying person in the capacity of a witness.
§ 4. When actions referred to in § 3 are needed, the Police notifies the state prosecutor about undertaking the same.
§ 5. Provision of § 2 shall apply accordingly, in the event that a prosecution agency undertakes the verification of their own information leading them to suppose that an offence has been committed.

[162] Oral statement (National Prosecutor's Office representatives and Warsaw prosecutors) during expert mission 11-15/03/02.

[163] Either with the prosecution service, if the information of the crime was lodged with the police, or with the next higher prosecutor's office, if it was lodged with the prosecution service.

[164] M. Jankowski, Institute of Justice, Comments to the Desk Research, 7.

[165] Article 66. § 1. The court may conditionally discontinue the criminal proceedings if the guilt and social consequences of the act are not significant, the circumstances of its commission do not raise doubts, and the attitude of the perpetrator not previously penalised for an intentional offence, his personal characteristics and his way of life to date provide reasonable grounds for the assumption that even in the event of the discontinuance of the proceedings, he will observe the legal order and particularly that he will not commit an offence.
§ 2. Conditional discontinuance shall not be applied to the perpetrator of an offence for which the statutory penalty exceeds 3 years deprivation of liberty.
§ 3. In the event that the injured party has been reconciled with the perpetrator, the perpetrator has redressed the damage or the injured party and the perpetrator have agreed on the method of redressing the damage, the conditional discontinuance may be applied to a perpetrator of an offence for which the statutory penalty does not exceed 5 years deprivation of liberty.
Article 67. § 1. The conditional discontinuance shall be made for the term of probation

discontinued unconditionally. The preconditions for unconditional discontinuation are listed in the law, e.g. if the investigations have not resulted in sufficient evidence. The possibility of unconditional discontinuation is at the disposal of the prosecutor as long as a case is within his/her realm, also if the accused person is in detention.[166] But if a prosecutor wishes to settle a case by ways of payment of a compensation etc., he has to propose this to the court, which will take the final decision.[167]
As appeal is possible in case of discontinuation (first to the prosecutor's superior, then to the court), this is not called 'principle of opportunity' in Polish terminology.[168]

In administrative and civil law

The Polish public prosecutor has the right to appeal to the court against administrative decisions, which are contrary to the law.
Prosecutors may demand the body of public administration to institute actions aimed at remedying a situation contrary to the law, on grounds limited to points of law and not to the way the matter is regulated. They may take part in any administrative proceedings to guard the observance of the law in the process of issuing the administrative decision; challenge the final decision if, according to administrative law, the decision may be declared null or repealed, or the proceedings may be instituted anew etc. These measures have to precede the initiation of administrative court proceedings.[169]

In civil law, art. 7 of the Civil Procedure Code provides that prosecutors 'may request the institutions of the proceedings in any matter, as well as to join and participate in any pending proceedings, if – according to him – the protection of the rule of law, of citizens' rights, or the public interest so requires'. More detailed rules are contained in art. 55-60 of the code. Similar powers, however restricted to a specific scope of activities/ competencies, are vested in citizens' organisations (alimony, consumer protection,

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which is between one and two years, which shall run from the date the judgement becomes valid and final.
§ 2. In discontinuing conditionally the criminal proceedings, the court may, in the probation period, place the perpetrator under the supervision of a probation officer or a person of public trust, association, or community organisation whose activities include educational care, preventing the demoralisation of or providing assistance to sentenced persons.
§ 3. In discontinuing conditionally the criminal proceedings, the court shall require the perpetrator to redress in whole or in part the damage, and may impose on him the obligation specified in Art. 72 § 1 sections 1-3 or 5, and also adjudicate a pecuniary consideration as specified in Art. 39 section 7, and an interdiction on driving a vehicle as specified in Art. 39 section 3, for a period of up to 2 years.
§ 4. The provision of Art. 74 shall be applied accordingly.

166 Oral statement (National Prosecutor's Office representatives and Warsaw prosecutors) during expert mission 11-15/03/02.

167 Oral statement (National Prosecutor's Office representatives and Warsaw prosecutors) during expert mission 11-15/03/02.

168 Oral statement (National Prosecutor's Office representatives and Warsaw prosecutors) during expert mission 11-15/03/02.

169 M. Jankowski, Institute of Justice, Comments to the Desk Research, 5.

environmental protection, inventions protection cases), in the State Inspection of Working Conditions and consumer protection advocates.
Decisions are taken by judges, regardless of the participation of prosecutors. Prosecutorial activity in this field is virtually non-existent.[170]

Secondary tasks and supervisory functions

The main task of the public prosecutor in Poland is protecting the rule of law and the prosecution of offences. He conducts and supervises the preparatory proceedings in criminal cases and performs the function of prosecutor at the courts.

This function of a public prosecutor could be defined as follows: public prosecutors are public authorities who, on behalf of society and public interest, ensure the application of the law where the breach of the law carries a criminal sanction, taking into account both the rights of the individual and the necessary effectiveness of the criminal justice system.

Other functions of the Polish public prosecutor are:
- Lodging civil actions in criminal matters and instituting civil proceedings, inter alia in cases concerning the rights of employees and in cases of social insurance when the public prosecutor is of the opinion there is a necessity to protect legality, social interest, social property or civil rights (see above II.2.).
- Undertaking legal means aiming at correct and uniform applying of law in court proceedings, administrative proceedings and other proceedings.
- Exercising supervision over execution of decisions in criminal matters, decisions concerning temporary arrest and other decisions related to the deprivation of liberty. The decisions on temporary custody as such, with the exception of arrest, are taken by courts (see below module III chapter III.2).
- Running research programs in the framework of criminal problems.
- Appealing to the court against administrative decisions which are contrary to the law and participating in court proceedings in such cases (see above II.2.).
- Co-ordination of activities undertaken by competent state agencies responsible for the fight against criminality.
- Co-operation with State agencies and social organizations in the crime prevention field.
- Giving opinions on draft legislation.[171]

International tasks

The European Convention on Mutual Assistance in Criminal matters entered into force in Poland in 1996. With Germany there is a bilateral Protocol from 8 March 1993 providing direct contacts of Polish public prosecutors with their German colleagues. When direct contacts with their colleagues abroad are not provided for, the head of the

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[170] M. Jankowski, Institute of Justice, Comments to the Desk Research, 4, 5.
[171] Opinions on draft laws are also sought from other social actors such as the NCJ, the Bar etc.; M. Jankowski, Institute of Justice, Comments to the Desk Research, 5

public prosecutor's office has to sign the letter of request, which is sent through the office of the Minister of Justice.
By virtue of the Code of Criminal Procedure, only the public prosecutor and court may carry out the actions in the framework of mutual assistance; there is no place for the police.
Prosecutors are also involved in cases of extradition. The Minister of Justice will take the final decision in his/her capacity as a part of the government, following the decisions of a regional court and certain procedural acts of prosecutors.[172]

Ethical code/statute for prosecutors

There is no code of ethics. The law itself contains a number of ethical considerations and requirements such as those for the appointment of prosecutors. Further detailed ethical rules emerge from the decision-making of disciplinary courts.[173]

III.3 The legal status of the public prosecutor

Working conditions

Computerization plans envisage the establishment of a fully integrated computer system connecting the prosecution service, police, courts, detention service, and the Ministry of Justice.[174] A central information system on current inquiries and supervision is considered to be of vital importance to effective prosecution. So far, information is mostly provided in writing, e.g. on request to the police, and computers in sufficient number are still lacking.[175]

Salaries of prosecutors are equal to those of judges (see module 1 chapter V.5). Salaries vary according to the level of prosecutor's offices and the functional allowances, e.g. the multiplication factor is considerably higher for heads of appellate prosecutor's offices or of the National Prosecutor's Office. The National Prosecutor is paid at the level of a Supreme Court justice.[176] Many prosecutors, in particular at the basic level, are of the opinion that there is too much difference in payment between the various levels, and are not satisfied with their salaries.[177]

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172 M. Jankowski, Institute of Justice, Comments to the Desk Research, 8.
173 There is no tradition of using ethical codes in Poland, apart from that of medical doctors. The constitution does not provide for this kind of source of law so an ethical code would not have legal force; M. Jankowski, Institute of Justice, Comments to the Desk Research, 5, 6.
174 Oral statement (Ministry of Justice representatives) during expert mission 11-15/03/02
175 Oral statement (National Prosecutor's Office representatives and Warsaw prosecutors) during expert mission 11-15/03/02.
176 Oral statement (National Prosecutor's Office representatives and Warsaw prosecutors) during expert mission 11-15/03/02.
177 Oral statement (National Prosecutor's Office representatives and Warsaw prosecutors) during expert mission 11-15/03/02.

So-called 'awards' for prosecutors from the awards fund of the prosecutor's office (money or assets) were paid in the past, but have been abolished by the end of 2001.[178] Prosecutors' self-governing bodies advise on professional issues including salaries, comparable to the National Council of the Judiciary as far as judges are concerned. But in contrast to the advice of judges' self-governing bodies, which are almost binding on the Ministry of Justice, prosecutors' self-governing bodies can only express opinions.[179] Retired prosecutors receive a pension of 75% of the remuneration of the last position.

Independence and impartiality within the organization of the public prosecution service, centralized and decentralized.

See also above under 'Relationship with the executive power'(III.1).
A public prosecutor may receive orders how to collect evidence, orders related to the direction of the investigation, orders to prosecute or not to prosecute, or orders related to the modalities of the prosecution. Because of the principle of legality, orders not to prosecute are practically impossible.[180]

The head of the public prosecution service is ex lege the Minister of Justice. He directs the public prosecution service, in person or through his deputies, one of who is the National Public Prosecutor heading the National Public Prosecutor's Office.
The Minister of Justice issues guidelines and instructions binding upon the public prosecutors. He may order his/her subordinate public prosecutors to undertake all acts within the scope of operation of the public prosecution service.

The public prosecutor of the district court level is competent for all crimes but the public prosecutor at the regional level is entitled to take over proceedings. The district prosecutor's office has a large inflow of cases and less experience than the regional office.[181] The takeover is not at the full discretion of the regional prosecutor. Usually, this concerns serious offenses and complex cases. Typically, cases related to money laundering, to a vital interest of the state or its security, and cases involving violations of the law by high-ranked officials, are being taken over.[182]

Appointment, promotion or downgrading of prosecutors

The Minister of Justice is appointed by parliament at the proposition made by the President. The deputies of the Minister of Justice are appointed by the Prime Minister

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178 Oral statement (National Prosecutor's Office representatives and Warsaw prosecutors) during expert mission 11-15/03/02.
179 Oral statement (National Prosecutor's Office representatives and Warsaw prosecutors) during expert mission 11-15/03/02.
180 Oral statement (National Prosecutor's Office representatives and Warsaw prosecutors) during expert mission 11-15/03/02.
181 Oral statement (National Prosecutor's Office representatives and Warsaw prosecutors) during expert mission 11-15/03/02.
182 Oral statement (National Prosecutor's Office representatives and Warsaw prosecutors) during expert mission 11-15/03/02.

upon the motion of the Minister of Justice. The Minister of Justice appoints the other public prosecutors. On the motion of the Minister of Defense, the Minister of Justice also appoints the public prosecutors of military units.

Transfer of prosecutors to another post (higher or lower) depends on his/her consent, apart from transfer as a disciplinary punishment and (re-)-organizational reasons.[183] Promotion to higher positions, i.e. head of a prosecution office, is in the authority of the Prosecutor General. A head of office is first appointed for 6 months, after which he/she will be evaluated by the assembly of prosecutors. The assembly is an elected body representing all public prosecutors. The assembly forwards its opinion to the Prosecutor General who takes the final decision; the advice of the assembly is not binding (and in fact not always followed).[184] Promotion is not by ways of competition; selection is being taken care of by the direct superior. There is no public information on vacancies.[185]

Possibility of dismissal

Public prosecutors enjoy stability in office. A public prosecutor may be dismissed by the Minister of Justice only in keeping with the procedure prescribed by law and on grounds prescribed in the law.
Public prosecutors may be dismissed by the Prosecutor General following two disciplinary court punishments and continuing manifest violations of the law or the dignity of public prosecutors, and after having heard both the person concerned and the prosecutors' self-governing body. Also disciplinary and ordinary court judgements may lead to dismissal.[186]

Possibility of exercising fundamental freedoms and rights

Public prosecutors are not allowed to be a member of political parties, yet the highest public prosecutor, i.e. the Minister of Justice is a politician and a member of the government.
Prosecutors are not allowed to perform political functions and be e.g. members of parliament. If prosecutors run for the position of a member of a legislative (or local government) body, they have to take leave without pay.[187]

Public prosecutors are allowed to join professional organizations.

The public prosecutor may be party of civil litigation. In those cases he has to inform his superior.

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183 M. Jankowski, Institute of Justice, Comments to the Desk Research, 7.
184 Oral statement (National Prosecutor's Office representatives and Warsaw prosecutors) during expert mission 11-15/03/02.
185 The Minister of Justice is said to work on draft legislation to make the rules for promotion more transparent; oral statement (National Prosecutor's Office representatives and Warsaw prosecutors) during expert mission 11-15/03/02.
186 M. Jankowski, Institute of Justice, Comments to the Desk Research, 6.
187 M. Jankowski, Institute of Justice, Comments to the Desk Research, 4.

Public prosecutors may not undertake additional employment (save as researcher or scholar), be a member of a company's management, hold more than 10% of a company's capital stock, conduct business etc. They have to provide yearly declarations on their assets, as well as at the beginning and end of service.[188]

Safety

Security measures can be arranged for on an individual basis, but there is no statutory regulation on safety issues.[189] Personal protection can be provided in cooperation with the police, e.g. in the case of threats by organized crime. Funds are not sufficient to allow for adequate protection; prosecutors can receive physical protection but it is not possible to finance protection of family members as well. If prosecutors take such initiatives themselves and incur expenses for the protection of their families, they are not compensated.[190]

Disciplinary proceedings

A public prosecutor enjoys 'formal immunity', which in comparison with substantial immunity (absolute and permanent) can be repealed.[191] This immunity means that in order to be brought to criminal justice or administrative criminal justice[192], consent of the disciplinary court is necessary. In order to be arrested or detained, the prosecutor's superior in the disciplinary sense has to consent[193].

Following disciplinary proceedings, a prosecutor may be held accountable for offences against his office. He may be disciplined for abusing the freedom of expression only while performing official duties.
Prosecutors are tried by disciplinary courts.[194] Members of the disciplinary courts are elected by the prosecutors' assembly (a self-governing body consisting of prosecutors of the appellate prosecutors' office and deputies of subordinated provincial and district offices).[195] Superiors in disciplinary matters may request the initiation of disciplinary

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188 M. Jankowski, Institute of Justice, Comments to the Desk Research, 4.
189 Oral statement (National Prosecutor's Office representatives and Warsaw prosecutors) during expert mission 11-15/03/02.
190 Oral statement (National Prosecutor's Office representatives and Warsaw prosecutors) during expert mission 11-15/03/02.
191 Polish comments of January 2002.
192 Polish law distinguishes between criminal and administrative criminal offences (misdemeanors or petty offences, e.g. traffic violations). Though the boards which dealt with the latter have been abolished and their powers taken over by courts, the distinction is still important since the sentence for a petty offence does not lead to criminal record; M. Jankowski, Institute of Justice, Comments to the Desk Research, 7.
193 Except in the case of in flagranti apprehension while committing a criminal offence, not: an administrative criminal offence; M. Jankowski, Institute of Justice, Comments to the Desk Research, 7.
194 M. Jankowski, Institute of Justice, Comments to the Desk Research, 7.
195 M. Jankowski, Institute of Justice, Comments to the Desk Research, 7.

proceedings against a prosecutor, then the disciplinary commissioner files a motion to open such proceedings. A superior in disciplinary matters cannot adjudicate the case of a prosecutor who is subordinated to him.[196]

Disciplinary punishments are:
1. admonition
2. reprimand
3. removal from the function
4. removal to another place of service
5. removal from the post.

III.4 Recruitment and education

Selection of public prosecutors

Conditions to become a public prosecutor are (similar as the conditions to become a judge):
- Polish citizenship
- Unlimited civil and citizens rights
- Unimpeachable personality (character)
- Diploma from the law faculty
- Prosecutor apprenticeship ('praktikant')
- Have passed the prosecutor's examination after the apprenticeship
- At least[197] one year time of assessor in public prosecutor's office
- Age of at least 26 years

Training

The training of prosecutors (like that of judges) is arranged in a decentralized way, not in a national school for the judiciary. The chief public prosecutors at the courts of appeal are responsible for initial and for permanent training of the public prosecutors within their jurisdiction.

Initial training is based on the concept of apprenticeship. The trainees work at prosecutor's offices of different tiers (most time at the basic level). Additionally, they attend lectures and training sessions. The training period ends with an examination.[198] Continuous training encompasses inter alia seminars and conferences for judges and public prosecutors organized by the Ministry of Justice, which also cooperates with the French (ENM) and the Dutch school for the judiciary (SSR) and other partners on a bilateral or international basis. There are also in-service training projects (lectures and

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[196] Polish comments of January 2002.
[197] Polish comments of January 2002.
[198] M. Jankowski, Institute of Justice, Comments to the Desk Research, 7.

seminars devoted to e.g. European law, stock market mechanisms, money laundering practices etc.).[199]

For details, in particular concerns that the decentralization might lead to diverse qualities of training, and the role of the Ministry of Justice in ensuring the homogeneity of training levels, see module 1 chapter VI.

[199] M. Jankowski, Institute of Justice, Comments to the Desk Research, 7.

MODULE 3

COURT PROCEDURES AND THE EXECUTION OF JUDGEMENTS

CHAPTER I

Overview of the court procedures and execution of judgements

The report of the Council of Europe: Judicial organization in Europe – Poland, 2000, gives an overview of Poland's judiciary and the court system. As for the execution of judgements, it contains a brief introduction to the role and function of court enforcement officers.

CHAPTER II

State of the legislation

The independence of the legal system in Poland is guaranteed in the Constitution and safeguarded by the National Council of the Judiciary. The Constitution also prescribes the various kinds of courts: the Supreme Court, the common courts, administrative courts and military courts. All court procedures should have at least two stages.[200]

Poland's national rules allow for transfer of criminal proceedings in criminal matters without a treaty basis, and co-operation in such a form is being carried out with the Member States of the European Union. The amendments to the criminal codifications which have been prepared by the Ministry of Justice stipulate that it will be possible to enforce in Poland a number of penalties and measures adjudicated abroad, including deprivation of liberty, fine, prohibition to conduct a specific activity or hold specific positions, ban on driving motor vehicles, and confiscation of the proceeds from the crime. Taking apart the question of enforcing penalties adjudicated abroad, those

[200] As to the reform of the administrative court system, see below chapter III.3.

penalties have existed in the Criminal Code before.[201] In drafting those provisions, the relevant 'acquis communautaire' has been taken into account and it has been ensured that their structure is ready for possible future expanding on other categories of penalties and criminal measures.

CHAPTER III

State of affairs in practice

III.1 Access to Courts

Efficiency of the court system and regional accessibility

One reform project of the Polish government deals with the setting up of a lower level of local courts for the purpose of reducing delays and of bringing justice closer to citizens in the case of small disputes.
Changes in the sphere of the organizational structure of civil courts are aimed at making it more rational – easier to manage, transparent and accessible to citizens. The changes in question presuppose the reduction in size of the largest entities through their division into smaller ones or through the transfer to other units of part of the tasks with which they are charged, and through the closing down of the smallest units, whose further functioning is not economically viable. In this manner, a structure is to emerge, which at all levels would be comprised of entities of a comparable, medium size and of identical spheres of competence. A new and very important element in this structure is the creation at its lowest level, at the level of district courts, of a dense network of easily accessible so-called 'borough divisions'. These divisions are established to examine minor civil and criminal cases using a simplified procedure (see module 1 chapter II).
As for administrative review, there has been only one instance so far, the High Administrative Court. Its main office is in Warsaw, but it also has branch offices in the main big cities (see below chapter III.3).

Intensive training of judges is being conducted, both centrally and in individual court districts. The subject matter of such training is the new legislation, as well as questions which present the most problems in judicial practice.

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[201] It enumerates the following penalties: fine, restriction of liberty, deprivation of liberty, deprivation of liberty for 25 years, deprivation of liberty for life; and penal measures: deprivation of public rights, interdiction preventing the occupation of specific posts, the exercise of specific professions or to engage in specific economic activities, interdiction on driving vehicles, forfeiture of proceeds, obligation to redress the damage, supplementary payment to the injured or for a public purpose, pecuniary consideration, making the sentence publicly known; Polish comments of January 2002.

There are possibilities for specialization of judges. To become a judge, several years of training and experience are required. Candidates have to complete 3 years training[202], and then they may start to work as court assessor. During this period, specialization in one or more fields of law is expected. From the assessor position, they can apply for judgeship with the National Council of the Judiciary. The selection is competitive.
Recently, there has been a slight increase in the number of judges (8763) as well as in the 'referendarz' function (a quasi-judicial function in the field of registration proceedings); 603 'referendarzy' have been recruited and are currently employed.[203]
Since the year 2000, the Ministry of Justice has been offering a professional training program for judges to specialize on specific fields.

With regard to the infrastructure of the judiciary, important progress has been made, but many courts still suffer from out-dated working conditions and shortage of auxiliary staff. In some instances, practical, technical and organizational conditions in district courts are poor and call for urgent and thorough improvements. Courts do not have enough rooms for conducting trials and for the deliberation of judges and witnesses. The secretariats are badly equipped because of lacking funds (see module 1 chapter IV.3).
The Ministry of Justice has launched a program to provide the judiciary, and especially the courts with more computers and access to information technologies. A special emphasis lies on the access to legal databases (LEX, Temida).
Although the level of computerization in the Polish justice administration system is not yet satisfactory, the number of computers installed in Polish courts has risen significantly over the last couple of years. In 1998, Polish courts were equipped with 2767 computers (an average of eight per court) and 2062 printers (an average of six per court). In 1999, these figures grew to 4493 computers (an average of twelve per court) and 3469 printers (an average of ten per court). The number of computers was 8627 in 2001 and shall reach 9167 in 2002.[204]

In this context, the development of an overall, fully electronic nation-wide system of court registers (CORS), which is currently under way, must be mentioned. It will integrate information of all registers, such as land and mortgage register, commercial register and so on. Work was also begun on another high priority aspect having to do with the computerization of the justice administration system: The On the Court Information System, which aim is to make the work of other court divisions more efficient through a computerized system dedicated to their needs. At the beginning, this system will be used and verified in the newly created civil and criminal divisions (borough courts). On infrastructure, equipment and computerization, see also above module 1 chapter IV.3.

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[202] Polish comments of January 2002.
[203] Polish comments of January 2002.
[204] Oral statement (Ministry of Justice representatives) during expert mission 11-15/03/02.

Provision of free legal aid (pro bono lawyer schemes as well as issues of the level of court fees)

The backlog and the costs of legal action might deter many citizens from having recourse to the justice system whereas, on the other hand, the number of incoming cases keeps increasing.[205]
Legal aid is provided to natural and legal persons to obtain exemption from court fees and assistance of a lawyer if they are not in the position to bear these costs. The Civil and Criminal Procedure Codes indicate cases in which it is obligatory to provide legal counsel.[206]
The 1997 Constitution enshrines the right to counsel at all stages of criminal proceedings (art. 42 para 2).[207]

In civil cases throughout the region, plaintiffs are usually not required to be represented by counsel, and in fact, the percentage of lawsuits in which parties are assisted by lawyers is relatively low. Advocates are involved in approx. 30-50% of civil cases and more than 50% of criminal cases.[208] In criminal cases, legal counsel is obligatory if the defendant is accused of a crime (from 3 years imprisonment). This is one of the cases in which the court must appoint a counsel ex officio (see below). Also, defendants almost always refer to an advocate if in custody, although not all defendants who are arrested have a lawyer.[209] Ex officio lawyers account for 50-60% of court proceedings with lawyers, depending on the budget of the court.[210]

As compared to a total number of 8000 advocates and 24000 legal advisers[211] in Poland, the number of lawsuits without counsel is quite high. In civil cases, the height of court fees might be a reason (between 8-12% of the value of the case[212], which may be more than the fees to be paid to advocates[213]) so parties may hesitate to enter into further financial

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[205] E.g. the number of incoming cases of the Piotrkow Trybunalski regional court increased by 18.3% in 2001 as compared to 2000; oral statement (president Piotrkow Tryb. regional court) during expert mission 11-15/03/02.

[206] Polish comments of January 2002.

[207] Parker School Journal of East European Law Vol. 5 1998 Nos. 1-2, http://www.pili.org /library/access /jeel1998/poland.htm.

[208] Oral statement (president Piotrkow Tryb. regional court; vice-president Polish Bar Association) during expert mission 11-15/03/02.

[209] Oral statement (president Piotrkow Tryb. regional court; Ministry of Justice representatives) during expert mission 11-15/03/02.

[210] Oral statement (president Piotrkow Tryb. regional court) during expert mission 11-15/03/02.

[211] Members of the legal profession who perform the same functions as advocates, except they may not appear before criminal courts; oral statement (president Piotrkow Tryb. regional court; vice-president Polish Bar Association) during expert mission 11-15/03/02.

[212] The maximum fee is 100.000 zl.; oral statement (Ministry of Justice representatives) during expert mission 11-15/03/02.

[213] Oral statement (vice-president Polish Bar Association) during expert mission 11-15/03/02. However, costs of experts in criminal, labor law and social security cases are not paid by the parties. These costs account for the major part of court expenses in the budget; oral statement (Ministry of Justice representatives) during expert mission 11-15/03/02.

obligations. In general, the height of court and lawyers' fees may be an obstacle for many people as they cannot afford to pay this but may not be 'poor enough', on the other hand, to profit from legal aid schemes. The percentage of cases with advocates is higher in criminal cases, since the fees are usually lower and more ex officio advocates are appointed by courts.[214]
Courts are used to deal with parties who are not represented by lawyers. Parties have to abide to procedural requirements and submit written statements, but they are said to be able to cope with this.[215] Courts play an active role in proceedings and notify the parties of the consequences of actions and omissions. In social, labor and family law cases, parties can come to the court to have their statements written there and make oral applications. Courts even prefer to conduct proceedings without advocates as sometimes the quality of their contributions is doubted and proceedings may be delayed if advocates do not come to hearings.[216]

In criminal cases, courts must appoint an ex officio defense lawyer in certain cases enumerated by law, including the accusation of having committed a serious crime (min. 3 years imprisonment).[217] In the final judgement, courts can decide that court and lawyers' fees are not to be refunded if the defendant is poor and proves that he cannot afford to pay without undermining the support for himself or his family (Article 624 §1 of the Code of Criminal Procedure).[218] This rather restrictive definition of poverty is due to the fact that the funds for legal aid are limited. The legal aid budget is decentralized, every court disposes of such a budget item. However, courts cannot reject justified applications and funds have to be made available in that case.[219]
The courts appoint ex officio advocates from a general list of the Bar. Lawyers are obliged to take over although they may not be specialized in criminal law. This may be one of the reasons behind courts' complaints about advocates missing hearings.[220]

In civil cases, as a rule, parties have to advance the fees of the court when instituting proceedings. There are several possibilities of exemption depending on the category of cases[221] or the status or poverty of the party (both natural and legal persons). The

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214 Oral statement (vice-president Polish Bar Association) during expert mission 11-15/03/02.
215 Oral statement (presidents Warsaw Court of Appeal and Piotrkow Tryb. regional court) during expert mission 11-15/03/02.
216 There is no contempt of court provision, courts can only inform the Bar which may institute disciplinary proceedings; oral statement (presidents Warsaw Court of Appeal and Piotrkow Tryb. regional court) during expert mission 11-15/03/02.
217 If the defendant is a minor, deaf, blind or mute, if there are doubts about his/her mental sanity; or if he/she does not master the Polish language; oral statement (Ministry of Justice representatives) during expert mission 11-15/03/02.
218 Oral statement (Ministry of Justice representatives) during expert mission 11-15/03/02.
219 Oral statement (Ministry of Justice representatives) during expert mission 11-15/03/02.
220 Oral statement (vice-president Polish Bar Association) during expert mission 11-15/03/02.
221 This concerns – inter alia – cases of affiliating children to putative fathers and claims connected therewith, claims of alimony, recognition of contractual provisions as inadmissible (Article 111 §1 items 1, 2, 7 of the Code of Civil Procedure) and claims by employees in the scope of labour law and claims by insured persons in the scope of social

definition of poverty is the same as in criminal proceedings. If a party is exempted from court fees, it may apply for the appointment of an advocate.[222] The court's decision is based on the poverty of the applicant and the complexity of the case, it does not consider the prospects of the case.[223]
Exemption from court costs extends also to execution (Article 771 of the Code of Civil Procedure).[224]
Either party may apply for assigning a lawyer in any case conducted under the Civil Procedure Code, as well as in legal proceedings before the High Administrative Court.[225]

Both in civil and criminal proceedings, the actual height of fees of ex officio lawyers is determined by the court, on the basis of minimum tariffs fixed by presidential regulation. Fees vary, in criminal law, from 250 zl. for most simple cases to more than 1000 zl. for cases at regional courts, and for civil lawsuits from 50 zl. to 6000 zl. depending on the value of the case.[226]

There is no pro bono tradition in the region, and most lawyers are caught up in the day-to-day business of finding paying clients. Law Clinics created by the university of Warsaw and 4 other universities nationwide substitute to some extent for this and provide free legal advice to clients who are not able to afford professional legal counsel.[227]

According to the Code of Civil Procedure, social organizations can make claims on behalf of citizens, in particular with regard to consumer protection (Article 61 §1 of the Code of Civil Procedure) and labor law and social security (Article 462 of the Code of Civil Procedure).[228]
Free legal aid is also provided (mainly for own members) by various associations, for example of war veterans.[229]

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security (Article 463 §1 of the Code of Civil Procedure); Polish comments of January 2002.

222 Oral statement (Ministry of Justice representatives) during expert mission 11-15/03/02.

223 Oral statement (Ministry of Justice representatives) during expert mission 11-15/03/02

224 Oral statement (Ministry of Justice representatives) during expert mission 11-15/03/02

225 Parker School Journal of East European Law Vol. 5 1998 Nos. 1-2, http://www.pili.org/library/access/jeel1998/poland.htm.

226 Oral statement (vice-president Polish Bar Association) during expert mission 11-15/03/02.

227 Oral statement (Warsaw Law Clinic representatives) during expert mission 11-15/03/02.

228 The Ministry of Justice is working on a draft law introducing class action for consumer issues; oral statement (Ministry of Justice representatives) during expert mission 11-15/03/02.

229 Other organisations the statutory activities of which include free legal aid are: Centrum Praw Kobiet (the Centre for Women's Rights), Fundacja 'Dzieci niczyje' (Foundation 'Nobody's children'). Ogólnopolskie Forum na rzecz Ofiar Przestêpstw (National Forum for Crime Victims), Biuro Informacji Obywatelskiej (Office for Civic Information) or Klinika Prawa (Law Clinic) at the University of Warsaw and Cracow; Polish comments of January 2002.

III.2 Fair trial and due process in civil and criminal matters

Compliance with art. 6 § 1 ECHR

Delay of court procedures causes great concern[230] (all the way up to a high rate of complaints before the Human Rights Court at the Council of Europe). In the year 2000, around 400 criminal cases pending before the Warsaw courts were about to be prescribed without any hearings. In Warsaw, in the most simple case, without evidentiary proceedings, (which is an exception since, as a rule, judgements are preceded by evidentiary proceedings[231]) it took 2-3 years to get a judgement. By using the most rudimentary delaying tactics – the defence lawyer claiming sickness on hearing dates – a case could take up to five years.

Meanwhile, the overall efficiency in terms of court delays and effective treatment of judicial cases has increased. The gap between Warsaw, where the situation is however still critical in terms of overburdening of judges and long delays, and the rest of the country has narrowed. The government is aware of the difficulties faced in Warsaw and has unveiled in May 2000 its plan to reorganize the Warsaw judiciary including the introduction of a number of new courts (see module 1, chapter II).

At the time being, the duration of court proceedings is the most alarming in labor and social security issues, due to a major raise in social security cases as a consequence of a recent law amendment.[232] E.g. at the Court of Appeal in Warsaw, these cases take about 14 months from registration to the designation of trial, plus another 3 months until the judgement, in case evidence is necessary. The average of the other divisions is 6-9 months. In criminal law, most cases are finalized in the first hearing. The average period of time passing between the committal of an offence and the trial is 1 to 1 ½ years.[233]

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[230] Cf. Freedom House, Nations in Transit 2001, Poland, 295.

[231] In some cases in criminal proceedings the evidentiary proceedings can be omitted. This possibility is envisaged in art. 387 of the Code of Penal Procedure until the conclusion of the first examination at the first-instance hearing. The accused who is charged with a misdemeanor subject to a penalty of deprivation of liberty not exceeding 8 years, may submit a motion for a decision convicting him and sentencing him to a specified penalty or penal measure without evidentiary proceedings. The court may grant the motion of the accused to issue a decision convicting him only when the circumstances have not given rise to doubt, the state prosecutor and the injured party concur, and the objectives of the proceedings are to be achieved, in spite of the hearing not being conducted in full. In the second instance the evidentiary proceeding is limited; art. 452 of the Code of Penal Procedure states that an appellate court shall not be allowed to conduct evidentiary proceedings pertaining to the intrinsic nature of the case. In exceptional cases the appellate court, if it finds the completion of a judicial examination necessary, may nevertheless take evidence directly at the appellate trial, if this will expedite the judicial proceedings, and there is no necessity to conduct the whole of it, or a major part thereof, anew. Before the appellate trial, the court may also issue an order on the admission of evidence.

[232] Oral statement (presidents Warsaw Court of Appeal and Piotrkow Tryb. regional court) during expert mission 11-15/03/02.

[233] Oral statement (presidents Warsaw Court of Appeal) during expert mission 11-15/03/02.

Under the new Criminal Code of 1997, the courts have some means to prevent undue delay. The newly introduced simplified procedures are: mediation and conciliation arrangements; possibility of speeding up proceedings if the accused pleads guilty; simplification of the arrangements regarding evidence, aiming to accelerate the work of both prosecutors and judges.
Also the Civil Procedure Code has been changed repeatedly in recent times, with the aim of simplifying and speeding up proceedings.[234] The Ministry of Justice prepares a further modification of the code with regard to arbitration, especially commercial arbitration, in order to reduce the workload of courts.[235]

Compliance with art. 6 § 2 and 3 ECHR in criminal matters; principles of decision making

The new Polish Criminal Procedure Code, which entered into force on 1 September 1998, is based on the main criminal procedure rules in force in the current European Union. The consolidation commission has endeavored to produce a text in conformity with the main European standards, notably the ECHR. These guiding principles, which however largely existed before, are contained in Articles 1-23 of the new Criminal Procedure Code. They are the following: substantive truth as the objective basis of all judicial decisions (Art. 2); the impartiality of criminal procedure (Art. 4) together with the possibility, in particular, of objecting to the judge and jury in the event of established partiality (Art. 41); the presumption of the innocence of the accused (Art. 5); the rights of the defense (Art. 6) together with the principle of fairness (Art. 16) whereby criminal judicial bodies must inform the parties of their rights and duties; the judges' firm conviction in assessing the evidence, justification for the verdict handed down and the possibility of appeal (Art. 7); jurisdictional autonomy of the criminal courts (Art. 8); the automatic prosecution of offenders (Art. 9); legality (Art. 10); the adversarial principle (Art. 14), whereby the court may try only that particular criminal case in which a charge is brought by a (public or private) prosecutor.

Assistance by defense counsel throughout criminal proceedings is enshrined as a right. In certain cases, this assistance is compulsory (physical handicaps, but also before regional courts acting as courts of first instance in the case of the most serious crimes; see above chapter 3 § 1). Rules which conform to Community systems also cover access to files and issuing documents to the parties, to the counsel and to the parties' representatives.

In accordance with the rules laid down by the ECHR, the hearing is generally public, except in special cases where *in camera* sessions may be ordered by the court in case of risk of a breach of the peace, insulting behavior, official secrecy, etc.

For a long time, Polish substantive and procedural criminal law has known solutions which enable the conclusion of criminal proceedings without conducting a trial – in

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[234] Oral statement (Ministry of Justice representatives) during expert mission 11-15/03/02.
[235] The draft shall be ready in 2003; oral statement (Ministry of Justice representatives) during expert mission 11-15/03/02.

matters involving misdemeanors that are not punishable by severe penalties of deprivation of liberty.[236]
In recent years, these instruments are being used more and more often.

Polish procedural criminal law includes a number of solutions enabling the court to depart in certain situations from the principle of directness and thus limit the duration of the trial, as well as to avoid deferrals due to non-appearance of witnesses whose testimony is not of vital importance for the decision in the case. In practice, it depends on the judge and his/her experience to what extent he or she will be ready to apply such measures, and especially to offer them to the parties.
A more extensive application of the proportional, individual adjustment of sentences is enshrined in the new Criminal Procedure Code, in conformity with the principles of the ECHR and the constitutional principles of the European Member States. For example, the greater latitude conferred on judges by the new Criminal Procedure Code to determine the severity of sentences.

Compliance with art. 5 ECHR in case of pre-trial detention

In the regional courts, there are also divisions for the enforcement of sanctions. The authorities acting in such proceedings are, inter alia, courts as such and specialized judges exercising their own powers. Such a judge exercises supervision over the legality and conditions of imprisonment and pre-trial detention. The principal responsibilities of enforcement of sanctions, include deciding cases of conditional release, granting breaks in serving a term of imprisonment, issuing decisions concerning the serving of the sentence and considering complaints of prisoners against such court decisions. In the enforcement proceedings for court orders, as a rule, a single judge adjudicates. With the new Code of Criminal Procedure, temporary custody arrangements have been aligned with European standards. Now, only the court may decide on the temporary custody of the accused, and not the public prosecutor as under the former code.[237]

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[236] A new possibility to conclude a criminal case without trial is provided for in art. 335 of the Code of Penal Procedure stating that the state prosecutor may, with the consent of the accused, attach to the indictment a motion to convict the accused for a contravention imputed to him, subject to a penalty not exceeding 5 years deprivation of liberty, without conducting a trial and impose a penalty with an extraordinary mitigation, or decide on a penal measure specified in Art. 39 subsections 1 through 3 and 5 through 8 of the Penal Code, or waive the imposition of a penalty or adopt a conditional stay of execution of the penalty. This requires that the circumstances do not raise doubts, and the attitude of the accused indicates that the objectives of the proceedings will be achieved despite the lack of a trial. If conditions for filing the motion referred to in § 1 occur, and in the light of the evidence collected the explanation of the accused does not raise doubts, conducting any other evidentiary actions in preparatory proceedings may be abandoned; Polish comments of January 2002.

[237] Cf. The Polish System of Criminal Procedure (Phare Project No. Pl9904.05), 8 et seq.

Specific rules of procedures in civil matters

Small claims procedures

In January 2000, a new layer of jurisdiction has been introduced to deal with petty cases. Up to 200 civil-criminal chambers have been set up, covering all the national territory. The final target is for 400 such chambers to be set up until 2005. These new chambers are competent for petty cases (inter alia civil claims below 5000 PLN, consumer rights cases and fiscal offences of up to two years of imprisonment (see module 1 chapter II).

In May 2000, a law introducing simplified procedures in civil matters was adopted. In cases concerning small claims, the plaintiffs are obliged to make their claims on special blank forms comprising all the necessary data like name, address etc. This is meant to reduce the workload of the judges who, before, had to assist the plaintiffs to make their claims in a proper way, since there is no obligation to be represented by a counsel.

III.3 System and procedures for administrative justice

Internal administrative review procedures

There is a two-tier internal administrative review procedure before administrative court proceedings can be instituted. As parliament is currently considering a comprehensive draft law on the reorganization of the administrative court system (see below), it is not yet clear if the administrative body of second instance may be abolished.[238]
About 10 million administrative decisions are issued per year, out of which about 300.000 are complained against and reviewed internally, 250.000 complaints are settled at the second level of internal administrative review.[239]

Court procedures

Judicial review of public administration is functioning, and in addition, the position of the Commissioner of Civil Rights became very strong due to its central role in the beginning of the 1990s.

Up until now there has been only one instance of judicial review, performed by the High Administrative Court (HAC). The HAC employs 270 judges. Its main office is in Warsaw, 10 local branches are in big cities. The average duration of proceedings is 1 year. 35% of the cases is resolved positively.[240]
At this moment parliament is considering a legal draft introducing first instance administrative courts for each of the voivodships.[241] The HAC will then function as appeal court. It is not yet clear if the second level of internal administrative review (see

[238] Oral statement (HAC representative) during expert mission 11-15/03/02.
[239] Oral statement (HAC representative) during expert mission 11-15/03/02.
[240] Oral statement (HAC representative) during expert mission 11-15/03/02.
[241] Oral statement (HAC representative) during expert mission 11-15/03/02.

above III.1) will be abolished when there will be two levels of judicial review. The fact that 250.000 complaints out of the total of 300.000 are settled at the second internal review level might be in favor of maintaining it, because otherwise they would have to be dealt with by the administrative courts.[242]

Certain administrative decisions are, however, still exempt from judicial control. For example, a refusal by the President of the Polish Republic to grant polish nationality can still not be brought to appeal before the High Administrative Court, on the grounds that the President is not one of the 'administrative bodies'. This arrangement lags behind the solutions adopted in the EU countries, where questions relating to civil status are generally within the courts' jurisdiction. Under Polish law, the matter of nationality is not encompassed by the notion of the civil status.[243]

In addition to having recourse to administrative justice, citizens can also lodge their complaints with the Commissioner of Civil Rights Protection. The Ombudsman can only give advice to the institutions concerned, it is not legally binding but may speed up procedures.

III.4 Execution of judgements

Execution in civil and commercial matters

The organizational system and the procedural rules for executing court judgements in civil matters have been adapted in recent times, to improve the efficiency of the enforcement of judgements.

In particular, the Act of 29 August 1997 on bailiffs and execution[244] has changed the status of bailiffs by making them public officers instead of judicial officials, and made bailiffs' remuneration dependent on the efficiency of executions. Also, creditors have been given the possibility to choose a bailiff. A creditor has always the right to apply to a territorially competent bailiff, who may not refuse implementation of the requested execution, but a creditor can also apply to any other, freely selected bailiff.[245]

The Act on bailiffs and execution was changed again by the act of 18 September 2001[246], which entered into force on 1 January 2002. Now, bailiffs perform their functions on their own account and are no longer financed by the state. Their income consists only of execution charges, fully dependent upon the efficiency of the execution. Administrative supervision over the activity of bailiffs continues to be performed by the courts.
This amendment aims also at reducing the costs of enforcement. It provides for decreased proportional charges down to 15% of the value of the claim (so far 20%) and

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[242] Oral statement (HAC representative) during expert mission 11-15/03/02.
[243] Polish comments of January 2002.
[244] Official Journal No. 133, item 662, as amended.
[245] Polish comments of January 2002.
[246] Official Journal No. 130, item 1452.

collection of the charge from the debtor. Collection of a part of the proportional charge from the creditor before launching of execution is not obligatory and left to the bailiff's discretion.[247]

The Ministry of Justice has just completed a further draft on the enforcement of civil judgements aiming at simplifying procedures and making enforcement more effective. The draft has been forwarded to the council of ministers and will be considered by parliament afterwards.[248]

Due to the increasing percentage of burdensome execution cases (execution from real estate, from debts, execution from the assets of companies under commercial law and civil law), execution proceedings are generally difficult and the effectiveness of execution used to be extremely low. E.g. the execution of court dues amounted on the average to 27% in 1995.
In addition to inefficiency, parties have had to face high costs in enforcement procedures, supposed to cover the expenses related to the functioning of the court execution apparatus. In the past, execution costs reached on the average 40% of the value of the vindicated property claims (ranging from 30% to 65% of the claimed value in different districts). Costs had to be paid by the creditor at the time of submitting an application, and regardless of the results of the execution. It remains to be seen in how far enforcement of civil claims will be facilitated by the most recent as well as the envisaged changes of the Civil Procedure Code.

Execution in criminal matters

Judicial procedures in the criminal sphere are on the whole effective. In comparison with other states of the region, the state and conditions of prisons and the number of prisoners are reasonably satisfactory, although the situation has recently worsened due to a dramatic increase in the number of detained persons.[249]

The arrangements regarding fines have improved to take more account of the solvency of the accused (notably so that the offender's family does not have to bear the burden of the sentence). Offenders are not sentenced to fines if the state of his resources proves inadequate. However, if an offender has compensated his victim and his behavior suggests that he might mend his ways, the court may commute his sentence to a fine.[250]
The possibilities for parole have been restricted with the new Criminal Code in 1997. This is now subject to the completion of a period representing at least half the sentence

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[247] Polish comments of January 2002.
[248] Oral statement (Ministry of Justice representatives) during expert mission 11-15/03/02.
[249] Comments on the Inception Report by the EC Delegation, 3; see also Twinning Quarterly Report PL98/JH/IB/01 (1 Jan-31 March 2001), 2 et seq.; Huitième rapport trimestriel POL/IB/JHA/01 (1 April-30 June 2001), 2.
[250] This concerns cases where the court applies extraordinary mitigation of the penalty – when the act in question constitutes a misdemeanor, and the lower statutory level of penalty is less than one year's deprivation of liberty, the court shall impose either a fine or the penalty of restriction of liberty; Polish comments of January 2002.

handed down (for repeat offenders after 2/3 of the sentence, for multiple offenders after 3/4 of the sentence).[251]

Persons who were unjustly convicted are entitled to compensation[252]. Also victims of unjust remand or arrest have to be compensated.[253]

Treatment programs were introduced. The efforts made in the new Criminal Code to promote the social reintegration of detainees are coupled by increasing the number of social workers and launching individual rehabilitation programs for prisoners. In fact, half the prison population is made up of repeat offenders. The purpose of these programs, designed by the administration in partnership with the prisoner and his social workers, is to offer vocational and academic training/education, extending to training establishments outside the prison. These arrangements do not cover those sentenced to life imprisonment nor those constituting a 'threat to law and order'.
However, the principle of rehabilitation rather than punishment, upheld in the new Polish Criminal Code, is held back by the current inadequacy of means (number of places in rehabilitation centers, notably).

The staff/prisoner ratio (one official to 2,7 detainees) is close to European average. In 1997, there was a workforce of 21578 prison officers.
Prison reforms in 1990 promised to be quite successful as far as change of the regime and personnel were concerned. However, with the crime rate rising, the prisons filled very soon again. Most prisons are overcrowded and material conditions of prisons are reported to have remained bad. Most of the 156 penal institutions were built before the Second World War. The Prison Service of the Ministry of Justice which manages all institutions is now facing some 100 prisons that require immediate repair or modernization.
The share of the budget of the Ministry of Justice spent on prisons fell from 43.5% in 1991 to 30.9% in 1997. At the same time the total budget of the Ministry grew with 6.1% between 1989 and 1997.[254]
As of April 2001, 75.000 persons were in prison[255], as against 120.000 at the end of the Communist regime. However, overpopulation is becoming more serious as these persons share 63.000 places and capacity rates reach 110-150%.[256]

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[251] Conditional release may not occur before the lapse of one year. A person sentenced to 25 years of deprivation of liberty may be conditionally released after serving 15 years of the sentence, and a person sentenced to deprivation of liberty for life, after serving 25 years of the sentence; Polish comments of January 2002.

[252] This existed already in the Code of Penal Procedure of 1928; Polish comments of January 2002.

[253] The compensation for unjust pre-trial detention was introduced by the amendments to the Code of Penal Procedure in 1956, that for short term detention in 1989; Polish comments of January 2002.

[254] The 2001 budget for penitentiary services decreased with 14%; Comments on the Inception Report by the EC Delegation, 3.

[255] Comments on the Inception Report by the EC Delegation, 3.

[256] Comments on the Inception Report by the EC Delegation, 3.

In general, prison conditions are regarded as 'quite liberal' by many Poles (television, leisure activities, contact with families).

Execution in administrative matters

The decisions of the High Administrative Court (as well as those of the future administrative courts) are binding by law for the administrative body. The administrative bodies comply with the court's judgements although sometimes execution takes long. Execution of administrative decisions falls under the control of administrative justice as well.[257]

System of bailiffs

Bailiffs are responsible for executing sentences. They prepare claims, enforce them and lead public auctions. Bailiffs have to graduate from a law or administration faculty and have to undergo a further 2-years training, ending with exams.[258]

Enforcing the payment of debts used to be very difficult and costly. A foreign lawyer in Warsaw reported that of the 100 or so collection cases he had been involved in, none had been successful: the court bailiff always reported back that the defendant had no assets. There were also reports that bailiffs could be 'influenced' by debtors not to pursue them too assiduously. As the new law on bailiffs is in force only since 1 January 2002, its effects cannot yet be assessed (on the reform of the bailiffs system, see above).

The tasks of the court enforcement officers (sheriff officers) can be summarized as follows. They perform the enforcement functions in civil law cases and have certain other responsibilities, among others the following: enforcing court decisions as to financial and non-financial claims, making seizures to secure claims, enforcing other executory titles and making an inventory before institution of court proceedings or before passing judgement by the court. These officers may also serve processes and other documents and oversee public auctions.

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[257] Oral statement (HAC representative) during expert mission 11-15/03/02.
[258] Polish comments of January 2002.

Romania

This report is based on information gathered up to March 1st, 2002

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MODULE I

AN INDEPENDENT JUDICIARY

OVERVIEW OF THE JUDICIAL SYSTEM OF ROMANIA

Judicial disputes are decided by courts in a general, four-tier court system, competent for all kind of matters, be they civil, commercial, labour, family, administrative or criminal as well as any other matters, with few exceptions: Military courts exist for some criminal matters involving security personnel, including the police. The Court of Audit has some jurisdictional powers (art. 139 of the Constitution). Several kinds of labour disputes are not decided by the courts, but by higher administrative organs (art. 174, 175 of the Code of the Labour Courts).[1]
The guarantee of the Constitution is the task of the Constitutional Court.

The judicial bodies of the (general) judiciary comprise:
- the (187)[2] District courts or Courts of First Instance – *Judecatorii* –
- the (41)[3] Tribunals – *Tribunale* –
- the (15)[4] Courts of Appeal – *Curþi de apel* –
- the Supreme Court of Justice – *Curtea Suprema de Justiþie* –

The District Courts deal with all cases and applications not assigned by law to the jurisdiction of other courts.

The Tribunals deal at first instance with cases and applications that come under their jurisdiction by law. They also hear ordinary appeals (*apel)* – concerning law and facts – against judgements delivered by the District Courts, and limited appeals (*recurs*) – concerning only law – against decisions of the District Courts which are not subject to ordinary appeal.
The Tribunals are divided into civil, commercial, criminal, administrative and, in some cases, maritime sections.

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1 By Law no. 168/1999 on the settlement of labour disputes, the provisions of art. 174-179 of the Labour Code were repealed; comments on the adjusted desk research by the Romanian Ministry of Justice, July 2002.
2 Comments on the inception report by the Romanian Ministry of Justice.
3 Comments on the inception report by the Romanian Ministry of Justice. The annex of Law no. 92/1992 on Judicial Organisation provides for a number of 42 tribunals, but the Ilfov Tribunal, included in the district of the Court of Appeals of Bucharest, is not functioning at the moment.
4 Comments on the inception report by the Romanian Ministry of Justice.

The Courts of Appeal deal at first instance with cases that come under their jurisdiction by law. As appellate courts, they hear ordinary appeals against first instance judgements of the Tribunals and limited appeals against appeal judgements of the Tribunals, as well as certain other cases provided for by law.
The Courts of Appeal are divided into the same kind of sections as the Tribunals.

The Tribunals and the Courts of Appeal can have specialised divisions for solving labour conflicts and for labour litigation.[5]

The Supreme Court of Justice ensures the correct and uniform application of the laws by all the courts by considering decisions made on appeal on other decisions specified by law. It may also rule on the merits (also facts) of cases specified by law. It may ask the Constitutional Court to rule on the constitutionality of laws before their promulgation. The court comprises 4 chambers: civil, criminal, commercial, administrative. The military section was abolished in 1999.[6]

The Constitutional Court is the only authority to rule on constitutional matters in Romania by the means of decisions, decrees and expert opinions.

Every court is headed by a president, who also exercises administrative functions.
A single judge delivers judgements on the merits of the District Courts, the Tribunals and the Courts of Appeal. In appeal cases at the Tribunals and the Courts of Appeal, judgements are delivered by panels consisting of two judges. In case of recourse at Tribunals and Courts of Appeal, panels of three judges deliver judgements. At the Constitutional Court, in general, all nine judges decide in plenary session.

All judges are professional judges. For labour cases of first instance there are panels made up by a professional judge and two judicial assistants, one representing the employers' associations, the other representing the trade unions.[7] The lay judges (judicial assistants) in labour litigation, first instance, have the right of vote. Decisions are taken with majority (art. 17).
At the Supreme Court of Justice, 'assistant magistrates' play a certain role. They have a special status, are considered to be judges equivalent to the judges of the Tribunals and the Courts of Appeal.[8]

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5 Comments on the adjusted desk research by the Romanian Ministry of Justice, July 2002. Divisions of labour conflicts and labour litigation have been created, by order of the Minister of Justice, at the Tribunals of Gorj and Dolj and at the Courts of Appeal of Craiova and Bucuresti.

6 OSI Report 2001, 368.

7 The Law no. 92/1992 provides for cases on labour conflicts to be judged as soon as possible, on first instance level by panels of two judges; two consulting magistrates assist the panel of judges, participate at deliberations, having a consultative vote. Comments on the adjusted desk research by the Romanian Ministry of Justice, July 2002.

8 Law no. 53/1996 of the Supreme Court of Justice stipulates the following:
Art. 36- "First assistant-magistrate, chief assistant magistrates and the assistant magistrates are included in the Magistrates' Corps and they enjoy stability. The general

The Public Prosecutor's Office shall – not only in criminal cases – represent the general interests of the society and shall protect the legal order as well as citizens' rights and freedoms.
Prosecutors attached to the District Courts, the County Courts, the Courts of Appeals and the Supreme Court of Justice exercise the functions of the Public Prosecutor's Office.
Judges and prosecutors together form the profession of 'magistrates'. These include judges from all courts of law, the public prosecutors from the public prosecutor's offices related to these courts, as well as the assistant-magistrates of the Supreme Court of Justice.[9]

STATE OF AFFAIRS IN PRACTICE

CHAPTER I

The creation of a true Balance of Power

I.1 De jure and de facto division of competencies between judiciary, executive and parliament

I.1.1 *Vis-à-vis the executive*

General

The independence of the judiciary is guaranteed in the Constitution (art. 123 para. 2) and in the Law No. 92 (art. 1 and 3). The Constitution also stipulates that constitutional provisions regarding the independence of the judiciary may not be amended (art. 148 para. 1).[10]

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terms for their appointment are those requested for the magistrate office, according to Law no. 92/1992, re-published"
Art. 37- "First assistant-magistrate has the rank of appeal court judge. He/she is appointed among the chief assistant magistrates with a length of service of minimum 2 years in this office. After a probation period of 5 years as first assistant-magistrate, he/she can be promoted to the appeal court president rank.
The Chief assistant magistrates have the rank of the tribunal president and they are appointed among the assistant magistrates with a length of service of minimum 3 years in office. After a 2 years probation period as chief assistant magistrate, they can be promoted to the appeal court judge rank and after other 5 years, to the appeal court president rank."

9 Comments on the adjusted desk research by the Romanian Ministry of Justice, July 2002.

10 Comments on the inception report by the Romanian Ministry of Justice.

Applicable to the organisation, mandate and operations of courts are – in first instance – the art. 123 - 129 of the Constitution and art. 1 - 25 of the Law No. 92 with amendments by the Emergency Order No. 179.
For the Constitutional Court there are special and detailed provisions in the Constitution (art. 140 - 145) as well as in the Law on the Constitutional Court.[11] They are not subject of the following summary.

The mentioned norms regulate basic rules for the judiciary (art. 123 - 129 of the Constitution) and basic rules of: court status, the proceedings, structure of the courts, competencies of the courts of the different levels (Law No. 92)

The Constitution and the Law No. 92/1992 consider prosecutors as part of the judiciary. By treating prosecutors and judges equally, the functional distinction between the judiciary and the executive is blurred, since prosecutors carry out their activities under the hierarchical control of the Minister of Justice whereas judges are supposed to be independent. A 1997 amendment and ruling have clarified the distinction between judge and prosecutor, but prosecutors' powers were not significantly reduced.[12] Investigative prosecutors perform judicial-like functions such as issuing arrest warrants and authorising searches.[13] Investigative measures are not subject of direct judicial control. Only after complaint with the prosecutor's superior initiating an internal review procedure, appeal to court is possible.[14] An amendment currently being debated in Parliament intends to increase judges' control of prosecutorial activities e.g. in the case of pre-trial detention, concluding investigations without indictment, and wire-tapping.[15]

Organisation of the judiciary

The law provides a kind of representation of the judiciary in form of the Superior Council of Magistracy (SCM). Basic provisions are in the Constitution (art. 124 para. 1 and art. 132 and 133). For details there are provisions in the Law No. 92 (art. 86 - 90, 120). The Supreme Court of Justice has of course a high position in matters of the judiciary because of its reputation. But the Minister of Justice continues to be the supreme representative of the administration of justice. He is also responsible for contacts with the Parliament and the executive.

The members (17) of the Superior Council of Magistracy are 11 judges and 6 prosecutors, who have to have a certain standard: 3 judges have to be judges of the Supreme Court, 6 judges have to be judges of the Courts of Appeal and 2 judges from the Tribunals. Courts of first instance are not represented in the Council. With regard to the public prosecutors, 2 public prosecutors from the Public Prosecution Office at the Supreme

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[11] For an English version see http://www.uni-wuerzburg.de/law/ro01000_.html.
[12] OSI Report 2001, 362.
[13] OSI Report 2001, 360.
[14] Oral statement (General Prosecutor) during expert mission 25/02-01/03/02.
[15] Oral statement (General Prosecutor; Department for Elaboration of Normative Acts, Ministry of Justice) during expert mission 25/02-01/03/02.

Court of Justice, 3 public prosecutors from the public prosecution offices at the Courts of Appeal, 1 public prosecutor from the public prosecution offices at the tribunals. The preparatory work for activities of the SCM is taken care of by the department of human resources of the Ministry of Justice. A specialised division within this department shall ensure the secretarial work of the SCM.[16]

Judges as candidates are nominated by the respective courts and in general meetings of the court's judges. They are elected for 4 years by the Chamber of Deputies and the Senate, in a common sitting.

The control of the court system (supervision of service) is the task of the Minister of Justice. The Minister of Justice also is the authority to start disciplinary actions against judges. The Superior Council of Magistracy has attributions enumerated by law. They concern especially the appointment and the promotion of judges. The Council needs a recommendation by the Minister of Justice and proposes the appointment or promotion to the President of Romania (art. 88 Law No. 92). This can be understood as a right of veto.

Other important attributions of the Council are the role as disciplinary council of judges and the adoption of a Code of Deontology (Code of Ethics) (art. 120). (See also below III.7) Meanwhile the Code has been prepared with the support of international experts (ABA CEELI and EU) and adopted in the last session of the Council.[17] In the case of a serious infringement of the provisions of the Code, it will serve as basis for a disciplinary action (Art. 122 littera i). The Council also can intervene in a non disciplinary manner: In case of manifest professional misconduct, on notification of the Minister of Justice, the Council may order the removal from office (appeal possible to the Supreme Court of Justice): art. 97 § 2 and 3 Law No. 92.

The Minister of Justice, who is not a member and may not vote, chairs the Council. The Minister only takes part in the sessions when they deal with the appointment, transfer and retirement of judges, since he proposes decisions in these cases which the Council may then reject or accept.[18] In disciplinary sessions, the SCM is chaired by the president of the Supreme Court.

The Superior Council plays an important role in the career of judges since it is responsible for appointment, promotion, transfer, disciplinary action and removal from office of judges. As one-third of the Council are prosecutors acting under the authority

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16 In order to support the Superior Council of Magistracy (SCM) and the modifications introduced by the new provisions, the Ministry of Justice included in the PHARE 2002 project fiche a component aiming at enhancement of the institutional capacity and functioning of the SCM.

17 Comments on the inception report by the Romanian Ministry of Justice.

18 Oral statement (SCM members and Secretary-General) during expert mission 25/02-01/03/02.

of the Minister of Justice and the Prosecutor General, the careers of judges depend to a large extent on the executive power.[19]

Planned modifications of the Law on Judicial Organisation envisage to substantially strengthen the role of the Superior Council of Magistracy by increasing its independence vis-à-vis the Ministry with regard to the assignment, promotion and evaluation of judges, the budget of the judiciary, and its disciplinary role.[20]

Budget

The justice budget in 1999 was 100 million Euro, which is 0,365 percent of the GDP. According to the Director of the Financial and Administrative Department of the Ministry of Justice, the budget of the judiciary amounts to 0,28 percent of the GDP. A budget share of approximately 0,50 percent would be necessary to cover all necessary expenses. At present, some statutory privileges of magistrates like health care cannot be covered, although the Ministry would be obliged to provide this.[21]

The judiciary's budget is entirely in the hands of the Ministry. The Minister drafts the budget for the courts (Law 72/1996 on public finance).[22] Courts are not formally consulted when the budget is drafted, but submit estimates to the Ministry of Justice.[23] The draft budget must be approved by Parliament. Following parliamentary approval, the Minister of Justice divides the budget between the 41 Tribunals, which manage the budgets of the lower and higher courts under their territorial jurisdiction.[24]

The president of the Tribunal as credit co-ordinator, also for the appeal courts, elaborates the budget projects for tribunals and first instance courts within their territorial jurisdiction, on the basis of documents containing all costs to be included into the project for each court. The tribunal budget projects are submitted to the Ministry of Justice and centralised with the budget projects of the other units in the system and with the central administration budget project. The centralised budget project of the Ministry of Justice is thus formed, a project that will be transmitted to the Ministry of Public Finances to be submitted for endorsement to the Romanian Government and Parliament. By the budget projects, the tribunal presidents make quantitative and value proposals for material costs, capital costs, respectively for costs necessary for some projects or objectives precisely determined on the basis of the necessary quantitative indicators.[25]

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19 OSI EU Accession Monitoring Report, Judicial Independence in Romania, 6.
20 Observations of the Romanian Ministry of Justice of 04/04/02, 1.
21 Oral statement (Financial and Administrative Department Director, Ministry of Justice) during expert mission 25/02-01/03/02.
22 Comments on the inception report by the Romanian Ministry of Justice.
23 OSI Report 2001, 374.
24 Comments on the inception report by the Romanian Ministry of Justice.
25 Comments on the adjusted desk research by the Romanian Ministry of Justice, July 2002.

Courts are independent with regard to using their funds for current expenses, but the Ministry's approval is necessary for investment programmes. However, investment is limited in scope, due to the lack of resources.
Partly as a result of the executive and legislative control over the judiciary's budget, working conditions – including buildings, offices, access to adequate infrastructure and modern technologies – are poor, hampering effective adjudication.[26] By investment, consolidation and major overhauls works between 1990-2002, 121 locations were equipped and prepared to be used both by the existent courts before law no. 92/1992 and by the courts newly set up by this law.
The increase of the number of courts and the necessity to place them in the city's central areas, imposed the take over of different buildings that were inadequate to carry on the justice specific activities. The buildings taken over needed huge investments and major overhauls to function as a court.[27]

Many projects are currently ongoing with support from the World Bank, to endow the justice system with IT equipment. Projects on infrastructure, IT, logistics, etc. have also been initiated by the European Union

Administration and control

The Law No. 92 says in art. 18 § 1 that the Superior Council of Magistracy and the Minister of Justice shall watch the observance of the independence of the judiciary.

The Minister of Justice is responsible for the proper organisation and functioning of the courts as a public service. General inspectors in the Ministry of Justice and magistrate inspectors in the courts of appeal, inform the Ministry on the operation of the courts and on any situation likely to have an adverse effect on the quality of their work or on the application of the laws and regulations in the Court of Appeal districts.

Inspector-judges from the Courts of Appeal and from the Inspection Corps at the Ministry of Justice exercise the so-called 'judicial control'. The majority of inspections are based on complaints by parties who are not satisfied with judges' decisions. Usually, a first inquiry is carried out by the Appeal Court inspectors who draw up a report, which is then forwarded to the Ministry. The Ministry orders and carries out an investigation, to be carried out by its Inspectors-General. If deemed necessary, the Ministry brings a disciplinary action before the Superior Council of Magistracy and proposes a sanction. The findings of the inspectors may also be forwarded to the Prosecutor General, who may use it as a basis for instituting an extra-ordinary appeal.

The inspectors should examine only the administrative issues concerning the way a judge handles a certain case, but it happens that they enter into supervision over the procedural aspects of the case, and sometimes even over the substance of a judge's decision. Reportedly, this may even occur while proceedings are still pending. It is reported that

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[26] OSI Report 2001, 358.
[27] Comments on the adjusted desk research by the Romanian Ministry of Justice, July 2002.

judges are contacted for an explanation of their decision and asked to answer to the Ministry to this end. Nevertheless, the courts' yearly balance session reports do never refer to political or executive attempts at interfering with judicial issues.[28]
Judges can object to the findings of the inspectors and send a comment to the Ministry, but they cannot contest the inspection as such.

The draft amendment to the Law on Judicial Organisation envisages transferring the inspection system to the Superior Council of Magistracy.[29]

The overall control over each court is exercised by the president of the court, who also has administrative responsibilities. The president of the district court can have 1 vice-president, the president of the tribunals and the courts of appeal are assisted by 1 - 3 vice-presidents. They appoint judges to perform duties other than their judicial function, in conformity with the law. The presidents and the vice-presidents of courts shall check the organisation and quality of the service, the observance of laws and regulations within the framework of the institution they run and of the courts under its jurisdiction.

The Minister of Justice and the presidents of the courts have influence in assessing the judges especially in the process of promotion. Also the salary of the judges partly is not fixed and can be increased by bonuses or reduced in case of bad work. The checks carried out always have to be handled in a way that they do not interfere with the judicial process concerning pending cases or lead to the review of a case that has already been heard and decided (art. 18 § 4). (see also below III.4)
To have a basis for promotion, judges are assessed yearly by the judges being their superiors, as regulated in art. 66. The qualifying marks (assessments) shall reflect the results of the judge's professional activity, his conduct at work and in society, his abilities as well as his development prospects within the framework of his job. These criteria are difficult to quantify and to objectify.[30]

However, court presidents have substantial influence over the work of individual judges. Discretionary transfer of judges to a different court section reportedly may occur from one day to another, without any motivation and without the specialisation of a judge being taken into account. Court presidents also play an important role in evaluation, awarding benefits, premiums, indemnities, even providing housing. This contributes to creating a bureaucratic chain of command and to judges' being very loyal to court presidents, who are, in turn, dependent on good relations with the Ministry of Justice[31].

Court presidents assign cases to individual judges/panels according to criteria like experience of the judges, type and complexity of the cases, specialisation of the judges.[32]

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28 Observations of the Romanian Ministry of Justice of 04/04/02, 2.
29 Oral statement (Inspectorate General for the Judiciary Director, Ministry of Justice) during expert mission 25/02-01/03/02.
30 Oral statement (Bucharest Court presidents) during expert mission 25/02-01/03/02.
31 OSI Report 2001, 391.
32 Comments on the inception report by the Romanian Ministry of Justice.

At present it is more or less up to court presidents how to interpret the above criteria. Projects are being developed regarding the reorganisation of the distribution of cases. An example of a project in the field of case assignment is the assistance project implemented with the American Bar Association – Central and Eastern European Law Initiative (ABA CEELI). The programme aims at reforming the court management at the pilot court: Third Sector First Instance Court. One of the components of the programme was the elaboration of a transitory regulation for the functioning of the pilot court, establishing several rules to depart from the current regulation in force at the other courts. An important modification is represented by the alphabetical system of assignment cases. This system is being implemented at the pilot court since March 18th 2002 and, if it will be successful, will be extended to the other 2 pilot courts in the project: Fourth Sector Court in Bucharest and First instance Court in Iasi.[33]

The assignment of a case to a particular judge may be a deciding factor in the outcome of a trial. E.g. restitution of nationalised property has become a decisive issue in Romanian politics and most judges have strong personal opinions on this matter. Theoretically, court presidents would be able to influence the outcome by directing cases towards specific judges.[34]

Judges on probation have to pass special examinations to assess their quality (art. 54- 62).

Judges may not be investigated, detained, arrested, searched or sent for trial without the approval of the Minister of Justice (art. 91 § 2).

The courts are established by law. The executive cannot establish other courts or dissolve courts.
The executive can not invalidate judicial decisions. But the Prosecutor General can by himself or ordered by the Minister of Justice under special conditions appeal against judicial decisions, also in civil proceedings, after the normal time for appeal has expired. The Law on the Judiciary provides that '[t]he exercise of the right to appeal granted by law to the Minister of Justice shall not be considered an interference.'[35]

There are no provisions explicitly restricting the executive to criticise judges or judicial decisions. In fact, politicians often criticise judges and judgements, with the express aim of altering decisions. In 2001, several such incidents occurred.[36] In a letter dated 7 March 2001 addressed to the presidents of all courts of appeal, the Minister of Justice required that judicial decisions aimed at enforcing judgements returning nationalised property should take into account the housing problems of the current tenants. In addition, the letter placed judges under implicit threat of being inspected by judicial inspectors and officials in the Ministry of Justice for their compliance with its terms. In a letter of April 2001, addressed to all courts of appeal, the Minister of Justice recommended that

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33 Comments on the adjusted desk research by the Romanian Ministry of Justice, July 2002.
34 OSI Report 2001, 390.
35 Art. 18.
36 OSI Report 2001, 355; EC 2001 Regular Report Romania, 20.

proceedings relating to liquidation of bankrupt banks be suspended.[37] According to the Ministry of Justice, the letters clearly mentioned that the Ministry does not have the right to influence judicial decisions.[38] However, the EC 2001 Regular Report states that the Romanian authorities have subsequently recognised that such recommendations would appear to contradict the principle of an independent judiciary.[39]
A more recent example is a letter of February 2002 in which the Ministry asked court presidents to report all 'important cases' to the Ministry, maybe for 'statistical' purposes.[40]

I.1.2 *Vis-à-vis the legislature*

Regarding the procedure of a-priori control of the constitutionality of laws, Parliament, by two-thirds majority of each chamber, may quash the Constitutional Court's decisions (art. 145 of the Constitution). This restriction is one of the topics in a current debate on revising the Constitution.

I.2 De jure and de facto division of competence within the judiciary

Romania is a centralised state. The courts form a unitarian system.
The Constitutional Court has – among others – the competence of a-posteriori control as to the unconstitutionality of laws and orders, and can be approached by all courts to this end. The Constitutional Court is closer to political affairs than to the regular court system.[41] Its relation to the regular courts has not yet been fully clarified, as they do not necessarily consider themselves to be bound by the Constitutional Court's rulings.[42] This is shown by a continuing controversy over pre-trial detention. The Constitutional Court held that courts must review pre-trial detention ordered by prosecutors every 30 days, but the Supreme Court has issued contradicting judgements. In response, the Constitutional Court ruled that courts failing to observe Constitutional Court judgements could be held liable. This situation has led to confusion among the ordinary judiciary.[43]

The Supreme Court of Justice has to ensure the correct and uniform application of the laws by all the courts. In practice, the effect of the Ministry's inspection system on the way in which courts apply the law may be more significant. The Supreme Court has to cope with a very high workload (40.000 cases in 2001), so, according to its President, the quality of judgements may suffer.[44]

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37 OSI Report 2001, 365 et seq.
38 Observations of the Romanian Ministry of Justice of 04/04/02, 2.
39 EC 2001 Regular Report, 20.
40 Observations of the Romanian Ministry of Justice of 04/04/02, 2.
41 Oral statement (President Constitutional Court) during expert mission 25/02-01/03/02.
42 Oral statement (President Supreme Court) during expert mission 25/02-01/03/02.
43 OSI Report 2001, 363 et seq.
44 Oral statement (President Supreme Court) during expert mission 25/02-01/03/02.

The Court has to consider decisions made on appeal and other decisions specified by law. The Supreme Court has to some extent to decide also on facts.
The Supreme Court of Justice decides in certain cases of the Superior Council of the Judiciary, for instance, when a judge is removed from office (art. 97 § 3 Law No. 92) or when a judge is object of disciplinary decisions.

Large areas of jurisdiction fall under a separate system of military courts (military tribunals, military territorial tribunals, military appellate courts). The administration of the military court system is under the authority of the Ministry of Defence. A draft law plans to transfer it to the Ministry of Justice (pre-parliamentary phase), and a new draft version of the criminal procedure code shall reduce competencies of military courts.[45]
At present, Military Courts are competent to try all criminal offences committed by military personnel both within and outside the scope of their duties. Police officers, prison staff, members of the secret services and of the Ministry of Defence have military status and are therefore tried in military procedures.[46] The courts also try offences by civilians against the 'defence capacity' of the Romanian State.
Military magistrates are military personnel and earn higher salaries than their civilian counterparts, based on their military ranks.

There are different kinds of appeals: on law and facts *(apel)* and only on law *(recurs)*.
Lower courts are bound to implement the instructions issued by higher courts deciding on appeal. However, in practice, inferior courts do not always follow these instructions so another appeal might be sought. Courts of appeal may also decide to completely change a decision based on the facts or law. The Supreme Court, following extraordinary appeals filed by the General Prosecutor, may issue binding judgements clarifying legal issues that have been given different interpretations by the courts.[47]

Judges from the Courts of Appeal conduct inspections of lower courts, and the Ministry of Justice is briefed on the findings (see already above I.1.1). The inspecting judges have a very broad mandate to inspect the activities of the lower courts, the application of laws, and judicial conduct.[48]

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45 Oral statement (Department for Elaboration of Normative Acts, Ministry of Justice) during expert mission 25/02-01/03/02.

46 Two new bills introduced in parliamentary procedure envisage demilitarising the police with the exception of special officers; oral statement (Department for Elaboration of Normative Acts, Ministry of Justice) during expert mission 25/02-01/03/02.

47 OSI Report 2001, 389, referring to Code of Civil Procedure, Art. 329; Code of Criminal Procedure, Art. 414.

48 OSI Report 2001, 389.

CHAPTER II

The independent functioning of the Judiciary

II.1 Incompatibilities

According to the Constitution, the office of a judge is incompatible with any other public or private office, except that of an academic professorial activity.
Judges are forbidden to be affiliated to political parties or to be engaged in public activities with a political character. In general, the Constitution and the Law No. 92 set comparatively narrow limits to extra-judicial activities or functions. As to public commissions, there are exemptions: Judges may be members of study committees or committees which draw up laws, regulations, international treaties or conventions, but only with the approval of the Minister of Justice. The Minister of Justice shall make the appointment of judges to various boards or committees provided by law, except for the case in which the law provides otherwise.
To judges, trade activities, participation in the administration of trade companies and any other entrepreneurial activities are forbidden.[49]

At the beginning and at the end of their terms in office, judges must submit declarations on their assets.[50]

In concretising the provisions of the Law No. 92, a more detailed regulation of conflicting interests is contained in the Code of Deontology.
The Civil and Criminal Procedure Codes also regulate conflict of interest. The customary circumstances in which judges face a conflict of interest are provided explicitly, and they are followed. Judges must either disclose the conflict and refrain from the case or risk that the parties require the judge to step down from the case. In addition, judges are not allowed to give legal advice, orally or in writing, even in cases pending before other courts. They must also refrain from publicly expressing their views on lawsuits that are not closed. However, judges may plead in cases where their interests or the interests of their parents, spouses or children are involved.[51]

II.2 A judge should not be subject to any authority

The relation judiciary-media is difficult. Human rights documents report of harsh sentences of courts against journalists who criticised court decisions or who alleged corruption by a judge. The media and the judiciary mistrust each other. Judges are afraid of media criticism, which they regard as incorrect and unjust, in particular exaggerated accuses of corruption. In the view of judges, the media try to influence the judiciary when

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[49] Comments on the inception report by the Romanian Ministry of Justice.
[50] Comments on the inception report by the Romanian Ministry of Justice.
[51] OSI EU Accession Monitoring Report, Judicial Independence in Romania, 10.

reporting during pending procedures and 'intimidating' judges.[52] The media focus on individual cases e.g. of corrupt judges rather than on structural issues such as the working conditions, the caseload, and political interference. Politicians' critical statements support media criticism, e.g. the Minister of Justice referring to incompetence and erroneous judgements.
At each appeal court, a magistrate has been appointed as spokesperson, but systematic training in media issues is not arranged for.

The Minister of Justice tries to improve the relations between mass media and judiciary by organising respective units in the Ministry and in the courts (press offices).
In 1999, a training seminar for magistrates was organised with the support of ABA CEELI, addressing the relationship of judges with the media.
Another seminar took place in Bucharest in 2002, with participation of the spokespersons and the presidents of the courts in Bucharest. Also, representatives of the media were invited, in order to establish contacts with the judges. A follow-up of the seminar will probably take place autumn 2002, when a seminar for the judges outside Bucharest will be organised on the same topic.

The NIM organised, with the USA Embassy assistance a 2-week training session for the representatives of the written media and audio-visual in the field of discovering the judicial system. The spoke persons and other judges of the courts in Bucharest also attended the meetings.
In the framework of the PHARE 99 Twinning program with Spain, which focused on the strengthening of the state institutions with competencies if the fight against corruption and organised crime, a forum concerning the implication of mass media in the fight against corruption was organised with the participation of Romanian journalists, Spanish experts, representatives of the civil society and of the magistrates.[53]

II.3 Supporting facilities

The general infrastructure facilities and information technology in the different judicial institutions have remained poor in spite of recent improvements.
In general, working conditions are inadequate. The main problems are:[54]

- Lack of buildings, office space and court rooms, and inadequate condition of buildings and rooms. Often 3 to 4 judges or even more share one room. In Bucharest courts, the situation is particularly serious, but will improve when the new Palace of Justice will be ready in 2003. Many buildings that previously belonged to the judiciary have still not been returned to the courts so they have to rent space.

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[52] Oral statement (judges from Bucharest and Ploiesti courts) during expert mission 25/02-01/03/02.
[53] Comments on the adjusted desk research by the Romanian Ministry of Justice, July 2002.
[54] Oral statement (judges from Bucharest and Ploiesti courts) during expert mission 25/02-01/03/02.

- Lack of computers and equipment. Courts often have only one or two computers for all their judges and support staff. Mostly these are reserved for the presidents and land registries.[55] Usually, courts do not have internet access.
- Lack of legal materials and literature. Libraries are very small and often contain only one copy of important reference materials for the entire court. Also, courts receive only one copy of the official journal, which contains the frequently changing legislation that is essential to judges' work. Many judges buy books from their own money.
- Lack of (legally trained) support staff. Judges perform many non-judicial duties such as the supervision of the registry and archives, calculation of court fees etc., which could be performed by legally trained support staff as well. The budgeted number of court staff is 12.250 but the resources actually provided by the national budget do not cover for 500 of theses posts. A court section of 12-13 judges may have only two typists, a number that is not sufficient to have judgements typed within the time limits prescribed by law. Reportedly, judges pay typists from their own money to do the work in their leisure time.

With regard to computerisation, the Case and Document Management System (CDMS) and the Legal Library Document System (LLDS) have started to be implemented in 1999 with the support of Phare, and the hard- and software shall be available by mid-2003.[56] It is a computerised case registration and filing system combined with access to databases with information on case law and new legislation. A central electronic library with legislation, case law, and international works will be made available to all courts and prosecutors' offices.[57]
So far, the first beneficiaries of technological upgrades have been the higher courts and court presidents; judges and archives are still waiting.[58]

There is a lack of resources necessary for substantial progress in the processing, reporting, and transfer of cases (between courts). The different courts have several lists, organised differently, but there is only one copy which is used at the same time by the judges, clerks, the bailiffs, the prosecutors and the public. The manual system to handle the cases causes delays and clear inconveniences. Improvements shall be underway.

Court presidents cannot do much about the infrastructure and personnel situation. Decisions regarding additional staff are taken by the Ministry of Justice (which determines the number of judges) and the court of appeal (which determines the size of the administrative staff), and court presidents have no influence on drafting budgets or spending allocated funds.[59]

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55 Oral statement (judges from Bucharest and Ploiesti courts) during expert mission 25/02-01/03/02.
56 Oral statement (EC Delegation) during expert mission 25/02-01/03/02.
57 Comments on the inception report by the Romanian Ministry of Justice.
58 OSI Report 2001, 376 et seq.
59 OSI Report 2001, 376.

In the framework of PHARE 97 and 98 programmes, within the component of creation of a legal library for the MoJ and the courts, all the courts of appeal in the country received Romanian and EU legal textbooks. From this point of view, the courts already have a minimum equipped documentation centre. As far as the computerisation of the courts is concerned, at the moment there are two on-going projects Phare programs in this field.
PHARE 97 is in the final phase of the testing the software application contracted. The application consists of a 'Case and Document Management System' and a 'Legal Library Documentation System' and aims at the creation of an automatic management system for the files and of a documentation database for the use of the magistrates.
PHARE 2000 programme offers assistance for purchasing the necessary hardware equipment for about 60 locations. The equipped courts will be able to transfer the whole process of management of files on computers. The programme will be implemented by mid 2003.

The courts are overloaded. Since 1993, the number of cases has doubled.[60] In 2001, the average caseload of a judge at a court of first instance in Bucharest was approx. 1000 cases, which includes approx. 700 decisions. Usually, judges hear 50-80 cases per session, and have sessions once or some even twice a week. Decisions have to be announced to the parties either during the hearing or else the next morning so judges have to prepare them during the night. The written judgements have to be issued within 30 (civil cases) or 14 days (criminal cases).
Due to the many non-judicial tasks judges have to perform, the actual judicial work often only begins after the regular working hours. On average, judges work 10-14 hours per day. According to judges, the problems related to the working conditions are serious enough to violate the parties' right to a fair trial as well as the reasonable period of time-requirement.[61]
Also, the workload is so high that the above deadlines for issuing decisions and judgements can hardly be met. But, with regard to the assessment of the work of judges by court presidents and subsequent inspections by inspector-judges, already two cases of delay may count as a 'systematic delay' in disciplinary terms and be reported to the Ministry and the Superior Council of Magistracy. Thus, judges are under permanent pressure of disciplinary action.

The backlog of court cases has been significantly reduced, due to the amendment of the Civil Procedure Code, which entered in force 1998. Another revision of the Civil Procedure Code, which entered into force in April 2001, aims at speeding up court procedures and improving enforcement of judicial decisions. In a separate measure, judges have been obliged to publish a reasoning for all decisions (previously only in cases involving appeal to higher courts).

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60 Oral statement (SCM members and Secretary-General) during expert mission 25/02-01/03/02

61 Oral statement (judges from Bucharest and Ploiesti courts) during expert mission 25/02-01/03/02.

These steps may improve the efficiency of the judicial system, although they have also established additional tasks of the Supreme Court (hearing appeals in commercially significant cases) though it is already overburdened, and restricted the right to appeal in certain cases[62]

II.4 Independence vis-à-vis the parties

The remuneration of judges cannot be influenced by parties. But public trust in courts is low, and there is a widespread public perception that corruption is endemic in the judiciary.[63] Small local cases as well as high-level corruption involving politicians and powerful 'clients' contribute to this perception.

CHAPTER III

The Status of Judges

III.1 General

As 'statute of judges' can be understood art. 123 and 124 of the Constitution and the main parts of the Law No. 92/1992, particularly art. 3, 46 - 131.

Judges are free to found and to be member of judges' associations (art. 120). Judges and prosecutors are represented by the Association of the Romanian Magistrates.[64] The association is active in defending the rights and interests of magistrates.
The Union of Judges' Associations represents exclusively judges and focuses on professional training.[65]

III.2 Selection

The main modality of recruiting the magistrates is the admission at the National Institute of Magistracy (NIM), by competitive examination, provided for Law no.92/1992. In order to participate at this competitive examination, the persons shall have to meet the conditions provided for by the art. 46 of the same law. The duration of training at the NIM has been extended to 2 years (as from 2001) and represents the probation period for the future magistrates.[66] According to the Law on Judicial Organisation, the NIM is the 'main' entry gate to magistrates' professions, whereas it is envisaged to change the law so

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62 EC 2001 Regular Report, 20.
63 OSI Report 2001, 356.
64 Comments on the inception report by the Romanian Ministry of Justice.
65 OSI Report 2001, 370.
66 Ministry of Justice, The National Institute of Magistracy, 2 et seq.

as to make it the 'exclusive' way of access.[67] Theoretically, also candidates who have not graduated from the NIM may apply as magistrates after having passed a special contest or examination for admission to the magistracy, but it appears that this is rare in practice now. These candidates would have to undergo a probation period of 2 years.

Within the probation period, after 6 months, there is another examination with selective function (art. 54, 55). At the end of the probation time the judges on probation have to sit for the qualification examination. The results of this (final) examination are 'validated' by the Superior Council of Magistracy. The Council also draws up a classification table, on the basis of which the appointments to vacant offices are made.
The NIM is subordinated to the Ministry of Justice. It is headed by a council composed mainly of judges and prosecutors. The training staff is composed, as a rule, of judges and prosecutors. (For more information on the NIM see below chapter IV)
The board of examiners of the qualification examination is composed of 2 judges of the Supreme Court of Justice, 2 members of the General Prosecutorial Office, 2 professors of law, and 1 delegate of the Ministry of Justice.
The entrance contest for the NIM is regulated by the Regulation of Organisation and Functioning of the NIM. The subjects of the qualification examination are in general regulated by law (art. 61). (See also below chapter IV)

The access to the judiciary after contest but without quality examination is open to lawyers and certain other kinds of legal professionals with at least 5 years of professional experience (art. 65). In exceptional cases access is given to persons without contest or qualification examination (art. 67). A person can be appointed exceptionally on the Magistrates' Corp without sustaining a competitive examination or without taking an exam, when:
- he/she is a Doctor in Laws or he used to have the magistrate quality;
- he /she is a general inspector or legal advisor in the Ministry of Justice;
- he/she is a professor in the Faculty of Law;
- he/she is a research worker at the Juridical Research Institute of the Romanian Academy;
- he/she was a lawyer or notary for at least 5 years, as well as the legal advisors with a minimum length in service of 10 tears, on their speciality.[68]

III.3 Appointment

Judges are appointed by Decree of the President of Romania, at the proposal of the Superior Council of Magistracy, following the recommendation by the Minister of Justice.[69] The Superior Council can reject or accept the Minister's proposals, who is also chairing the sessions.[70]

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[67] Oral statement (Director of the NIM) during expert mission 25/02-01/03/02.
[68] Comments on the adjusted desk research by the Romanian Ministry of Justice, July 2002.
[69] OSI Report 2001, 381, referring to arts. 47, 88, para. 1 (a-c) of the Law on the Judiciary.
[70] Oral statement (SCM members and Secretary-General) during expert mission 25/02-01/03/02.

The conditions of appointment are regulated by law (particularly: art. 46, 51, 65). The law also has detailed provisions for the probation period.

A magistrate who has not been nominated by the Superior Council of Magistracy for appointment by the President of Romania, may file a complaint with the Supreme Court of Justice which decides by a panel composed of 9 judges (art. 64 § 2). There is no such appeal from the Minister's refusal to recommend a candidate to the Council, or from the State President's refusal to appoint him.[71]

Court presidents are appointed by the Superior Council of Magistracy, upon the recommendation of the Minister of Justice. The court presidents are appointed to four-year terms, with the possibility of renewal. The Minister of Justice can request the Superior Council of Magistracy to recall a court president before the end of the service, for 'unsatisfactory fulfilment of the leading tasks or following a disciplinary sanction.'[72]

The tenure is for lifetime.[73]
Supreme Court members have a six-year term of office which can be renewed (by the Minister of Justice, the Superior Council of Magistracy and the President).
Constitutional Court members are appointed to non-renewable nine-year terms (the State President, Senate and Chamber of Deputies appoint 3 judges each). As these judges are (re-)appointed by political actors, they are particularly vulnerable to political influence.[74] Supreme Court justices referred to this phenomenon as 'self-censorship' which may become visible towards the end of the term of office.[75]

The law entitles Supreme Court judges to return to their former position after expiration of the term of office with the Supreme Court.[76] But it appears that, in practice, their positions will not always be reserved, so they may have to accept positions in other parts of the country or at lower courts.[77]
Planned modifications of the law shall limit the influence of the Ministry of Justice on the appointment, evaluation/inspection and promotion of judges and strengthen the role of the Superior Council.[78]
The mandatory retirement age is according to the level of the court 65, 68 or 70 (art. 68).

III.4 Promotion

Promotion is possible after a minimum length of service. The length depends on the grade of the position. The promotion is founded on exams as well as on yearly

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71 OSI Report 2001, 382.
72 OSI Report 2001, referring to art. 66, paras. 5, 7 of the Law on the Judiciary.
73 OSI Report 2001, 383, referring to the Romanian Constitution.
74 OSI Report 2001, 358; OSI EU Accession Monitoring Report, Judicial Independence in Romania, 16.
75 Oral statement (Supreme Court judges) during expert mission 25/02-01/03/02.
76 Observations of the Romanian Ministry of Justice of 04/04/02, 3.
77 Oral statement (Supreme Court judges) during expert mission 25/02-01/03/02.
78 Observations of the Romanian Ministry of Justice of 04/04/02, 1.

assessments, the 'qualifying remarks', which shall according to law 'reflect the results of the magistrate's professional activity, his conduct at work and in society, his ability as well as his development prospects within the framework of his job.'
The criteria laid down by the Ministry of Justice are difficult to objectify[79], which seems to leave some discretionary powers to court presidents. The law does not provide quantitative measures for evaluating a judge's activity, but an unjustifiably high rate of reversals leads to a low qualification assessment.[80]

Judges can only object to the outcome of their evaluation to the Ministry.
In 2000, the Ministry of Justice introduced provisions on promotion including evaluation criteria, by ways of a regulation. It has also organised competitive testing exams.[81] In addition to positive assessments, in order to be promoted to higher courts judges need to have passed an exam consisting of writing an essay on a controversial issue and an oral examination.

For judges holding management positions, the qualifying marks have to mention the management abilities. The promotion to management positions of judges is made for a period of 4 years, with the possibility of a single reappointment in the position held.

As promotions are decided upon by the Superior Council of Magistracy following a proposal by the Minister of Justice, who is also presiding over the Council, the Minister has a considerable influence on promotions. Also, decisions of the Superior Council are taken with the participation of prosecutors, whereas the Council has no responsibility with regard to the promotion of prosecutors (this is a capacity of the Ministry).
Planned modifications of the law shall limit the influence of the Ministry of Justice on appointment, evaluation/inspection and promotion of judges and strengthen the role of the Superior Council.[82]

III.5 Professional security

Irremovability

Taking apart the judges on probation, judges are irremovable as said in art. 124 of the Constitution and in detail in art. 91-97 of the Law No. 92/1992. The mandatory retirement age is regulated by law. Transfer may be done only with consent but, reportedly, judges sometimes experience sudden transfers to other court sections taking effect within shortest periods of time, without being given a motivation and in spite of objecting to the transfer.[83] Law No. 92/1992 provides for the transfer of judges, which can be done only with their consent. The law provides for the transfer of judges from a court of law to another or their transfer outside the system, but does not provide for

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79 Oral statement (Bucharest Court Presidents) during expert mission 25/02-01/03/02.
80 OSI EU Accession Monitoring Report, Judicial Independence in Romania, 17.
81 The Romanian Ministry of Justice's White Paper1997-2000, 47.
82 Observations of the Romanian Ministry of Justice of 04/04/02, 1.
83 Oral statement (Bucharest Court judges) during expert mission 25/02-01/03/02.

their transfer in a different division of the same court of law. The president of the court of law distributes the judges on divisions. The law does not stipulate the necessity of the judge's consent for being distributed to a certain division.
For the delegation to another court in order to give a court the necessary manpower temporarily, the law sets narrow conditions (art. 95).
One of the disciplinary sanctions in art. 123 is the disciplinary transfer, for 1 - 3 months, to a court located within the jurisdiction of the same court of appeal.

Sudden replacements of some 30 presidents of courts of first instance and tribunals happened in February and March 2001, without clear reasons being given, only some of the cases have been linked to corruption.[84] In this context, the EC 2001 Regular Report stresses the influence of the Ministry of Justice over the Superior Council of Magistracy (due to the Minister chairing the meetings and one-third of its members being appointed by the Ministry).[85] According to the Superior Council of Magistracy most of these replacements took place because the term of the presidents concerned had elapsed.[86]

Judges on probation are not irremovable in the usual meaning of the term. According to the law (art. 91 § 1) they do not enjoy irremovability but 'stability' (*stabilitate)*. Their removal from office can be ordered by the Minister of Justice, when they fail to pass the intermediate examination after 6 months of service or the qualification examination at the end of the probation period. During the first 6 months they have no power as deciding judge (art. 53). The art 63 provides for the rejection of the candidate after two

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[84] EC 2001 Regular Report, 20. Comments from the Romanian Ministry of Justice on the adjusted desk research (july 2002) indicate the following. There were 40 presidents of tribunals, on their office at February 1st 2001; at June 4th 2002, 13 of them were still in office. The other 27 were released from their function for following reasons:
- carrying out their second mandate for a leading function - 15;
- resignation from their function and transfer to a superior court of law - 3;
- releasing from function at their request - 3;
- carrying out their first mandate - 2;
- the retirement upon a pension - 1;
- appointment at the Supreme Court of Justice - 2;
- revocation - 1.

There were 15 presidents of the courts of appeals, on their office at February 1st 2002; at June 4th 2002, 8 of them were still in office. The other 7 were released from their function for following reasons:
- carrying out their second mandate for a leading function - 3;
- releasing from function at their request - 1;
- carrying out their first mandate - 1;
- appointment at the Supreme Court of Justice - 2;

We emphasis that, for this period, the second mandate was carried out by many of the persons having a leading function in the courts of law. The legal impossibility of maintaining them in these offices leaded to their replacement, without having any other reasons for these changes.

[85] EC 2001 Regular Report, 20.

[86] Oral statement (SCM members and Secretary-General) during expert mission 25/02-01/03/02.

sessions of the qualification examination (final), that means the loss of his quality of magistrate on probation.

III.6 Remuneration and social welfare

By the new legislation (Law No. 104/1999 and Law No. 126/2000) on salaries, the incomes of judges have increased substantially. This was seen as necessary in order to deter corruption and stop the exodus of magistrates into the private sector.[87] Law 50/1996, which established the basis for magistrates' compensation, was repeatedly modified adding and suspending supplementary payments by government ordinances.[88] This republished, modified and completed law on remuneration and other rights of the judicial authorities, provides for the magistrate's activity the right to monthly remuneration. Their remuneration is established by office, in view with the level of courts of law and of public prosecutor's offices and by the length in service. The remuneration granted on the basis above mentioned is the only monthly remuneration form for the activities corresponding for a magistrate' s office and represents the basis for salary calculation in establishing the rights and obligations determined with the salary income.[89]

Magistrates still continue to rank amongst the best paid officials, however, this preference is being eroded. Unlike other public employees, they were not included in a wage adjustment in 2001[90], the raises have been below the inflation rate. As compared to their immense workload and the importance of their work, judges themselves consider their salaries as very low.[91]

The salaries of the magistrates are established on the basis of their office, the court of law or public prosecutor's office level and their length in service as magistrates. After the Ordinance of Government no 83/2000 on modification and completion of the Law no 50/1996 came into force, the magistrates do take benefit for the risk addition and for the neuro-physical addition. With the view to the length in service in a magistrate office, they benefit for an additional remuneration, calculated by per cent on the basic remuneration.[92]

At present, the average monthly salary of a young judge with some years of experience is approx. 340 Euro.[93] This is in line with the observations of the OSI Report: The average monthly salary of a district court judge is 325 Euro, roughly three times the average salary. Judges in regional courts receive an average salary of approx. 370 Euro, judges in

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87 OSI EU Accession Monitoring Report, Judicial Independence in Romania, 2.
88 OSI Report 2001, 378.
89 Comment to the adjusted desk research by the Romanian Ministry of Justice, July 2002.
90 EC 2001 Regular Report, 21.
91 Oral statement (Bucharest and Ploiesti Courts judges) during expert mission 25/02-01/03/02
92 Additional information received from the Ministry of Justice of Romania, July 2002.
93 Oral statement (Bucharest Court judges) during expert mission 25/02-01/03/02.

courts of appeal 405 Euro.[94] Judges with the Supreme Court receive 580 Euro per month.[95] Judges serving as court presidents receive higher salaries. For instance, a district court president receives a net salary of approx. 405 Euro, a regional court president 440 Euro and an appellate court president 485 Euro.[96]

The Law No. 92/1992 provides a wide scope of other special benefits granted to judges: art. 98 - 102, 105, 106, including for instance long-term loans for building or purchasing a house or a certain discount on railway and other transportation tickets. Judges at courts in villages are provided with houses by the local administration. Judges may also receive 'medals' entitling to tax reductions, bonuses on the basis of the length of service etc. Many of these additional benefits are awarded on a contingent or selective basis, leaving some discretionary powers to the Ministry of Justice and court presidents, who exercise this power in practice.
Additionally, not all of the statutory privileges of magistrates are in fact available, e.g. judges would be entitled to free health care, but the state budget is not sufficient to cover this.[97]

The salaries of military judges and military prosecutors are higher than those of their civilian counterparts.[98]

The pensions are granted in art. 103 in a relatively generous manner (basis: 80% of the last net income).

III.7 Disciplinary proceedings

The behaviour constituting a disciplinary conduct is in detail regulated in art. 122 of Law no 92/1992. A clause is recently introduced that disciplinary conduct also is 'the committing of other serious infringements of the provisions of the Code of Deontology of the Magistrates'.
The procedure applied by the judge can constitute disciplinary misbehaviour when the situation has the character of a repeated neglect in the resolution of work. However, the content of the decision can only constitute disciplinary misbehaviour in case the judge committed a crime.[99]

The main problem for judges with regard to disciplinary accountability is 'systematic delay in work', since the high workload and the poor working conditions make it difficult

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94 OSI Report 2001, 378 Fn. 133 referring to Ordinance 83/2000, Annex 1. The figures indicate the net and not the gross income.
95 OSI Report 2001, 378 Fn. 134 mentioning that in accordance with Law 56/1993, Art. 64, justices with the Supreme Court receive salaries equal to those paid in the highest public authorities.
96 OSI Report 2001, 378 referring to Ordinance 83/2000, Annex 1.
97 Oral statement (Director of the Financial and Administrative Department, Ministry of Justice) during expert mission 25/02-01/03/02.
98 Oral statement (President Military Court of Appeal) during expert mission 25/02-01/03/02.
99 Comment on the adjusted desk research by the Romanian Ministry of Justice, July 2002.

to meet the deadlines imposed by law.[100] If delays were confirmed by inspector-judges, the Ministry of Justice would forward their reports to the Council. However, the Council is aware of the working conditions at courts so disciplinary sanctions in such cases are rare in practice.

The disciplinary sanctions are in detail regulated in art. 123 following the usual system in continental Europe.
Also the disciplinary proceedings with a compulsory preliminary investigation are regulated in detail. The initiative for a disciplinary action belongs to the Minister of Justice, except for the judges and assistant-magistrates of the Supreme Court of Justice. The preliminary investigation is carried out by judges having at least the same rank as the investigated judge. According to the result of the preliminary investigation, the Minister of Justice may refer the case to the Superior Council of Magistracy. The Minister is thus the actual holder of disciplinary action, rather than the Council.

As a disciplinary body, the reunions of the Council are headed by the president of the Supreme Court of Justice.[101] The Council is not competent for disciplinary proceedings against prosecutors although prosecutors take part in disciplinary proceedings against judges (prosecutors are tried by a disciplinary commission of their own).
The proceedings of the Superior Council of Magistracy are not public. The accused judge may be assisted only by another judge or prosecutor.[102] The Council in disciplinary cases pronounces a motivated decision, communicated to the parties (only).

The draft Law on Judicial Organisation envisages strengthening the responsibility of the Superior Council in disciplinary matters so the role of the Minister of Justice may be more limited in future. It is also discussed to enable the Council to hold disciplinary proceedings against prosecutors too.[103]

Against the decision of the Superior Council of Magistracy, the judge concerned may appeal to the Supreme Court of Justice.

Concerning corruption in the judiciary, in 1999 the Superior Council of Magistracy handled 14 disciplinary actions against judges. 4 actions were rejected, 8 were accepted while 2 – in 2000 – were pending. Of the eight actions accepted, 6 judges received disciplinary sanctions and 2 judges were removed from office[104].
In 2001, 5 judges and 4 prosecutors were sent to criminal trial because of irregularities, including corruption. The public opinion is that corruption in the judiciary goes largely without investigation and unpunished and that officials do not take much interest in revealing corruption cases.[105]

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[100] Oral statement (judges) during expert mission 25/02-01/03/02.
[101] Comments on the inception report by the Romanian Ministry of Justice.
[102] Art. 128 of the Law of the Judiciary.
[103] Oral statement (General Prosecutor) during expert mission 25/02-01/03/02.
[104] Number of judges in September 2000: 3576.
[105] Oral statement (media representatives) during expert mission 25/02-01/03/02.

CHAPTER IV

The Training and Retraining of Judges

IV.1 Organisation of judicial training and status of training institute

The judicial training starts at the university, since a prerequisite to be appointed judge is holding a university Law degree or an Economic-Administrative Law degree (art. 46 § 1 letter b).

The specific institute to train future judges and prosecutors is since 1997 the National Institute for Magistrature (NIM). The way through the NIM is the main way to get access to the judiciary and shall be exclusive in the future.[106]
The training capacity of the NIM depends on the number of vacancies for magistrates, mostly about 100 candidates per year. Candidates have to pass an entrance contest which has been very difficult in recent times, more than 2.000 candidates have applied for the about 100 places available.

The NIM is not part of the national educational system, but subordinated to the Ministry of Justice. The NIM is headed by a Council composed of 11 members; high magistrates appointed by the Supreme Court of Justice and representatives of the training staff, the Ministry of Justice, and students. The Minister of Justice appoints the director and his deputies. The training staff is composed of judges and public prosecutors and other Romanian or foreign experts.[107]
The decisions of the Institute's council (including budget approval and staffing) must be vetted by the Minister of Justice.[108]
The NIM underwent radical changes in 2001, when the director and many teachers were replaced, curricula were changed and the training period was extended to 2 years.

The NIM has its headquarters in Bucharest in a Ministry building. Thanks to a Phare project, the institute is adequately equipped. An additional training centre for the training of magistrates and court clerks has been set up in Barlad. This centre is used for continuous training and is functioning since April 2002. There are two more training centres exclusively for magistrates, in Sovata (for continuous training, functioning since April 2002) and in Timisoara.[109] So far, this last centre has not been used.[110]

The period of being judge on probation (art. 52 - 58, 83) can be estimated as part of the judicial training. Responsible for the training of the judges on probation are the presidents of the respective courts.

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[106] Oral statement (Director of the NIM) during expert mission 25/02-01/03/02.
[107] Ministry of Justice, The National Institute of Magistracy, 1 et seq.
[108] OSI Report 2001, 372.
[109] Additional information received from the Romanian Ministry of Justice, July 2002.
[110] Oral statement (EC Delegation) during expert mission 25/02-01/03/02.

IV.2 Structure of the training and pedagogical instruments

The candidates admitted to the NIM have the capacity of Justice auditors and benefit by a monthly scholarship, paid by the Ministry of Justice. It amounts to the monthly salary of a judge on probation. The training shall be founded on getting acquainted with the tendencies and development of the main legal institutions, including the field of comparative law and, in particular, on acquiring the necessary practical knowledge for becoming a judge or a prosecutor. Whereas the first year focuses on theoretical training, the second year's training is more practical. The trainees perform probation periods within law courts and prosecutor's offices and carry out registration activities in the services. Under the guidance of the training staff and of the judges and prosecutors, they attend court hearings and pre-trial activities.[111]

The curriculum is based on a block system and comprises the main law subjects, including EU and European Human Rights law, and ethics and professional code. Computer skills and languages are also taught.
The courses are organised in small groups made up of 18 auditors. Exams take place at the end of the first year and the final examination at the end of the second year. The examination mainly consists of practical tests. The examination board is composed of 3 members of the training staff and 3 magistrates from courts and prosecutorial offices, appointed by the Minister of Justice.

IV.3 Training for junior judges

Judges who have not graduated from the NIM have to pass an admission contest with direct access to the magistracy. During the first six months, they may not pronounce decisions but carry out activities aiming at completing their professional experience. After these 6 months and after having passed an interim examination, they are entitled to performing trial activities, though not all. The probation period is 2 years.

NIM graduates who have followed two years of courses do not have to pass an additional probation period. They are entitled to functions in trial activities from the beginning, but they have to pass the final qualification examination too (art. 83).
The examination consists of written and oral tests of a theoretical and a practical nature. The theoretical tests shall concern the basic principles and institutions of civil, commercial, criminal, procedural and constitutional law and of judicial organisation; the practical tests shall consist of a written paper of applied nature (art. 61 § 1).

IV.4 Training for experienced lawyers to become judges

Those experienced lawyers who choose the way of direct access to the magistracy by contest become judges on probation as described under I.IV.3.

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[111] Ministry of Justice, The National Institute of Magistracy, 3.

For those experienced lawyers who directly want to become judge at a court of first instance according to art. 65, they have to pass the qualification examination (the same as for judges on probation). When they have more than 5 years of professional experience, they do not need to pass the qualification examination and no training seems to be necessary.

IV.5 Training and re-training for sitting judges

Art. 119 provides that judges are bound to participate, at least once every 5 years, according to the schedule approved by the Minister of Justice, in training stages or, as the case may be, in professional improvement stages at the NIM, at domestic or foreign academic institutions or within the framework of courses organised by courts of appeal.

The task of the continued training of magistrates has been taken over by the NIM since November 1, 2000. The NIM co-operates with international organisations and institutions and foreign institutions for the continuing training of judges to this end. However, the Ministry of Justice keeps responsibilities for continuous training as well, although from now on only the NIM should co-ordinate this activity.

Continuous training encompasses approx. 6.000 magistrates (3.500 judges, 2.500 prosecutors). Up until now, continuous training has been funded from Phare and other funds[112] which might expire soon. It is uncertain if the Ministry will provide such funds, but the NIM cannot ensure this service without additional funding. It seems that, due to the scarcity of funds, not all magistrates can indeed enjoy training as provided for by the law, although, reportedly, it may also happen that the same persons profit from repeated training units.

As a complementary measure, the NIM has developed a plan to create a network of trainers. The courts, including the courts of appeal, will have one or more trainers available to train the other judges, with documentary support of the NIM.[113]
Among the courses the NIM offers for judges (and prosecutors and other legal professionals) are those in European Law (since 1999).

As a whole, the importance of continuous training is acknowledged by all institutions involved. Reportedly, some years ago it was easier both to become a judge and to be promoted, whereas requirements are much stricter today.[114] Trainees and young judges have a good knowledge, but are often very young and inexperienced.[115] In general, the

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[112] Funds have been received from or through a number of international organisations, like the Netherlands Helsinki Committee, the US embassy, the German Foundation for International Legal Co-operation, International Labour Office, etc. Information received from the Romanian Ministry of Justice, July 2002.

[113] Oral statement (Director of the NIM) during expert mission 25/02-01/03/02 and additional information received from the Romanian Ministry of Justice, July 2002.

[114] Oral statement (Ploiesti court judges) during expert mission 25/02-01/03/02.

[115] E.g. the average age of judges of one of the Bucharest first instance courts is 28.

application of the law is difficult as it changes very frequently and procedural provisions are complicated.[116] Judges feel uncertain in fields such as bankruptcy law, money laundering, crimes related to financial and banking issues and would welcome specific training on this. Training would also be welcome in the area of information technology and organisation (internal co-operation and co-operation with other courts, the procuracy, ministries).[117]

It is known that some Romanian judges are given the chance to participate in courses abroad organised by various institutions concerning foreign law and European Law.

[116] Oral statement (Ploiesti court judges) during expert mission 25/02-01/03/02.
[117] Oral statement (Bucharest court judges) during expert mission 25/02-01/03/02.

MODULE 2

STATUS AND ROLE OF THE PUBLIC PROSECUTOR

CHAPTER I

Overview of the Public Prosecution Service

The public prosecution service in Romania performs its duties through public prosecutors working in offices attached to the courts, under the authority of the Minister of Justice. Its activities are organised within a hierarchical system

The prosecutors are, according to the law, independent of the courts and other state authorities. The prosecution service disposes of its own, separate budget which is negotiated directly with the Minister of Finance.[118]
However, prosecutors are obliged to follow written instructions from the Minister of Justice concerning the enforcement of criminal law. The Minister of Justice may give a written disposal to the prosecutor in order for the latter to initiate a criminal investigation of a crime he is aware of.[119] This provision does not restrict the prosecutor's right to bring, or not, criminal cases to court, in accordance with the law and based on his own legal opinion.[120] Furthermore, the Minister of Justice may not order the prosecutor to discontinue a prosecution that has officially commenced.

Prosecutors are appointed by a decree issued by the President. They not only have the duty to bring about public prosecutions, but also to act in civil matters when the law so requires. Furthermore, they are responsible for the lawful enforcement of judgements.

The Constitution of Romania, which has entered into force in December 1991, provides four articles on the role and status of the public prosecutor and its relation to the Superior Council of Magistracy especially in matters of nomination for appointment (articles 130 -133)

The Law on Judicial Organisation (law No. 92 of august 4, 1992, amended in 1997) deals in great detail with all sorts of aspects of the status and role of the public prosecutor, like

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[118] Oral statement (General Prosecutor) during expert mission 25/02-01/03/02.
[119] Art 34 from the Law no 92/1992.
[120] Comment on the adjusted desk research by the Romanian Ministry of Justice, July 2002.

promotion and removal from office, incompatibilities, relation to the Ministry of Justice, working conditions, rights and obligations etc.
This law provides a basis for a high standard and relatively independent prosecution service, within the realm of the Ministry of Justice.

CHAPTER II

Position of the Public Prosecutor

II.1 Relationship with the executive power

Article 26 of the Law on Judicial Organisation states that the Public Ministry shall exercise its attributions through public prosecutors belonging to prosecutorial offices attached to each court under the authority of the Minister of Justice. According to the same article the Public Ministry shall be independent in its relations to other public authorities.

The President of Romania appoints public prosecutors on nomination of the Superior Council of Magistracy, following a recommendation by the Minister of Justice. In these nomination procedures, the Superior Council of Magistracy is presided over, without voting right, by the Minister of Justice.
Prosecutors on probation are appointed by the Minister of Justice (Art. 51 of the Law on Judicial Organisation).[121]
The selection of magistrates is based on the marks obtained in the qualification examination.[122]

Art. 33 of the Law on Judicial Organisation states that the Minister of Justice's orders, issued directly or through the General Public Prosecutor, regarding observance of the law by prosecutors, shall be compulsory.

Art. 34 of the Law on Judicial Organisation creates the possibility for the Minister of Justice to exercise control over the prosecutors through 'inspector-prosecutors' and general inspectors and counsellors. The control consists in checking the work, the work relations with petitioners and other persons involved in work incumbent on prosecutorial offices as well as in evaluating public prosecutors' activity, experience and professional skills.

The same article gives the Minister of Justice the possibility to give directions as to the measures that are to be taken to fight crime.

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[121] Comments on the inception report by the Romanian Public Ministry.
[122] Comments on the inception report by the Romanian Public Ministry.

Moreover, according to this article, the Minister of Justice is entitled to issue a written order, directly or through the General Public Prosecutor, for the competent public prosecutor to begin the criminal pursuit proceedings in case of offences of which he is aware and to introduce before court actions and remedies necessary for the protection of the public interest.
However, orders for the discontinuance of a criminal pursuit that was lawfully opened may not be issued.

The Minister of Justice used to play an important role in the nomination of prosecutors, also because of him chairing the meetings of the Superior Council of Magistracy and one-third of its members being appointed by the Ministry.[123] However, with the amendment of the law by Emergency Ordinance no 20/2002[124], the Ministry of Justice lost this competence. According to the Ministry, the role of the Minister of Justice in the nomination of magistrates is limited to the nomination of prosecutors on probation.[125] The Minister also controls the prosecution, although the right to give orders to public prosecutors with a view to initiating criminal prosecution has very rarely been made use of. According to the law, the competent public prosecutor is the only one entitled to order on criminal action (art. 235, 262 Criminal Procedure Code) and free to present to the court the conclusions he deems founded according to the law.[126]

II.2 Relationship with the legislative power

Art. 26 of the Law on Judicial Organisation emphasises that the prosecution is independent in its relations to public authorities. Prosecutors do not have any legislative power or competence, and vice versa. The only link to the legislative is that the Prosecutor General of the Public Prosecutor's office attached to the Supreme Court of Justice makes proposals for improving the legislation to organs which have the right of legislative initiative (as a rule, to the Minister of Justice).[127]

II.3 Relationship with the judicial power

Art. 26 of the Law on Judicial Organisation stresses the importance of an independent prosecution service. There are no indications of unjustified interference from judges. At present, prosecutors rather enjoy a strong position towards the judiciary. Investigative prosecutors perform judicial-like functions such as issuing arrest warrants and authorising searches.[128] Investigative measures are not subject of direct judicial control. Only after complaint with the prosecutor's superior initiating an internal review

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123 EC 2001 Regular Report, 20.
124 This Emergency Ordinance was published in the Official Journal of 28 February 2002.
125 Art. 51 of the Law no 92/1992, comment on the desk research by the Romanian Ministry of Justice, July 2002.
126 Comments on the inception report by the Romanian Public Ministry.
127 Comments on the inception report by the Romanian Public Ministry.
128 OSI Report 2001, 360.

procedure, appeal to court is possible.[129] An amendment currently being debated in Parliament intends to increase judges' control of prosecutorial activities e.g. in the case of concluding investigations without indictment, and wire-tapping.[130]

Young judges and prosecutors have their training and examinations at the same place, the National Institute for the Magistracy in Bucharest (see above module 1 chapter IV).

II.4 Relations with the police

The investigation of crimes is carried out by the police under the supervision and direction of a prosecutor (art. 27 Law on Judicial Organisation). The prosecutor issues arrest warrants and authorises searches during the investigative phase. Romanian law does not distinguish between the investigating role and the prosecuting role.

The police have military status and considerable autonomy. Currently, Parliament discusses draft laws providing the demilitarisation of the police, with the exception of special officers.[131]
Allegations of police abuse are tried within the military court system.[132]

In practice, prosecutors, with the assistance of a group of police officers, investigate crimes with high social risk, whereas other crimes are investigated by the police under the supervision of a prosecutor. The Code of Criminal Procedure regulates the position of the prosecutor to whom the police are 'functionally subordinated'. The prosecutor can e.g. issue written instructions to the police. If a police officer does not comply, the prosecutor can only inform a superior police officer.[133] Once the investigation is complete, the prosecutor decides whether or not to press charges in court.[134]

There were plans to introduce an examining judge in the pre-trial phase especially to bring down the number and length of pre-trial detentions. At present, the public prosecutor orders the preventive arrest of the defendant for a maximum length of 30 days.[135] It may be extended by the court at the written request of the prosecutor, for another 30 days each, up to half of the maximum punishment provided by law for the alleged crime.[136]

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[129] Oral statement (General Prosecutor) during expert mission 25/02-01/03/02.
[130] Oral statement (General Prosecutor; Department for Elaboration of Normative Acts, Ministry of Justice) during expert mission 25/02-01/03/02.
[131] Oral statement (Department for Elaboration of Normative Acts, Ministry of Justice) during expert mission 25/02-01/03/02.
[132] See above module 1 chapter I.2.
[133] The General Prosecutor has proposed a new law to make this subordination more 'official'; oral statement (General Prosecutor) during expert mission 25/02-01/03/02.
[134] Oral statement (General Prosecutor) during expert mission 25/02-01/03/02.
[135] Comments on the inception report by the Romanian Public Ministry.
[136] Parker School Journal of East European Law Vol. 5 Nos. 1-2, Country Report Romania (http://www.pili.org/library/access/jeel1998/romania.htm); oral statement (Department for Elaboration of Normative Acts, Ministry of Justice; General Prosecutor) during expert

Currently, the Ministry of Justice is working on a draft law on Criminal Procedure, which envisages that prosecutors' powers with respect to pre-trial detention be limited to 3 days of temporary arrest whereas any longer detention period would be in the responsibility of judges.[137]

CHAPTER III

The Office of the Public Prosecutor

III.1 In criminal law

The public prosecutor has the following criminal attributions (art. 27 of the Law on Judicial Organisation):

- carrying out the criminal pursuit in cases and circumstances provided by law;
- supervising the criminal investigation activity effected by police and other authorities; in exercising this task, the public prosecutor shall direct and control the criminal investigation activity, the orders issued by the public prosecutor being compulsory to the authority which effects the criminal investigation;
- referring criminal cases to court for trial;
- attending, according to the law, the trial sittings;
- exercising, according to the law, the remedies against judicial decisions;
- supervising the observance of the law during the activity of execution of judicial decisions and other executory wits;
- checking the observance of the law at the preventive detention places, sentence serving places and places where educational and safety measures are implemented;
- protecting the rights and interests of minors and persons laid under a judicial interdiction;
- studying the causes that generate or favour criminality elaborating and submitting proposals concerning their elimination as well as improvement of criminal legislation;

Under Romanian law, the legality principle applies although there are some exceptions coming close to the principle of opportunity. In some cases prosecutors may assess if prosecution is necessary or if it would be sufficient to order administrative sanctions (fines) or educational measures. Judges have the same possibilities. The criteria for differentiation are contained in art. 18, 91 of the Penal Code; crimes with small consequences, and a low level of social danger. The Public Ministry is independent in

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mission 25/02-01/03/02.

[137] Oral statement (Department for Elaboration of Normative Acts, Ministry of Justice; General Prosecutor) during expert mission 25/02-01/03/02.

taking these decisions. In 2001, 80.000 criminal cases were brought to court as compared to 107.000 administrative sanctions.[138]

III.2 In administrative and civil law

The prosecutor participates in civil proceedings in cases 'provided by law' (article 27 of the Law on Judicial Organisation), e.g. judicial interdiction, declaration of death of missing persons. Mostly, prosecutors act in the interest of minors or in the general interest. In civil proceedings, prosecutors have the same rights as other parties, including the possibility of appeal, but they do not enjoy a privileged position.[139]
The parties have the right of disposition over the civil action, even if the prosecutor has initiated them. Civil causes play a much less important role in practice; in 2000, prosecutors participated in 322.689 criminal causes as compared to 97.464 civil causes.[140]

The Prosecutor General has the right to appeal against final judgements both in civil and criminal cases. This provision has been scrutinised by the European Court on Human Rights because extraordinary appeal was possible without any time limit, so the parties could never be sure of the finality of a judgement. At present, the time limit for extraordinary appeal in civil matters is one year.

The prosecutor has no competence to assist the victim of a crime to carry out a civil action.

III.3 Secondary tasks and supervisory functions

Art. 27 of the Law on Judicial Organisation instructs the public prosecutor to perform various supervision activities.
Prosecutors supervise the police (see above 1.4) and the observance of the law during the execution phase. The enforcement of judicial decisions falls within the competence of the courts (of the judge in charge of execution), under the supervision and control of the Public Ministry. Enforcement is seen as administrative – not judicial – in character.[141]
Courts also take decisions on probation.[142] Prosecutors verify that warrants are issued when decisions become executable, that the warrants are sent to the police or other enforcement bodies, that registers are kept correctly etc. This verification pertains to all kind of executive measures (penalties, complementary penalties, security measures).[143]

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138 Oral statement (General Prosecutor) during expert mission 25/02-01/03/02.
139 Oral statement (General Prosecutor) during expert mission 25/02-01/03/02.
140 Comments on the inception report by the Romanian Public Ministry.
141 Comments on the inception report by the Romanian Public Ministry.
142 Oral statement (Department for Elaboration of Normative Acts, Ministry of Justice) during expert mission 25/02-01/03/02.
143 Comments on the inception report by the Romanian Public Ministry.

Also, penitentiaries and other detention places are under the supervision of prosecutors.[144]
Prosecutors shall protect the rights and interests of persons under judicial interdiction. They participate in criminal and civil causes and supervise enforcement measures, if these persons are involved.
Finally, prosecutors shall study causes of crime and improve criminal legislation by ways of establishing criminological surveys.[145]

III.4 International tasks

In 2000, a Section for International Co-operation and Representation was set up within the prosecutor's office attached to the Supreme Court of Justice. It is responsible for the co-operation with similar institutions from abroad and for international legal assistance. The main international activities of the Public Ministry are: the exchange of delegations; the organisation of conferences, seminars etc.; co-operation in the framework of assistance programmes such as Phare; preparation of Romania's adhering to EU JHA standards; international legal assistance in criminal matters.[146]

III.5 Ethical code/statute for prosecutors

The Council of the Public Ministry adopted a code of the public prosecutors' professional ethics in 1996. It is structured around 10 principles proclaiming, inter alia, the supremacy of the law, the independence of the judiciary, equality, the presumption of innocence, proportionality etc.[147]
However, the present code of the public prosecutors will cease its applicability with the adoption of the magistrates' code (see module 1, chapter 1.1).[148]

Romanian law deals in great detail with matters of incompatibilities for both judges and prosecutors. This legislation clearly emphasises the importance of an independent and impartial judiciary. Article 131, § 2 of the Romanian Constitution states that the office of a prosecutor shall be incompatible with any other public or private office except that of an academic professorial activity. The Law on Judicial Organisation handles this matter in more detail.

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144 Comments on the inception report by the Romanian Public Ministry.
145 Comments on the inception report by the Romanian Public Ministry.
146 Comments on the inception report by the Romanian Public Ministry.
147 Comments on the inception report by the Romanian Public Ministry.
148 Comments on the inception report by the Romanian Public Ministry.

CHAPTER IV

The Legal Status of the Public Prosecutor

IV.1 Working conditions

The salaries of prosecutors and judges are equal.
The Law on Judicial Organisation provides all sorts of rights to magistrates as for instance salaries according to different factors as experience, but also neuro-psychic overburden (art.98), free medical assistance, treatment and protheses (art.99), several insurances (art.100), paid leave of 30 days (art.101), discount of 50% for 12 first class traintickets (art.102) and a pension up to 80% of the salary after at least 25 years in office.

This law also deals with subjects as support with a view to building and purchasing a house with long term loans at minimum interest rates (art.105) and many medals (entitling to tax reductions[149]) may be won for 'Judicial Merit' (art.108).
As to the magistrates' salaries and additional benefits, see also above module 1, chapter III.6.

The incomes of magistrates have substantially increased until 2000 (but not in 2001). On the other hand the availability of information technology for magistrates is limited, library and documentation facilities are insufficient and the workload is high. The infrastructure situation of prosecutors seems to be comparable to that of courts. Many offices, in particular in the cities, provide poor working conditions, whereas there are many new buildings for prosecutor's offices and courts in the country. Currently, every prosecutor's office has one or more computers. In 1999, projects aimed at introducing information technology systems for the electronic registering and tracking of cases and legal databases have started with the support of Phare.[150]

In 2001, 2.035 prosecutors dealt with 600.000 files nation-wide. They were supported by 2.200 administrative and technical support staff, including clerks (partly legally trained), IT specialists and economists.

IV.2 Independence and impartiality within the organisation of the public prosecution service, centralised and decentralised

According to art. 130, § 1 of the Constitution of Romania, public prosecutors shall carry out their activity in accordance with the principle of legality, impartiality and hierarchical control, under the authority of the Minister of Justice.

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[149] OSI Report 2001, 379.
[150] Comments on the inception report by the Romanian Ministry of Justice.

As to the internal hierarchy, prosecutors are subordinated to the head of the prosecutor's office, and the head of that office to the head of the hierarchically superior prosecutor's office within the same territorial jurisdiction. The Public Prosecutor General (at the level of the Supreme Court of Justice) is the head of the Public Ministry. The hierarchical subordination principle means that the superior prosecutor has the right to suspend or invalidate measures of the hierarchically inferior prosecutor, but he cannot impose measures to be taken contrary to the conviction of the individual prosecutor, based on the evidence and the applicable legal provisions.[151]

The Law on Judicial Organisation gives detailed provisions on promotion and transfer of prosecutors.

The independence of the prosecution service has been questioned in the context of a wave of transfers from the anti-corruption unit in 2001, when reports linked this to political issues, whereas according to the General Prosecutor, irregularities were revealed.[152]
Now, the unit has been strengthened and comprises 18 prosecutors, as combating corruption is a 'priority for the prosecution service'.[153]

IV.3 Promotion or downgrading of prosecutors

Art. 94 of the Law on Judicial Organisation states that promotion or transfer of magistrates may only be done with their consent. The law describes in detail the requirements for promotion.
Prosecutors are promoted by the Minister of Justice, on proposal by the General Prosecutor. The Superior Council of Magistracy is responsible for the first appointment of prosecutors, but not for their promotions, although it decides on promotions of judges with the participation of prosecutors.[154]

There are no specific provisions on downgrading of prosecutors. Downgrading means the disciplinary moving for a period of 1 to 3 months to a prosecutor's office within the same territorial jurisdiction, either at the same or at a lower level (art. 123d of the Law on Judicial Organisation).[155]

The Minister of Justice may order the transfer of a public prosecutor, but only with his written consent (art. 96). Prosecutors may be delegated to another office for up to 2 months, if the interests of the service so require (art. 95 of the Law on Judicial

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[151] Comments on the inception report by the Romanian Public Ministry.
[152] Oral statement (General Prosecutor) during expert mission 25/02-01/03/02.
[153] Oral statement (General Prosecutor) during expert mission 25/02-01/03/02.
[154] Oral statement (SCM members and Secretary-General) during expert mission 25/02-01/03/02.
[155] Comments on the inception report by the Romanian Public Ministry.

Organisation). In this case, and only in this case, the consent of the prosecutor is not required.[156]

IV.4 Possibility of dismissal

Art. 92 of the Law on Judicial Organisation deals with the removal of magistrates from office. Important reasons for removal are obvious professional misconduct, criminal conviction, mental disorder and disciplinary sanctions as well as infringement on articles 110- 112 of the Law that forbid a magistrate to engage in political actions, economic activities a.o.

In the case of mental disorder, three specialised physicians have to make the diagnosis and there is the possibility of appeal to the Superior Council of Magistracy (art. 97). The senior state prosecutor at the Supreme Court can be removed from office by the President of Romania on the recommendation of the Minister of Justice.

IV.5 Possibility of exercising fundamental freedoms and rights

Magistrates are forbidden to be affiliated to political parties or to be engaged in public activities with a political character. 'Public activities with a political character' means that prosecutors shall not publicly support political forces, e.g. participate in demonstrations and political meetings, publish political opinions, support or disapprove of political parties or personalities in public.[157]

The office of magistrate is incompatible with any other public or private office, except for academic teaching positions. Any economic activity, also through intermediaries is strictly forbidden (art. 110 -112 Law on Judicial Organisation).
Art. 113 of the Law on Judicial Organisation states that magistrates may contribute to specialised publications with a literary, scientific or social character, but that they are forbidden to participate in political actions.
Magistrates may set up or join (national and international) professional associations representing the magistrates' interests or for the purpose of improving the professional training. Judges and prosecutors are represented by the Association of the Romanian Magistrates.[158]

IV.6 Safety

Art. 91 of the Law on Judicial Organisation states that magistrates may not be investigated, detained, arrested, searched or sent for trial without the approval of the Minister of Justice.

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[156] Comment on the adjusted desk research by the Romanian Ministry of Justice, July 2002.
[157] Comments on the inception report by the Romanian Public Ministry.
[158] Comments on the inception report by the Romanian Ministry of Justice.

As to the safety of prosecutors, the Ministry of the Interior is legally obliged to provide protection for prosecutors and their families in case their lives, physical integrity or goods are threatened.[159]
With the Order no.266/C/7.02.2002 the Minister of Justice has adopted the Protocol and Regulations regarding the safety of the magistrates. According to that Protocol, the Ministry of Interior organises specialised structures for the protection of magistrates within the Country's Police Inspectorates. Safety measures should be taken when the magistrate addresses a request to this superior or when the president of the court, the prime- prosecutor or the general prosecutor has reasons to believe or receives verified information showing that the magistrate needs to be protected due to the cases that he is working on.
Subject to the safety measures is the magistrate himself and his family, meaning his/her spouse and his children living with him.

IV.7 Disciplinary proceedings

Already in the phase of the training at the National Institute for the Magistracy in case of misbehaving disciplinary sanctions issued by the Director of the Institute can apply as for instance expelling from the institute with the obligation to reimburse the schooling expenses (art. 81 Law on Judicial Organisation).
There is a very detailed procedure for disciplinary measures taken against magistrates (Title VII of the Law on Judicial Organisation). There are many reasons to qualify for 'disciplinary misconduct', like irreverent attitude during duty, public activities with a political character and repeated slow solving of cases (art. 122).
The sanctions range from reproof and reprimand to removal from magistracy (art. 123).

A preliminary investigation is compulsory and is conducted by an inspector-prosecutor of the General Prosecutorial Office attached to the Supreme Court of Justice. The magistrate investigated is entitled to know all the acts of the investigation and to request evidence for the defence (art.125).

Disciplinary action is taken by the Minister of Justice or the General Public prosecutor (art.124). The board that decides on the sanctions is composed of five prosecutors of the General Prosecutorial Office attached to the Supreme Court (art. 127). There is always a possibility of appeal to the Supreme Court of Romania that rules with a panel of nine judges (art. 129).

The Constitution of Romania (art. 133, § 2) states that the Superior Council of Magistracy – in which prosecutors are members – performs the role of a disciplinary council for judges (see also art. 88 of the Law on Judicial Organisation). However, at present, prosecutors are tried by the Disciplinary Board of the Public Ministry, not by the Superior Council.[160] The Public Ministry has proposed to modify the Law on the

[159] Public Ministry, Prosecutor's Office attached to the Supreme Court of Justice, 6.
[160] Comments on the inception report by the Romanian Public Ministry.

Judicial Organisation so as to assign the Superior Council of Magistracy the function of a disciplinary body for prosecutors, too.[161]

The debates of the Superior Council of Magistracy are presided over by the Minister of Justice, who may not vote. In the case of disciplinary proceedings the President of the Supreme Court of Justice presides.
The Disciplinary Board of the Public Ministry settled 5 cases in 2000 and 14 in 2001. Most cases related to the systematic delay and repeated neglect in carrying out the work.[162]

CHAPTER V

Recruitment and Education

V.1 Selection of public prosecutors

Important general conditions for the appointment of magistrates (i.e. judges and prosecutors) are :
- Romanian nationality and residence;
- medical and psychological ability to hold office;
- graduation from the National Institute for Magistrates (NIM).((the possibility of passing an examination for admission to the magistracy has been abolished from 2001, (see above module 1) (art.46 Law on Judicial Organisation));

The Law on Judicial Organisation (amended in 1997) lays down a well established procedure for the examinations that may lead to a position as a magistrate (art. 82-84 and 58-64). Candidates having passed the examination are, in order of classification at the examination, entitled to choose from a list of vacant positions published by the Ministry of Justice (art. 63).
Prosecutors as well as judges are appointed by the President of Romania (art. 47 Law on Judicial Organisation). Trainees (prosecutors on probation) are appointed and removed from office by the Minister of Justice (art. 51 Law on Judicial Organisation).

V.2 Initial training

Initial training of prosecutors takes place at the National Institute for the Magistracy (art.70-85 of the Law on Judicial Organisation). Art. 70 states that this institute is exclusively subordinated to the Ministry of Justice and has the task of training of magistrates and improving the professional skills of magistrates already holding office. Admission to the NIM is by way of contest (art.76).

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[161] Oral statement (General Prosecutor) during expert mission 25/02-01/03/02.
[162] Comments on the inception report by the Romanian Public Ministry.

Art.79 states that the training is founded on getting acquainted with the main legal institutions, including in the field of comparative law, and, in particular, on acquiring the necessary practical knowledge for becoming a magistrate.

Those who have not graduated from the NIM perform a two-year probation period under supervision of the prosecution service (art. 52 Law on Judicial Organisation), but as we saw above this method of becoming a prosecutor has been abolished (see also above module 1).
Prosecutors under probation have the right to submit conclusions in court and to sign procedural acts, except for those regarding a person's liberty (art.57 Law on Judicial Organisation).

MODULE 3

COURT PROCEDURES AND THE EXECUTION OF JUDGEMENTS

CHAPTER I

Access to Courts

I.1 Efficiency of the court system and regional accessibility

As is stated in Module 1, I, there are 187 Courts of First Instance, 42[163] Tribunals and 15 Courts of Appeal. In each 'judet' or county as well as in each sector of the city of Bucharest there are Courts of First Instance. The area covered by each of these courts is determined by government decree.
The number of judges in 2001 was 3499 (3576 in September 2000) but there still were 203 (173 in September 2000) vacancies then.[164] There were about 2500 prosecutors and 4163 trained auxiliary personnel. This indicates that there are insufficient judges and auxiliary personnel, even if all the judges are well trained and experienced. With a population of 22.5 million the ratio is one judge per 6650 inhabitants which is not bad but on the other hand with an area of 237500 square kilometres there is one judge per 70.2 square kilometres which is rather moderate. Due to the virtual non-existence of pre-trial and out-of-court settlement methods, disputes of all kinds and size go to court without any exception, which accounts for a very heavy caseload.[165]

Reports mention inadequate logistics, a lack in court operations and file management (registration of cases, systematisation of files), transmission within courts and between courts and prosecutor's offices etc., an archaic system of issuing summons to appear in court and carrying out other procedural acts, the absence of information technologies, undue delay in the drafting of documents due to the large number of cases heard during each session, increase in the numbers of actions, including appeals and prosecutions, excessive freedom of parties in respect of time limits, absence of a training system for bailiffs and court staff, unduly complex procedures, poor co-ordination between different judicial authorities and other government bodies, lack of general infrastructure

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[163] See comments Module I chapter 3.
[164] Comments on the inception report by the Romanian Ministry of Justice. In July 2002: 3509 judges.
[165] Oral statement (Bucharest and Ploiesti court judges) during expert mission 25/02-01/03/02.

and inappropriate working conditions, absence of adequate library and documentation facilities and worst of all corruption.

Efforts to improve this situation are being undertaken: in Bucharest, the Tribunal and the First Instance Court of sector 6 buildings have been renovated which allowed re-staring the activity in these headquarters and implicitly, duty-reduction of the Justice Palace. At the same time, the prosecutor's offices new headquarters were finished, and the Justice Palace headquarters are being finalised. As for the courts endowment with IT equipment, the Ministry of Justice by its specialised departments, has ongoing programmes related to applications development for the files' circuit and for an informative library, and for purchasing IT equipment for pilot courts.
The National Anti-Corruption Prosecutor's Office, a specialised structure similar to those existent in the European Union, has been set up to combat the corruption phenomenon.[166]

I.2 Provision of free legal aid

The Romanian Constitution provides for the right of citizens belonging to a national minority as well as of persons who cannot understand or speak Romanian to take cognisance of all acts and files of the case, to speak before the Court and formulate conclusions through an interpreter, in criminal trials free of charge.
Articles 6 to 8 of the Code of Criminal Procedure lay down that accused or charged persons and all other parties are guaranteed the right to defence throughout criminal proceedings and the right to assistance from the defence throughout the trial.
On legal aid there is law 51/1995 that sets out the cases where the advocate is obliged to give legal aid if he has been designated by the Bar. The costs of this mechanism are borne by the budget of the Ministry of Justice.

The articles 74 to 81 of the Code of Civil Procedure lay down the conditions in which free legal aid may be granted to anyone who cannot bear the legal costs of the case.

In practice, the quality of free legal aid both in civil and criminal cases is generally deemed unsatisfactory.[167] It appears a main reason is that the remuneration of lawyers in this field is quite low and not dependent on the time spent on the case or e.g. the number of court appearances.[168]

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166 Comments on the adjusted desk research by the Romanian Ministry of Justice, July 2002.
167 Oral statement (President Romanian Bar Association) during expert mission 25/02-01/03/02; EC 2001 Regular Report, 25.
168 Lawyers are paid per case (approx. 10 Euro per case); oral statement (President Romanian Bar Association) during expert mission 25/02-01/03/02.

I.3 Interference with access to court on the grounds of state security considerations

As a measure to gradually establish an independent, professional and impartial judicial system and to strengthen judicial authority and the rule of law, the amendment of article19 of Law 92/1992 on Judicial Organisation by law 142/1997 shall eliminate influence of the executive on judgements, by restricting the power of the Minister of Justice in this respect. That same law is mentioned as a measure to improve judicial organisation, in particular as regards the position and powers of the public prosecutor's office.
The new legislation has improved the separation between the political and administrative level.

I.4 Possibility to victims to bring civil and criminal charges against those alleged to have harmed them

Article 48 of the Romanian Constitution establishes the rights of a person aggrieved by a public authority and the liability of the state for damages in administrative and criminal matters. With regard to administrative cases this has been worked out in the Administrative Proceedings Act. Article 21 of the Constitution states that 'Every person is entitled to bring cases before the courts for the defence of his legitimate rights, liberties and interests' and that the exercise of this right may not be restricted by any law. From this provision it may be concluded that at least in theory any citizen, independently of race, nationality, ethnic origin, etc., may bring a case before the judicial authorities to defend rights, freedoms and guarantees, irrespective of whether these are derived from the constitution or other laws.[169] In civil cases the articles 112, 115 and 132 of the Code of Civil Procedure oblige the president of the court to hear the parties.

CHAPTER II

Fair Trial and Due Process in Civil and Criminal Matters

II.1 Compliance with article 6 § 1 ECHR

The Romanian law is in principle in compliance with article 6, § 1 ECHR as regards the right to a public hearing. It is provided for in article 126 of the Constitution for all courts of law.

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[169] According to the comment of the Romanian Ministry of Justice, these guarantees are put into practice effectively (July 2002).

In theory, the hearings may be considered fair. Equality of arms is legally guaranteed (i.a. articles 85, 112, 114, 115, 116 and 132 Code of Civil Procedure), however, in practice there are financial barriers for the less affluent to obtain the facilities needed.[170]

Civil proceedings in the first instance have an average duration of 12-15 months and criminal proceedings in the first instance an average of less than one year. With regard to civil matters judicial procedures are lengthy (varying from 6 months to several years, especially in commercial matters), there are difficulties regarding the application of court decisions (which is a responsibility of the courts in civil matters) and the parties have an excessive freedom regarding delays. At this time the courts lack powers to prevent undue delay. Measures are taken though to improve this situation (Emergency Ordinance 138/2000 for the modification and completion of the Civil Procedure Code; Official Journal 479/2.10.2000).[171]
The revised version of the Civil Procedure Code, which entered into force in April 2001, introduced new procedures speeding up courts' operation and improving the enforcement of judicial decisions. Also, judges have been obliged to publish a reasoning for all decisions (previously only in cases involving appeal to higher courts).[172]

II.2 Specific rules of procedures in civil matters

Article 85 of the Code of Civil Procedure provides that the court cannot take a decision before summoning and hearing the parties, save as otherwise provided by the law; articles 114 and 116 of same which guarantee reciprocal information of the parties on the requirements and their defence and the already mentioned provisions for free legal aid. In general the role of the state with regard to commercial cases is merely to provide institutions and rules. The parties themselves can decide about the scope of the action, the termination thereof and – within the limits of the law – about filing appeals. Article 27 of Law 92/1992 though mentions as duties of the Public Ministry 'd) exercising the civil action in cases provided by law; e) attending, according to the law, the trial sittings; f) exercising, according to the law, the remedies against judicial decisions; i) protecting the rights and interests of minors and other persons laid under a judicial interdiction.'
The Constitution provides for the equality of all citizens before the law, but this does not apply to aliens and stateless persons. They only enjoy 'general protection of person and assets as guaranteed by the Constitution and other laws' (Article 18).

II.3 Compliance with article 6, §2 and §3 ECHR in criminal matters; principles of decision making

International conventions ratified by the Romanian Parliament automatically become part of domestic legislation and international law prevails over domestic law. Since Romania has ratified the ECHR, the law theoretically complies with the ECHR on this

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[170] The Ministry of Justice comments on this that "compliance with fair trial guarantees is not conditioned, under any matter, by the parties' material possibilities. (July 2002)
[171] Observations of the Romanian Ministry of Justice of 04/04/02, 5.
[172] EC 2001 Regular Report Romania, 20.

subject. However, pre-trial arrest can be issued very easily by prosecutors and the pre-trial detention period can go up to half the maximum term provided for the crime alleged. There also is the fact that up to 30% of the persons in penitentiary institutions are detained on remand. (Regarding pre-trial detention see below II.4.)
Criminal proceedings can be conducted in absentia. However, if the defendant has been arrested, judgement shall take place only in the defendant's presence.[173]
Art. 66 of the Criminal Procedure Code states that the accused is not obliged to prove his innocence. This article constitutes the legal basis for the principle of presumption of innocence, which is a basic principle in the Romanian criminal law system.[174]

II.4 Compliance with article 5 ECHR in case of pre-trial detention

Pre-trial detention is nowadays subject to judicial control every 30 days. After expiry of the first 30-days period which is ordered by prosecutors, courts can prolong detention for another 30 days each.[175] In spite of that the periods of pre-trial detention can be excessive[176], it is not fully accepted that courts have to review it every 30 days.[177]
Currently, the Romanian Ministry of Justice is working on a draft law on Criminal Procedure which shall limit the powers of prosecutors to ordering up to 3 days of temporary police arrest, whereas any longer detention periods would be the responsibility of judges.[178]

CHAPTER III

System and Procedures for Administrative Justice

Apart from the administrative divisions of the courts there is an Ombudsman (Law 35/1997). He receives complaints from persons who consider their rights and freedoms to be violated by the public authorities, and ensures that the applications received are dealt with in accordance with the law. The public authorities in question or their officials may be required to cease the violation of the petitioner's rights and freedoms, restore those rights and make reparation for the damage suffered.

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173 Art. 314 of the Criminal Procedure Code.
174 Comments on the inception report by the Romanian Ministry of Justice.
175 Oral statement (General Prosecutor) during expert mission 25/02-01/03/02.
176 EC 2001 Regular Report, 25.
177 See module 1, chapter I.2.
178 Oral statement (General Prosecutor; Department for Elaboration of Normative Acts, Ministry of Justice) during expert mission 25/02-01/03/02.

CHAPTER IV

Execution of Judgements

With the assistance of the French bailiffs the function of bailiff has been created in Romania. The bailiffs' system has been reorganised into a private profession under the authority of the Ministry of Justice.[179] The new law provides for requirements to be met in order to become a bailiff (e.g. to be a law school graduate), the procedural rules to be followed to open a bailiff office, the rights and obligations of bailiffs, terms of their activities etc.[180] Also the institution of a Council of the National Union of Bailiffs is foreseen.

In general, enforcement of judicial decisions has been given a low priority within the executive and judiciary in the past. Enforcement often takes a very long time and allows for many possibilities for contesting and delaying the execution of judgements. Reports often link corruption to court personnel in charge of enforcement.[181] Enforcement procedures have also been subject of complaints to the European Commission of Human Rights.[182]
The Emergency Ordinance No. 138/2000 (entered into force on 2 May 2001) has led to modifications of the enforcement rules of the Civil Procedure Code, as well as the new law on bailiffs. The Ministry of Justice is working on further modifications of the Civil Procedure Code.[183]

In criminal matters, it is the task of the Public Ministry to supervise observance of the law in the activity of execution of the punishments and of other writs of execution as well as to verify the observance of the law in places preventive detention, of execution of the punishment of the educational and safety measures (Law 92 of August 4, 1992, article 27).

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179 Law No. 188/1 Nov 2000, Official Journal 599/2000.
180 Comments on the inception report by the Romanian Ministry of Justice; see also the Romanian Ministry of Justice's White Paper 1997-2000, 61.
181 OSI Report 2001, 358, 392.
182 Mainly with respect to the reasonable time requirement; for details see the Romanian Ministry of Justice's White Paper 1997-2000, chapter 9, 114 et seq.
183 OSI Report 2001, referring to the White Book, December 1996 - December 1999, 57-58.

The Slovak Republic

This report is based on information gathered up to November 23rd 2001

Table of Contents

MODULE 1

AN INDEPENDENT JUDICIARY

CHAPTER I

Overview of the judicial system[1]

I.1 General

The judicial system in the Slovak Republic comprises three tiers: District Courts, Regional Courts (Courts of Appeal) and the Supreme Court. A major territorial re-organisation of the judiciary in 1996 and 1997 substantially increased the number of courts.[2] At present, there are 55 District Courts and 8 Regional Courts. The current number of courts is judged excessive by the Ministry and by several experts.[3]

I.2 Court system

District Courts and Regional Courts

District Courts sit as panels of three judges (one judge and two 2 lay-judges)[4]. The panels always include two lay-judges.

Regional Courts function both as courts of appeal to the District Courts and, in certain cases, as courts of first instance. Regional Courts sit as panels composed of two judges (one of them is the President) and three lay-judges if deciding as first instance courts in criminal cases. In other cases they sit as panels composed of the President and two other judges.[5] The Regional Courts also have an administrative section that exercises judicial review over decisions taken by the administrative authorities. The Slovak Republic has no independent system of administrative tribunals.

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1 Judicial Organisation in Europe, Council of Europe Publishing, Strasbourg, May 2000; Information from the Government Office of the Slovak Republic.

2 Phare Expert Mission, January 2002, meeting with the Minister of Justice, Mr. Carnogursky.

3 Phare Expert Mission, January 2002, meeting with the Minister of Justice, Mr. Carnogursky. See also: Second assessment mission in the fields of JHA in Slovakia, 12-16 February, 2nd revised version of the preliminary draft (June 5th 2001), p. 32.

4 § 9, §2, Act No 335/1991 Coll. as amended

5 § 12, § 3, Act No. 335/1991 Coll. as amended

Supreme Court

The Supreme Court of the Slovak Republic is the highest judicial authority in the country. It functions as a court of cassation. It is permitted only in exceptional cases to change decisions by the Courts of Appeal in criminal proceedings. However, it functions as a court of appeal in cases dealt with at first instance by a regional court. The Supreme Court has no lay assessors.

In cases heard in first instance by a Regional Court, the ordinary appeal lies to the relevant chamber of the Supreme Court. If an extraordinary appeal is lodged against a decision of the District Court, the case is heard by a chamber of the Supreme Court. If the General Prosecutor or the Minister for Justice makes an application to set aside a decision of a Regional Court, the case is heard by a chamber of the Supreme Court. If an application is made to set aside a decision of a chamber of the Supreme Court exercising appellate jurisdiction, it is dealt with by a panel of the Supreme Court consisting of five members.

The jurisdiction of the Supreme Court in civil, commercial and administrative matters is governed by the Code of Civil Procedure. The Supreme Court ensures the uniform interpretation and application of generally binding laws and regulations by:
- hearing ordinary and extraordinary appeals against the decisions of the lower courts in the cases provided for by the law;
- expressing its opinion on matters relating to the uniform interpretation of generally binding laws and regulations;
- examining the conformity with the law of decisions taken by the central administrative authorities of the Slovak Republic;
- ruling on the recognition and enforceability in the Slovak Republic of decisions made by foreign courts, if this is provided for by law or by an international instrument; and
- ruling on other cases provided for by law.

In administrative cases the Supreme Court is empowered to review as to the merits the decisions of:
- the central administrative authorities;
- state administrative authorities responsible for the entire territory of the Slovak Republic;
- authorities responsible throughout the entire territory of the Slovak Republic for carrying out the administration of the state, to the extent laid down in a special law; and
- self-governing bodies and other legal entities authorised by the law to take decisions in the area of public administration, unless the Supreme Court is competent to do so by virtue of a special law.

Military Tribunals

The judicial system also includes Military Tribunals, which hear all criminal cases involving the armed forces, prisoners of war and other persons specified by law.[6] There are three District Military Tribunals and there is one High Military Court. The Supreme Court is the highest instance for the military jurisdiction. Military courts are part of the general court system with all the attributes of the judiciary. Although judges in these courts are military officers, the rules of their appointment, promotion, discipline are the same as for civilian judges. They are paid from the budget of the Ministry of Justice, but the Ministry of Defence makes additional payments according to the military rank of the judge.[7]

Constitutional Court

The Constitutional Court is an independent and self-governing authority, independent both of the legislature and the executive. It is set up to protect compliance with the Constitution. The Court exercises its jurisdiction over the entire territory of the Slovak Republic. The Constitutional Court is composed of thirteen judges appointed by the President of the Republic, upon nomination by Parliament, for a twelve-year term.[8] The President and vice-presidents are appointed by the President of the Republic from among the judges of the Court. Judges shall have special qualifications and can only be dismissed by the President under strictly limited conditions (for example in case of a criminal conviction or a disciplinary decision) as determined by the Constitutional Court.[9]

The Court acts upon the individual complaint of a citizen, upon the petition submitted by any court or upon the petition of one of the President of the Republic.[10] Article 128 of the Constitution defines the acting of the Constitutional Court as follows: "The Constitutional Court provides an interpretation of the Constitution or constitutional laws in disputed matters. The decision of the Constitutional Court on interpretation of the Constitution or a constitutional law is promulgated in a method established for promulgation of laws. The interpretation is generally binding as of the day of its promulgation."[11]

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6 The military courts have no jurisdiction on police forces cases (note: according to the suggested amendment of the Criminal Procedure Code discussed at the present by the Parliament, the military courts will have such a power as of September 1, 2002 again).

7 Report of the Open Society Institute, 2001, p. 406. ('OSI Report').

8 The term of the judges of the Constitutional Court was changed by the amendment of the Constitution (constit. law No 90/2001 Coll.) from 7 years to 12 (art. 12 § 1,2 Constitution of the SR).

9 Constitution of the Slovak Republic, art. 138 par 2.

10 OSI Report, p. 405-406.

11 Constitution of the Slovak Republic, art. 128, English translation ABA/CEELI

CHAPTER II

The creation of a true balance of power

National Judicial Council

As mentioned above, the February 2001 amendment demands the establishment of a National Judicial Council as the constitutional representative of the judicial power. The National Judicial Council will have a balance of judges and appointees from other branches, and will take decisions by simple majority. The head of the Council is to be the President of the Supreme Court. The other members of the Judicial Council shall be:

- 8 judges elected and removed by the judiciary
- 3 members elected and removed by the National Council
- 3 members appointed and removed by the President of the Republic
- 3 members appointed and removed by the Government

All members of the National Judicial Council shall be appointed or elected for a 5 year term of office. The same person can be appointed or elected only for two consecutive terms. All other members of the National Judicial Council besides the 8 judges will have to be people who have obtained legal education by graduating from a Master's programme at the faculty of law, having 15 years of practise and fulfilling the necessary moral criteria. According to the legislation, judges do not form a majority in the Council. However, the Ministry has promised to appoint at least one judge among its candidates.[12]

The National Judicial Council will take over many competencies that formerly belonged to the Ministry, such as appointment and promotion of judges and disciplinary proceedings.[13] However, matters such as budgeting and negotiations with other Government institutions and Parliament on behalf of the judiciary will continue to be conducted by the Ministry.[14]

Appointment and dismissal of court presidents

The selection and appointment of Regional Court and District Court presidents has not been included in the competencies of the new National Judicial Council. The National Judicial Council will have the competence to prepare general principles for the selection of (vice)-presidents.[15]

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[12] Phare Expert Mission, January 2002, meeting with representatives from the Ministry of Justice.

[13] Phare Expert Mission, January 2002, meeting with representatives from the Ministry of Justice.

[14] OSI Report, p.408; Second assessment mission in the fields of JHA in Slovakia, 12-16 February, 2nd revised version of the preliminary draft (June 5th 2001), p.30.

[15] Idem.

Presidents and vice-presidents are appointed by the Minister of Justice for an indefinite period and may be recalled at any time, after consultation of the Judicial Council at the relevant court, but without statement of reasons.[16] Candidates for appointment as (vice)-president at a certain court level must already be active at that level.

After the 1998 elections, the Minister of Justice initiated informal co-operation with judges in the appointment of court presidents and vice-presidents. On the basis of an agreement between the Minister of Justice and the Association of Judges of Slovakia, all presidents and vice-presidents of Regional and District Courts were released from their offices in December 1998 and at the same time charged to carry out their functions until the selection procedure of the candidates and their appointment to the office was concluded. Judges were able to select their local candidates for these offices by ballot. Subsequently the Judicial Councils and the Association of Judges of The Slovak Republic expressed their opinion, and respectively proposed their candidates. In turn, presidents of courts gave their opinion on vice-presidents of the courts. The Minister of Justice consequently appointed the presidents and vice-presidents of the courts and in ca. 95% of all cases followed the proposals.

Presently, the Judicial Council of the relevant court is always consulted concerning the appointment of the court president and vice-presidents.[17] Reportedly, the Minister respects their views in the great majority of cases.[18]

Under the February 2001 constitutional amendment, the President and Vice-President of the Supreme Court are appointed by the State President from among Supreme Court judges, upon the advice of the Judicial Council at the Supreme Court.[19] The Association of Judges proposed to make the Council's opinion binding.[20] The president and the vice-presidents of the Supreme Court are appointed for a five year term, with the possibility of re-appointment.[21]

Budget

The presidents of the Regional Courts distribute the funds allocated to them among individual District Courts. The Constitutional Court and the Supreme Court (since

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16 Phare Expert Mission, January 2002, meetings with judges and court presidents.

17 Idem. See also: OSI Report, pp. 419-421.

18 According to the State-Secretary for Justice, Mr. Scholcz, the Minister has only in ca. 5% of cases appointed a different candidate than the one suggested by the Judicial Council at the relevant court.

19 OSI Report, p. 421. Under former rules, Parliament voted on candidates proposed by the Government. N.B. The Judicial Council at the Supreme Court opposed the nomination of the current president of the Supreme Court.

20 Second assessment mission in the fields of JHA in Slovakia, 12-16 February, 2nd revised version of the preliminary draft (June 5th 2001), p.32.

21 See for concerns regarding the position of the president and the vice-presidents of the Supreme Court, voiced by the Special Rapporteur for the United Nations: *Human Rights Monitor*, no.53-54, 2001, p.72.

2001) are the only courts with a separate chapter in the budget.[22] However, as of 2004, the budget for the Supreme Court will be brought again under the general Justice budget in the framework of an operation to decrease the number of budgetary chapters.[23]

II.1 Division of competencies within the judiciary

Position of court presidents

Court presidents have broad competencies through which the position and the work of judges active at the court can be touched, such as the distribution of the work-load, the evaluation of a judge, the decision to bring a disciplinary charge against a judge, the possibilities for the judge to participate in (foreign) training seminars and in the distribution of certain bonuses. Presidents are responsible for the economic efficiency of the functioning of their court. However, as the Open Society Institute observes, the great majority of presidents have not had any special training in the field of economical or personal management.[24]

In administrative matters, presidents of District Courts receive their instructions from the Ministry through the Regional Court president. Instructions usually relate to requests for certain data (eg. number of pending cases) or requests for justification for excessive delays.[25]

Assignment of cases

Legislation stipulates that cases must be assigned according to the work schedule. However, the law does not contain a definition of this notion. Each president is obliged to establish a yearly work schedule by December 15th of the preceding year. Presidents are free to choose the exact method for the allocation of cases through the work schedule. Many presidents reportedly use the last two digits of the file-number in criminal cases. The schedule is submitted to the Judicial Council at the court for advice, and, upon adoption, to the Ministry, which publishes it on the internet. Direct assignment of a case by the president to a certain judge is impossible.

However, presidents have admitted that manipulation of the system by the president would be possible.[26] Also, the OSI Report mentions the occurrence of cases in which presidents or court clerks manipulated systems of case assignment to enable the assignment of a certain case to a specific judge.[27] Reportedly, there are no instances

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[22] OSI Report, p. 415.
[23] Phare Expert Mission, January 2002, meeting with the president of the Supreme Court, Mr. Harabin.
[24] OSI Report, p. 414.
[25] Phare Expert Mission, January 2002, meetings with court presidents.
[26] Phare Expert Mission, January 2002, meetings with court presidents and with ASJ representatives.
[27] OSI Report, pp. 427-428.

known of the Ministry trying to influence the system of assignment of cases. Also, most Slovak judges do not perceive the assignment of cases as a problem.[28]

Once a case has been assigned to a particular judge, it cannot be transferred to another judge, save instances of long term illness and absence or in the event of significant imbalance between the caseloads for different judges.[29]

The Ministry of Justice is currently involved in a programme to introduce computerised random case assignment in all District Courts. All District Courts should be equipped by the end of 2002. Such a system has been operational for a while already at the Banska Bystrica Regional Court and the experience has been positive.[30]

Relations with higher courts

Generally speaking, there are no problems of decisional interference in the relationship between the higher and lower courts. Lower judges are not officially subordinated to higher judges, and there are no systems of supervision or mentoring.

The jurisprudence of higher courts, including the Supreme Court, is not officially binding on lower courts. However, in practice, higher courts request that similar cases be decided similarly in order to ensure legal certainty and consistent interpretation and application of law. For this purpose, the Chambers of the Supreme Court select cases of general importance to publicise; courts are expected to conform to those rulings.[31]

CHAPTER III

The independent functioning of the judiciary

Incompatibilities

Article 23 of the Act on Judges and Lay Judges defines the incompatibilities of the judicial function. According to paragraph 1, the function of a judge is incompatible with (among others) the position of President of the Republic, member of Parliament, member of the Government, head or president of any central administrative authority, judge at the Constitutional Court or public prosecutor. A judge may not be a member of a political party, nor perform any political activity.[32] Paragraph 2 stipulates that judges are not to

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28 Phare Expert Mission, January 2002, meeting with ASJ representatives.
29 OSI Report, pp. 427-428. The OSI Report refers to Regulation No. 66/1992 of the Ministry of Justice.
30 Phare Expert Mission, January 2002, meeting with representatives from the Ministry of Justice.
31 OSI Report, p. 427.
32 Art. 30 § 9 of the Act on Judges and Lay Judges.

perform any other paid function or run a business, besides (among others) the management of their own property or being active scientifically or pedagogically. It is possible for judges to be detached to the Ministry of Justice for an indefinite period of time. While working at the Ministry, judges keep their judicial status, although since 2000 they have not been allowed to adjudicate cases during their secondment.[33]

Associations

The freedom of association is guaranteed to judges in the same way as to any person. There are now three professional associations of judges, the largest being the Association of Slovak Judges, followed by the Union of Slovak Judges and the Association of Women Judges. All three address issues of judicial independence and corruption. However, many judges are not members of any organised association.[34]

The Association of Slovak Judges (ASJ) is an independent, non-governmental organisation. It was created in December 1991. The ASJ has its seat in Banska Bystrica and in Bratislava. The Association currently has 708 members, which amounts to more than 70% of all judges in The Slovak Republic.[35] The ASJ was one of the first organisations in this part of Europe to become a member of the International Association of Judges. From its very beginning, the ASJ has co-operated closely with Austrian, Czech, Hungarian, German and Polish colleagues. The president of the Association has stated that the co-operation with the Ministry of Justice and other relevant partners within The Slovak Republic has improved in recent years.[36]

Relationship with the media

Many judges have difficulty accepting the fact that media legitimately take a critical interest in their work. Until 1989, there was no real need to communicate with the media. Judges were not prepared or trained to communicate with the media, and courts did not have the necessary media facilities.[37]

Support facilities

The slowness of courts is perceived as a major problem. By speeding up court procedures, the incentives for corruption would be decreased. One important reason for the delays seem to be the great number of administrative chores for judges. Current legislation and practice do not allow judges to focus exclusively on their adjudicating tasks.

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33 OSI Report, pp. 409-410.
34 OSI Report, p. 411.
35 Phare Expert Mission, January 2002, meeting with representatives from the ASJ.
36 Phare Expert Mission, January 2002, meeting with representatives from the ASJ.
37 OSI Report, pp. 403-404.

The Banska Bystrica pilot-system comprises, in addition to the system of random assignment of cases, a general computerised case-management system, set up with the help of Swiss experts. Mrs. Dubovcova, Banska Bystrica court Chief Justice, has said that the project shortened the time between a case being assigned to a judge to the first decision being handed down from 300 days to 45, while it cut the average period from filing a lawsuit to the first hearing from 73 to 49 days.[38] A recent World Bank survey indicates a significant potential for the decrease of the length of judicial proceedings if administrative chores were taken away from judges.[39]

The February 2001 amendment to the Constitution provided the legal basis for the introduction of higher court officials/clerks.[40] The original intention was to introduce this institution as of January 1st 2002,[41] but the draft Act on Higher Court Officials is currently still under preparation.[42]

The Constitutional Court deals with complaints by citizens of delays in the judicial Courts. However, in this case, the power of the Constitutional Court is not particularly effective, being merely declaratory. In the cases examined until now, the Constitutional Court considered that judges of District and Regional Courts are sufficiently prepared for their duties, but they are overwhelmed by the quantity of work, denying them the opportunity for (self)-education.[43] Generally speaking, the number of judges is estimated sufficient by most observers. It is the courts' organisation and the system of State Administration that seems to require structural reform.[44]

As a result of the territorial reform of 1996 and 1997, new courts have been constituted. These new courts are generally better equipped than the older ones. Also, the newly created courts were not obliged to take over any old cases at their inauguration, enabling them to function without the burden of backlogs.[45]

Judges receive printed collections of legislation only, and in some courts just one copy is provided per judicial panel. Availability of other necessary professional literature (such as annotated codes) is so limited that even the appellate divisions of the Regional Courts often assign certain publications to panels of judges rather than to individual judges.

The judicial system is not sufficiently equipped with information technology. The judiciary, including the Supreme Court, as a whole utilises about 1400 computers, used

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38 Slovak Spectator, October 29th - November 4th 2001.
39 World Bank Expert Mission to The Slovak Republic, 2001, final report.
40 Article 142 § 2.
41 Second assessment mission in the fields of JHA in Slovakia, 12-16 February, 2nd revised version of the preliminary draft (June 5th 2001), p.31.
42 Phare Expert Mission, January 2002, meeting with the State-Secretary for Justice, Mr. Scholcz.
43 Second assessment mission in the fields of JHA in Slovakia, 12-16 February, 2nd revised version of the preliminary draft (June 5th 2001), p.31.
44 Idem.
45 Phare Expert Mission, January 2002.

mostly by court staff for typing and printing. Some 220 judges at higher of court levels have their own computer. Some courts have a computer available to judges in the library, while other courts have no computer reserved exclusively for use by the judges.[46] All judges should have a computer at their disposal after implementation of the PHARE project of IT-support. All District Courts should be connected to a national communication infrastructure by the end of 2002.[47]

The system of court reporting seems to be outdated. No stenography is allowed, which obliges clerks to use typing machines (or computers, if available) during court hearings. In criminal cases, judges must dictate records to typists; in civil cases they are allowed to dictate into tape-recorders and the text is subsequently transcribed by typists. This means that there is no direct record of proceedings at courts.[48]

CHAPTER IV

The status of judges

IV.1 General

The independence of the judicial system is formally guaranteed in the Constitution, which was adopted on 1 September 1992 and entered into force on 1 January 1993.[49] According to article 144 § 1 of the Constitution judges are independent in making decisions and are bound solely by the constitution, constitutional law, international treaties and law.

The February 2001 constitutional amendment enables the introduction of a (National) Judicial Council.[50] This Council is to be implemented by the Act on the Council of Judges of the Slovak Republic. This act has already been adopted by parliament, but at the time of the Phare Expert Mission in January 2002 had not yet entered into force because of a suspensive constitutional complaint by the President of the Republic.

Several important changes to the system of selection, appointment and promotion of judges have been introduced by the February 2001 constitutional amendment and by the new Act on Judges and Lay Judges.[51] The Act on Judges and Lay Judges governs the status

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46 OSI Report, pp. 416-417.
47 Phare Expert Mission, January 2002.
48 OSI Report, pp. 416-417.
49 See art. 141 and 144 § 1 of the Constitution. (Act no. 460/1990 Coll. Amendments from July 14th 1998, January 14th 1999 and most recently February 23th 2001, referred to in this study as 'The February 2001 constitutional amendment'.)
50 This national council is not to be confused with the several advisory Judicial Councils that already exist at the various courts.
51 Cf. 2001 Open Society Institute Report on the Slovak Republic ('OSI Report'), pp. 419-421.

of judges, their rights and duties, the commencement and the termination of their tenure, the disciplinary responsibilities of judges, their salary conditions and their pension rights.[52] The act also governs the status of lay judges.

IV.2 Selection and appointment

The Constitution states that judges are appointed by the State President on proposal of the (new) National Judicial Council.[53] The February 2001 constitutional amendment eliminated the initial four years term of office for young judges, replacing it by appointment for life.

In 2001, the Ministry of Justice and the President of the (new) National Judicial Council adopted common principles concerning competitive procedures for the selection of judges. The Ministry believes the new selection procedure is sufficiently transparent and open, since 800 candidates applied to the announcements of vacancies by Regional Courts.[54]
Candidates should first pass the general Judicial Examination.[55] The five applicants who have received the highest marks for this examination are invited for an oral exam for appointment to the individual court to which they ultimately hope to be assigned.[56] This procedure takes place at a Regional Court before an *ad hoc* committee composed of the president of the court, a member of the Judicial Council at the court, a member of the Association of Judges, a judge and a representative from the Ministry of Justice.[57] Members of this committee are nominated by the court president according to the proposal of the relevant Judicial Council. The law contains guarantees to assure the openness of the procedure and to prevent discrimination.[58]

The selection committee determines the result of the procedure and sets the order of candidates, which is reported to the court president. The order of candidates is binding. However, upon proposal of the court president, the National Judicial Council may change the order of candidates. The President of the Republic appoints the judge upon the proposal of the National Judicial Council.

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52 Act no. 385/2000 Coll.
53 Art. 145 of the Constitution.
54 Phare Expert Mission, January 2002, meeting with representatives of the Ministry of Justice.
55 Legal practitioners who have passed similar exams (such as the Bar Exam or the Prosecution Exam) and legal practitioners with more than 20 years of experience can apply without having to pass the Judicial Exam. See art. 5 of the Act on Judges and Lay Judges.
56 Art. 28 and onwards of the Act on Judges and Lay Judges.
57 Phare Expert Mission, January 2002, meeting with representatives of the Ministry of Justice. See also Artt. 28 and 29 of the Act on Judges and Lay Judges.
58 Art. 28 § 2 and 3.

IV.3 Promotion

The February 2001 constitutional amendment and the new Act on Judges and Lay Judges have introduced a new system of promotion for judges. The new law establishes an obligation to announce a selection procedure for promotion to a court of higher degree to all judges and carry out a competitive selection process, while the constitutional amendment shifts the power to decide on advancement to the National Judicial Council.[59]

Section III of Part 2 of the new Act on Judges and Lay Judges defines the system of appointment to higher judicial functions. Judges are appointed to the posts of president of a Court Senate by the court president from the judges of the court, according to the outcome of a selection procedure and after an opinion of the Judicial Council at the court.[60] Since 1 January 2002, a judge may only be appointed to a court of a higher degree through a selection procedure before a committee of the National Judicial Council, on the basis of a subsequent decision of that Council.[61]

The new Act on Judges and Lay Judges prescribes mandatory appraisal of judges once every five years, as well as during every selection procedure and whenever a judge so requests. Judges are appraised by their court presidents based on a review of their decisions prepared by a commission appointed by the relevant judicial council, opinions of appellate courts, and the president's own knowledge of the judge's work. The judge may express an opinion on the appraisal and request further specification or elaboration.[62] In addition, at the end of 2000, the Ministry of Justice introduced a new system of evaluation that ranks cases in terms of difficulty, thus reducing the incentive for judges to avoid taking complicated or time consuming cases.[63] This system was elaborated by a working group composed entirely of judges. The National Judicial Council is expected, in time, to adopt its own evaluation criteria.[64]

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59 Art. 28 of the Act on Judges and Lay Judges.

60 Art. 15 of the Act on Judges and Lay Judges.

61 At the time of drafting of this report, the actual situation is somewhat confusing because of the delayed entry into force of the Act on the Council of Judges of the Slovak Republic. The Act on Judges and Lay Judges stipulates that promotion-transfer is based on a decision by the Minister, according to the general 'Principles of Judicial Advancement', to be adopted by the National Judicial Council. However, the constitutional amendment of February 2001, which entered into force in July 2001, assigns the competence for the transfer of judges exclusively to the (currently non-existant) Council of Judges. Cf. Phare Expert Mission, January 2002.

62 Cf. Section VIII of the Act on Judges and Lay Judges. ('Evaluation of Judges and Selection Procedure').

63 Idem.

64 Phare Expert Mission, January 2002, meetings with representatives from the Ministry of Justice.

IV.4 Transfer

Transfer of judges is regulated by Section II of the Act on Judges and Lay Judges. A judge may only be transferred to another court of the same or higher degree, with his consent.[65] A judge may only be transferred to a lower court at his own request. In the case of Supreme Court judges, the opinion of the National Judicial Council is to be sought on this transfer. A judge may be transferred to a court of the same degree or a lower court without his consent only on the basis of a final decision by a Disciplinary Panel.[66]

With his consent, a judge may be temporarily assigned to perform his tasks at another court in the interest of the administration of justice. A judge may also, with their consent, be temporarily assigned for the exploitation of his experience:

a) to a central body of the state administration of judges or to an institution undertaking judges' education,
b) as a 'court advisor' to the Constitutional Court of the Slovak Republic,
c) to the Office of the President of the Slovak Republic, to the Office of the National Council of the Slovak Republic and to the Office of the Government of the Slovak Republic.[67]

The period of a temporary assignment of a judge may not exceed one year in a period of three years, with the exception of the situation stated under a). Temporary assignment for the benefit of training of the judge may not exceed a period of three months every five years.[68] In principle, judges may be assigned to work at the Ministry for an indefinite period of time.

The decision on temporary assignment is taken by the Minister of Justice. However, when a temporary assignment concerns transfer to or from the Supreme Court the decision is made by the President of the Supreme Court in agreement with the Minister; when a temporary assignment takes place within the circuit of a regional court the decision is made by the president of that regional court.[69]

IV.5 Term of office and irremovability

Because of the abolition of the probationary period for judges, Regional and District Court judges are now appointed to life terms from the beginning of their career. There is no term of office for regional and district court presidents or vice-presidents. The President and Vice-President of the Supreme Court and chamber presidents at this court are appointed to five-year terms by the State President.[70]

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65 Art. 14 § 1 of the Act on Judges and Lay Judges.
66 Art. 14 § 5 of the Act on Judges and Lay Judges.
67 Art. 12 § 2 of the Act on Judges and Lay Judges.
68 Art. 12 § 5 of te Act on Judges and Lay Judges.
69 OSI Report, pp. 421-423. Cf. Art. 13 of the Act on Judges and Lay Judges.
70 OSI Report, pp. 421-423.

There is no mandatory retirement age for judges. Rules recently introduced by the Act on Judges and Lay Judges of 2000, that stipulated recall of judges by Parliament, have been overhauled by the February 2001 constitutional amendment. Under this amendment, the State President, on the advice of the new National Judicial Council, may recall judges:

a) on the basis of a legally binding conviction for a deliberate criminal offence,
b) on the basis of a legally binding decision of a Disciplinary Court for an act which is incompatible with the performance of the post.

The National Judicial Council may remove a judge if

a) his health condition does not allow him to correctly perform his judicial duties for at least one year
b) he has reached the age of 65.[71]

IV.6 Remuneration and social welfare

Remuneration of judges is regulated by Title VII of the Act on Judges and Lay Judges. Salaries are calculated on the basis of the remuneration of the members of Parliament. The salary of a judge of the Supreme Court is fixed at 130 percent of the salary of a member of Parliament. Salaries of District and Regional Court judges will range from 90 to 125 percent of the salary of a Member of Parliament. Salary differentials depend on the instance of the court and experience as a judge.[72] Reportedly, this new salary scale, which entails an increase, will enter into force in 2003.[73]

In addition to their base salary, judges are entitled to a range of additional benefits, such as payments of ten to 20 percent of their base salaries for court presidents and vice-presidents and for overtime. Other bonuses, such as anniversary bonuses, may be granted by the court president.[74]

A judge's salary may only be reduced on the basis of a valid disciplinary decision.[75] Salaries are corrected for inflation. However, the State budget law may provide that salaries for State officials will remain at the level of the previous year. The Open Society Institute mentions that this has occurred several times during the last decade.[76]

Pensions for retired judges are considerably lower than the judicial salary. According to the new Act on Judges and Lay Judges, from 2003 retiring judges will be entitled to a supplement to their old-age pension commensurate to their length of service, which may amount to as much as 150 percent of the basic pension. Upon retirement, a judge is also entitled to a severance payment equal to ten months 'salary.[77]

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71 Art 18 par 1 and 2 of the Act on Judges and Lay Judges
72 Articles 66 and 67 of the Act on Judges and Lay Judges.
73 OSI Report, pp. 417-418.
74 Articles 68, 69, 70, 72, 73, 74, 75, 76, 77 and 79 of the Act on Judges and Lay Judges.
75 Art. 84 of the Act on Judges and Lay Judges.
76 OSI Report, pp. 417-418.
77 OSI Report, pp. 417-418.

Title VIII of Part 2 of the Act on Judges and Lay Judges contains provisions on social security for judges, including provisions on sickness benefits, maternity financial assistance and premiums on pension benefits.

IV.7 Protection

According to the Act on Judges and Lay Judges, a judge has, in justified cases, the right to the provision of protection for himself, for family members and for his residence if he so requests of the court administration.[78]

Without the consent of a judge, his features or address may not be publicised. This provision also relates to family members of a judge if this is necessary for the efficient protection of a judge and his family, and if these family members agree. A judge also has the right to adequate concealment of facts about his person and family.[79]

IV.8 Disciplinary proceedings and liability of judges

Disciplinary proceedings against judges are governed by Titles II and III of Part 3 of the Act on Judges and Lay Judges. The judge can be held disciplinary responsible only for the infringement or non-fulfilment of his official duties stipulated by law, for behaviour giving grounds to question his impartiality and independence and his efforts to settle the case fairly and without unreasonable delays, or for behaviour which is incompatible with the principle of judicial ethics.

A disciplinary offence is defined as the deliberate non-fulfilment or infringement of a judge's duties which creates justified doubts about that judge's independence, conscientiousness and objectivity in giving judgements, impartiality with regard to participants in proceedings, or efforts to end court proceedings fairly and without undue delays.[80] A disciplinary offence is qualified as a *serious disciplinary offence* if, in consideration of the nature of the infringed duty, the way of acting, the degree of deliberateness, its repetition or other aggravating circumstances, the damage caused has increased. The Act distinguishes disciplinary offences from disciplinary contraventions, the latter being conscious infringements of a judge's duties to give judgements impartially and objectively.[81]

The Minister of Justice and the court presidents handle complaints against judges. There is no formal procedure for this, but in practice, the court president investigates the complaint and answers the complaining party.

Disciplinary proceedings are initiated upon proposal by the Minister or the relevant court president, including the Regional Court president for judges in the District Courts

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78 Art. 34 § 5 of the Act on Judges and Lay Judges.
79 Art 34 § 6 of the Act on Judges and Lay Judges.
80 Art. 116 § 1 of the Act on Judges and Lay Judges.
81 Art. 116 § 2 of the Act on Judges and Lay Judges.

in his region. Proceedings may also begin in the absence of a proposal on referral of a criminal court.[82]

The number of disciplinary proceedings in the last ten years has fluctuated between seven to 14 cases per year. In 2000 there were 13 disciplinary cases. The most common sanctions are reprimands and salary reductions. Reportedly, the members of disciplinary courts are reluctant to pronounce more serious sanctions, such as removal from the post of court president or transfer to a lower court[83], even in more grave cases such as altering case assignments in order to be assigned a particular case in which the judge is biased in favour of one of the parties.[84]

The new Act on Judges and Lay Judges provides that the disciplinary court will be elected and dismissed by the new National Judicial Council from among candidates nominated by the relevant judicial councils at the courts, in such a way as to ensure adequate representation of judges from all types and levels of general courts. A Disciplinary Court of first instance consists of three members. The five-member appellate Disciplinary Courts are composed exclusively of Supreme Court judges.[85] Under the new Constitutional amendment, the Constitutional Court is the responsible disciplinary authority for the President and Vice-President of the Supreme Court.[86]

Disciplinary proceedings are public, and the accused judge has the right to be heard and be defended by someone of his choice.[87]

The liability for damages sustained in connection with judges' wrongful conduct in the course of their duties lies with the State.[88] However, the Court Administration is entitled to recover such damages from the judge in question. The amount of damages caused by negligence that may be enforced against the judge may not exceed three times his monthly salary.[89] The court president decides on the liability of the judge and the amount of the damages.[90]

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82 Art. 120 of the Act on Judges and Lay Judges. Nota Bene: judges may not be sanctioned by ordinary criminal authorities. The authority must forward the case to the president of the relevant court, who has discretion as to how to proceed. Regarding liability for serious criminal offenses, the power to consent to prosecution and detention of a judge has been transferred from Parliament to the Constitutional Court as of 1 July 2001.

83 See art. 117 of the Act on Judges and Lay Judges for an overview of all possible sanctions.

84 OSI Report, pp. 424-426.

85 Art. 119 of the Act on Judges and Lay Judges.

86 OSI Report, pp. 424-426.

87 Art. 127 of the Act on Judges and Lay Judges.

88 Art. 104 of the Act on Judges and Lay Judges.

89 Art. 105 paras. 1 and 2 of the Act on Judges and Lay Judges.

90 Ar. 105 § 3 of the Act on Judges and Lay Judges. In case of damages caused by a District Court president the decision lies with the president of the Regional Court. The Ministry decides in cases involving presidents of higher courts.

IV.9 Ethical standards

A new Code for Conduct for judges has been drafted recently. The Code has been submitted to the Council of Europe, to the Judiciary Council and to the Judges' Association for remarks and observations, before its approval.[91]
All judges are obliged to submit a property statement yearly to the Judicial Council at their court and to the Minister of Justice.[92] The Ministry has stated that in the near future, also the spouses of all judges will be obliged to issue statements about their assets.[93]

IV.10 The status of Lay Judges

Part 4 of the Act on Judges and Lay Judges contains provisions relevant to the function of lay judge. Lay judges are elected by the local representation in the circuit of the relevant court from candidates from the citizenry who have their permanent residence or employment within the circuit of the court. Lay judges are nominated by community mayors and town mayors. A local authority requests an expression from the president of the relevant court on a candidate nominated for election. Lay judges of military courts are elected by the relevant assembly of members of the Military Forces and Armed Corps on a proposal of commissions appointed by the relevant commanders according to the circuits of Military Courts. Lay judges are elected for a period of four years. Part 4 of the Act contains other provisions concerning removal and resignation from the function, conditions of performance and basic rights and responsibilities of lay judges.

CHAPTER V

Training of judges

V.1 General

Since 1984 there has been an institute for the training of judges in Omsenie where the Ministry provides training courses.[94] The intention currently is to establish a permanent Academy for the Judiciary. The Minister believes that this Academy will soon be founded.[95] The Slovak Republic co-operated with German and Greek judges in the

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91 Phare Expert Mission, January 2002, meeting with representatives from the Ministry of Justice.
92 Art. 32 of the Act on Judges and Lay Judges.
93 Phare Expert Mission, January 2002, meeting with the State-Secretary for Justice, Mr. Scholcz.
94 Phare Expert Mission, January 2002, meeting with representatives from the Ministry of Justice.
95 Phare Expert Mission, January 2002, meeting with the Minister of Justice, Mr. Carnogursky. See also: Negotiating position of the Slovak Republic, Chapter 24, April 2001, p.44.

framework of a Twinning-programme in this field, in particular in the elaboration of a 'training philosophy'.[96] The final report of this programme signals the dangers of a too great influence of the executive on the exact content and organisation of the training programmes within the future Academy.[97] The idea of setting up basic training for judges and prosecutors together is being considered. The General Prosecutor is willing to open the Prosecution Service training facilities to a training programme for judges and prosecutors which should include common general courses and separate specialisation courses.[98]

V.2 Initial training

The initial training period lasts 3 years and is composed of a theoretical part organised by the Ministry of Justice which lasts several weeks and a practical training organised by the Courts under the 'tutors' magistrate responsibility. At the end of the training period, after having been evaluated by the magistrate responsible for the training, the candidates have to pass both oral and written examination.[99]

The above mentioned Twinning-programme concluded that the desired effects of initial training can be best achieved within so-called "sandwich-courses", i.e. alternating cycles of teaching activities and practical training at the courts. Thus, judges-candidates should generally attend several months of education at a schooling centre and then proceed to acquire work experience at the courts. Furthermore, the curriculum offered to judges-candidates within the framework of systematic education should encompass not only legal subjects, but also other scientific disciplines that are useful for service at the judiciary. Finally, judges-candidates should receive foreign language training.[100]

V.3 Permanent training

In addition to the courses organised by the Ministry of Justice, the Slovak Association of Judges has developed its own, independent, educational initiatives.[101]

The Ministry of Justice organised, in co-operation with the Slovak Association of Judges, the institutions from EU member states, the TAIEX-programme and Twinning programmes under PHARE, two-year training programmes for judges of District and Regional Courts on "Application of *acquis communautaire* in the practice of the courts in

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96 Phare Expert Mission, January 2002, meeting with representatives from the Ministry of Justice.

97 Final Report to the Twinning project 'Training of judges' - Skouris and Gogos, 'Analysis of the education of judges', 2000, pp. 2-3.

98 Phare Expert Mission, January 2002, meeting with the General Prosecutor, Mr. Hanzel.

99 Second assessment mission in the fields of JHA in Slovakia, 12-16 February 2001, 2nd revised version of the preliminary draft (June 5th 2001), pp.33-34.

100 Final Report to the Twinning project 'Training of judges' - Skouris and Gogos, 'Analysis of the education of judges', 2000, Annex 1.

101 Final Report to the Twinning project 'Training of judges' - Skouris and Gogos, 'Analysis of the education of judges', 2000, Annex 1.

EU member states". The training programme further included internships at courts in EU member states as well as at the European Court of Justice.

Specialisation in the judiciary is not clearly present, both in the legislative framework and in practice. This is reflected in the training system. At the ministerial level, specialisation is not seen as positive, but as a limitation of a complete qualification. Moreover, the Ministry considers that it might cause a lack of transparency in the system of assignment of cases. Judges, however, are particularly favourable to an increase of some forms of specialisation, without which they think not to be able to deal with new forms of financial and organised crime.[102]

[102] Second assessment mission in the fields of JHA in Slovakia, 12-16 February, 2nd revised version of the preliminary draft (June 5th 2001), p.32.

MODULE 2

STATUS AND ROLE OF THE PUBLIC PROSECUTOR

CHAPTER I

Overview of the prosecution service

The public prosecution service in The Slovak Republic is based on Tile 8 of the Constitution, which states the following:
'The Prosecutor's Office of the Slovak Republic protects rights and the legally protected interests of natural and juridical persons and the state. The Prosecutor's Office is headed by the Prosecutor General who is appointed and recalled by the President of the Slovak Republic at the proposal of the National Council of the Slovak Republic. Details on appointing and recalling prosecutors and on their rights and duties of prosecutors, as well as on the organisation of the Prosecutor's Office, will be set out in a law.'[103]
The Act on the Public Prosecution Service[104] defines the prosecution service as 'an independent hierarchical uniform system of the state units, headed by the General Prosecutor in which individual prosecutors act in terms of subordination and superiority.'[105]
The scope of power of the Public Prosecution Service is defined in art. 3 of the Act on the Public Prosecution Service:

1) The Public Prosecution Service shall protect the rights and interests guaranteed by law to individuals, legal entities and the State.
2) Within the scope of its power, the Public Prosecution Service is in public interest obliged to take the measures with a view to prevent, identify and disclose any breach of law and eliminate the same, remedy any violation and impairment of rights and draw appropriate conclusions. When exercising its powers, the Public Prosecution Service is obliged to use all the statutory means available with a view to secure impartial, consistent, effective and prompt protection of the rights and interests guaranteed by law to individuals, legal entities and the State.

The prosecution service consists of the General Prosecutor's Office and subordinate Regional (8) and District (55) Prosecution Offices. There are 3 Military District

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[103] Articles 149 through 151 of the Constitution.
[104] Act on the Public Prosecution Service of 28 March 2001. Act No. 153/2001. ('APS').
[105] Art. 2 APS.

Prosecution Offices, having the same position as the (civil) District Prosecutions, and one Higher Military Prosecution Office, having the same position as the Regional Prosecutions. The Head Military Prosecution Office is a part of the highest level of the prosecution (which is the General Prosecutor's Office). The territorial limits of the jurisdiction of the prosecution offices corresponds with the territorial limits of the appropriate courts of law.[106]

The Act on the Public Prosecution Service regulates the organisation of the office. It contains chapters on the status and powers of the General Prosecutor, the other prosecutors' powers, collaboration with other agencies and the organisation and management of the service. The Act on Prosecutors and Trainee Prosecutors of the Public Prosecution Service[107] regulates the status of individual prosecutors, containing provisions on appointment, dismissal, basic rights and duties, disciplinary responsibility and remuneration and social security. Another relevant act for the status of prosecutors is the Act on Prosecutors' and Trainee Prosecutors' Wage Rates as amended.[108] The prosecutors' competencies and duties during court proceedings are governed by the Code of Criminal Procedure.[109]

CHAPTER II

Position of the public prosecutor

II.1 Relationship with the Ministry of Justice

The General Prosecutor of the Slovak Republic and his subordinate prosecutors enjoy more independence from the executive branch of government than most other prosecution services. The Act on the Prosecution Service, in article 2, guarantees the independence of the service. The Slovak Public Prosecution Service is not, in any way, subordinate to the Ministry of Justice or any other Ministry or the Government. The Public Prosecution Service has its own budget, which is subject to verification only to the Parliament.[110]

The Act on the Prosecution Service grants the General Prosecutor the right to attend Cabinet sessions and to cast advisory votes.[111]

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106 Art. 39 APS. Chapter V of this Act deals with the organisation of the Prosecution Service.
107 Act on Prosecutors and Trainee Prosecutors of the Public Prosecution Service of 28 March 2001. Act No. 154/2001. ('APTP').
108 Act on Prosecutors' and Trainee Prosecutors' Wage Rates. Act No. 66/1994.
109 Act No. 141/1961 as amended.
110 GPO Comments to Module 2, June 2002.
111 Art. 12 APS.

II.2 Relationship with the legislative power

The General Prosecutor is obliged to report to Parliament yearly on the activities of the Prosecution Service. He is furthermore obliged to answer all questions from members of Parliament, either during the weekly 'question hour' or in writing.[112]
The General Prosecutor may give suggestions, incentives for adoption of new laws or amendments, not only to the Government but also to the head of the Parliament.[113]

II.3 Relationship with the judicial power

There are no administrative neither personal relations between judges and prosecutors; they are members of two independent institutions. Day-to-day interaction is regulated by the various procedural codes. Informal co-operation sometimes takes place in the field of training or when commenting on draft legislation.[114] According to the Act on the Prosecution Service, the General Prosecutor may submit nominations for Constitutional Court judges to Parliament[115] and he can submit incentives for taking position on the uniform interpretation of law.[116]

II.4 Relationship with the police and the investigative services

Currently, the process of criminal investigation is divided into two parts. The first, informal, part is conducted by the 'ordinary' police. In this phase, the crime scene is searched, evidence is secured and witnesses are interviewed. The police then hands over the case to a 'police-investigator', who formally begins the 'official proceedings'.

According to the art. 89, § 2 and 3 of the Code of Criminal Procedure everything (if legally provided) may serve as evidence for clarification of the matter. Evidence gathered before the formal beginning of the official criminal prosecution can also be taken into account. Also, in case the evidence was not provided by the body acting in the criminal proceeding but by one of the parties, it is not a reason for refusing it.
According to the art. 158, § 5 of the Code of Criminal Procedure, the official record is made also on the basis of contents of the explications without peremptory or unrepeatable nature. The law expressly states, that this record serves to the prosecutor and to the accused person for considering the proposal to hear the person who has made such an explication, as a witness to the Court. It also serves to the Court for considering the possibility to develop this evidence. The Code of Criminal Procedure (currently in force) does not require the investigator to interrogate the person who has made an explication during the unofficial phase of the proceeding again as witness. The Court is obliged to examine this witness. In practice the witness is interrogated repeatedly, but for

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[112] Art. 11 APS. Detailed rules are contained in the Act on the Parliamentary Standing Order (Act No. 350/1996 Coll. as amended).
[113] Art. 12 APS.
[114] Phare Expert Mission, January 2002, meeting with prosecutors and judges.
[115] Art. 11 APS.
[116] Art. 14 APS.

changing this practice, modification of the law is not needed. Only the approach of the investigators, judges and prosecutors is to be modified, as they are too formal.[117]

The draft new Code of Criminal Procedure should eliminate the 'unofficial' phase and integrating the ordinary police's actions into the 'official' phase. The prosecutor is supposed to become more involved in the earlier stages of the proceedings.[118] However, this draft new Code is still only in the early stages of the legislative process and is not expected to enter into force any time soon.

Prosecutors may issue binding instructions to police-investigators concerning matters of procedure, the securing of evidence etc. These instructions should be in writing.[119]

CHAPTER III

The office of the public prosecutors

III.1 Introduction

An overview of the competencies of the Prosecution Service is given in the articles 3 and 4 of the Act on the Prosecution Service. Article 3 generally states that the Prosecution Service shall 'protect the rights and interests guaranteed by law to individuals, legal entities and the State'. Article 4 gives a list of specific competencies for the service and the individual prosecutors to fulfil their tasks. These include:

a) the pursuit of criminal proceedings conducted against individuals suspect of having committed crimes and through overseeing compliance with laws in the pre-trial proceeding,
b) overseeing compliance with laws in all the establishments where the individuals deprived of their personal freedom or the individuals whose personal freedom was limited upon a decision made by a court of law or by any other competent authority are kept,
c) exercising their powers in the court proceedings,
d) representing the State before the courts of law if so prescribed by a separate law,

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[117] Comments on readjusted desk research, received from the General Prosecutor's Office, June 2002.

[118] Phare Expert Mission, January 2002, meeting with representatives from the Prosecution Service.

[119] Phare Expert Mission, January 2002, meeting with representatives from the Prosecution Service.

e) overseeing compliance with laws on the part of public administrative agencies within the limits of this Act,
f) participation in preparing and taking preventive measures which aim to prevent a breach of law s and other generally binding regulations,
g) participation in eliminating, preventing and combating the causes and conditions of crime,
h) participation in drafting legislation,
i) performing other duties and obligations if so prescribed by a special law or by an international treaty declared in the manner prescribed by law.

III.2 Competencies in criminal law

Competencies of the prosecutor in the field of criminal law are only minimally regulated by the Act on the Prosecution Service.[120] More detailed provisions can be found in the Code of Criminal Procedure and the Act on Serving a Sentence of Imprisonment[121]. The Act on the Prosecution Service states only that the prosecutor shall especially supervise pre-trial proceedings, bring criminal actions and ensure the rights of victims and witnesses[122]. Pre-trial proceedings will be treated more extensively within the context of Module III of this study. Article 18 of the Act on the Prosecution Service regulates the tasks and competencies of prosecutors for the supervision of establishments of detention.

III.3 Competencies in civil and administrative law

In the period immediately following 1989, there was a strong desire to limit the powers of the Prosecution Service in the non-criminal field. According to the General Prosecutor, the tendency at present is to keep these competencies at their current level or even to increase them. The service for example recently received the power to enter bankruptcy proceedings and to challenge bankruptcy decisions before the Supreme Court.[123] The Prosecution Service currently treats around 12.000 non-criminal cases per year.[124]

According to article 19 of the Act on the Prosecution Service, the prosecutor may only act in civil proceedings when (and to the extent) this is mandated by a separate law.[125] If the prosecutor's action is prescribed by a special law, the Act on the Prosecution Service

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[120] Article 17 APS ('Scope of the prosecutor's powers in criminal proceedings').
[121] Act No. 59/1965 Coll. as amended.
[122] More detailed provisions are contained in the Act No. 255/1998 Coll. on Compensating Individuals for Loss or Damage caused by Aggravated Crimes and the Act No. 256/1998 Coll. on Witness Protection.
[123] Phare Expert Mission, January 2002, meeting with the General Prosecutor and representatives from the Prosecution Service.
[124] Idem.
[125] Such provisions are for example art. 35 of the Code of Civil Procedure, Artt. 21 and 29 of the Act on Collective Bargaining (Act No. 2/1991 Coll.) and several acts regarding (former) state property.

entitles him to file a motion to instigate proceedings, join pending proceedings at any stage, represent the State in court and appeal to decisions. The Code of Civil Procedure further regulates the rights and duties of the prosecutor in the proceedings.
One important competence for the General Prosecutor is the right to file appeals on points of law with the Supreme Court at the request of a party, a victim or a person affected by the lower court's ruling. This type of proceedings was introduced in 1998 and the number of applications filed with the General Prosecutor has since then risen sharply. The General Prosecutor believes that many of these cases would 'end up in Strasbourg' if it weren't for this procedural possibility.[126]

In the field of administrative law, prosecutors shall oversee and supervise the compliance with laws and generally binding provisions by administrative agencies such as State Administration and local government authorities. Supervision is exercised over generally binding regulations and guidelines, resolutions, ordinances and measures in individual cases. The control regards both the substance and the procedural aspects of government action.[127] Because of the recent transfer of competencies to local authorities, the number of administrative law actions by the Prosecution Service is expected to rise in the coming years.[128]

Prosecutors may act on their own account or on the basis of a motion filed with them by an agency or an individual.[129] Action is usually taken on the basis of complaints by individuals.[130]
Prosecutors may issue protests and notices against illegal practices and they may audit the agency concerned.[131] If the protest is lodged against a general regulation, the case may be brought before the Constitutional Court by the General Prosecutor if the authority fails to act. If the protest concerns a measure, the case is referred to a higher administrative authority and finally to the Slovak Cabinet for a final decision.[132]

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126 Phare Expert Mission, January 2002, meeting with the General Prosecutor. The numbers provided indicate a rise from 350 applications in 1998 to 1364 in 2001. So far, ca. 300 appeals have actually been brought before the Supreme Court.
127 Art. 20 and 21 APS.
128 Phare Expert Mission, January 2002, meeting with the General Prosecutor.
129 See Artt. 31 to 36 APS for procedures related to the filing of 'motions' with the Prosecution Service.
130 Phare Expert Mission, January 2002, meeting with the General Prosecutor.
131 These procedures are regulated in the Artt. 22-30 APS.
132 Idem.

CHAPTER IV

The legal status of the public prosecutor (including recruitment and education)

IV.1 Status of the General Prosecutor

The General Prosecutor is appointed and removed by the President of the Republic, upon the proposal of parliament. His term of office is seven years and he may be in office for a maximum of two consecutive terms.[133] The General Prosecutor's term of office shall terminate upon the expiration of the same. Prior to the expiration of his term of office, the General Prosecutor's service in this capacity terminates only as a consequence of

a) his resignation from office,
b) his removal from office,
c) his death or being declared dead.

Parliament may submit to the President a proposal to remove the General Prosecutor from his office provided that he

a) was found incompetent to carry out legal acts or his competence to carry out legal acts was limited as a result of a final decision made by a court of law,
b) ceased to be a Slovak Republic national,
c) was validly sentenced for having committed a crime,
d) has become a member of any political party or a political movement,
e) started to perform any activity or serve in a position that is incompatible with the General Prosecutor's position,
f) for medical reasons if his health condition as described in a medical report or as decided by the State Health Administration authority or the Social Security body hinders a due performance of the General Prosecutor's duties and obligation for more than one year,
g) does not permanently reside in the territory of the Slovak Republic.[134]

The General Prosecutor appoints and removes his First Deputy and all his other Deputies.

IV.2 Selection, appointment, promotion and training of prosecutors

Requirements for appointment as prosecutor are: being a Slovak citizen, having legal capacity, being over 25 years of age and having a university law degree. The law provides for an open announcement of vacancies, and the selection of prosecutor trainees before a

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[133] Art. 7 APS.
[134] Art. 8 APS, par 1 and 3.

five member selection committee composed entirely of prosecutors.[135] Currently, there are no possibilities to accept new prosecutor trainees.

Initial training of prosecutors takes a minimum of 24 months and a maximum of 3 years.[136]
During the training period, the trainee is allowed to carry out simple tasks, under supervision of a senior prosecutor. The trainee is evaluated regularly by the head of the prosecution unit.[137]

The prosecutor's exam consists of an oral and a written part. The written exam comprises the expert law test and drafting the decision both in a criminal and other than criminal matter (civil, administrative, etc.). The oral exam verifies the trainee's knowledge of constitutional law, legislation concerning the prosecution service, criminal law, civil and commercial law and administrative law.[138] The exam is taken before a committee consisting of five prosecutors, appointed by the General Prosecutor from among prosecutors recommended by the Council of Prosecutors.[139]
The General Prosecutor appoints as prosecutor all those who have passed the exam and meet all the eligibility requirements.

Decisions concerning promotion (which is seen as a form of transfer) are taken by the General Prosecutor. A prosecutor may be transferred to a higher office only on the basis of a selection process and in accordance with a general policy on promotion approved by the Council of Prosecutors.[140] Prosecutors to be transferred to the General Prosecution Office need to have at least 10 years of practical qualification in law.[141] Heads of prosecution offices ('Head Prosecutors') are appointed by the General Prosecutor, on the basis of a selection procedure, upon recommendation of the Council of Prosecutors.[142]

The selection procedure for promotion to a higher office or to the position of Head Prosecutor is identical. The law provides for an open announcement of vacancies (within the prosecution department), and selection before an Appointment Committee, consisting of five prosecutors appointed by the General Prosecutor upon proposal by the Council of Prosecutors.[143]

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135 Art. 234 APTP.
136 Art. 244 APTP. Phare Expert Mission, January 2002, meeting with prosecutors.
137 Art. 245 APTP.
138 Art. 246 APTP.
139 Art. 247 APTP. See for information concerning the Council of Prosecutors: paragraph 3.8.
140 Art. 10 APTP.
141 Idem.
142 Art. 19 APTP.
143 Art. 21 APTP.

IV.3 Dismissal and transfer

The prosecutor's professional service is terminated upon removal from office, resignation, death or a specific reason specified by law.[144] A prosecutor may be removed by the General Prosecutor in case he has been sentenced for having committed a malicious crime, upon a disciplinary decision to expel the prosecutor from the service, or upon membership of a political party.[145] A prosecutor may also be removed after having reached 65 years of age.

Transfer is generally speaking only possible with the consent of the prosecutor concerned. Exceptions are possible in the case of a disciplinary verdict or in case of a transfer to another prosecution office of the same level within the same municipality.[146]

Prosecutors may be temporarily allocated or assigned to another office if the 'due performance of tasks entrusted with the public prosecution service' so requires. They may be temporarily assigned without their consent to another prosecution office for 60 days of duty at a maximum within one year, if it is necessary for ensuring the performance of tasks of that office. Only in case of temporary allocation to another prosecution office without the prosecutor's consent, the prior consent of the Council of Prosecutors is required. This is regulated by the art.10 of the Act on Prosecutors and Trainee Prosecutors no.154/2001. Prosecutors may, with their consent, be temporarily allocated or assigned to the office of the President of the Republic, the office of Parliament, and the office of the Cabinet to apply their professional knowledge and experience.[147]

IV.4 Hierarchy

The General Prosecutor controls and supervises all activities of the prosecution service. He delivers internal regulations and instructions that are binding for all prosecutors. The General Prosecutor also issues positions on the uniform application and enforcement of laws and regulations that are binding for all prosecutors.[148] The Regional Prosecution Offices supervise the uniform compliance with laws and regulations by the District Prosecution Offices in their region.[149]
In certain cases defined by an order of the General Prosecutor, there exists an obligation to report. Only in very serious cases, there is an obligation to consult the superior prosecutor on how to proceed in a given case. Reportedly, this happens more often

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144 Art. 14 APTP. A specific reason would be for example the prolonged existence of a professional incompatibility.
145 Art. 15 APTP. Other reasons are those related to citizenship, residence, capacity for legal acts and long-term illness.
146 Chapter II, part 2 APTP. ('Secondment and Transfer')
147 Idem.
148 Art. 10 APS.
149 Art. 42 APS.

between the General Prosecutor's Office and Regional Offices than vis-à-vis the District prosecutors.[150]

Reportedly, instructions are not often given in specific cases. Guidelines and general instructions are more common. If a prosecutor refuses to accept a given instruction because he finds it illegal, the case may be allocated to another prosecutor.[151]
Within each Prosecution Office, the Head Prosecutor may instruct his subordinate prosecutors and other employees on how to proceed in concrete cases. He may also exercise himself the powers of a subordinate prosecutor or may transfer a case to another prosecutor.[152]

IV.5 Ethical guidelines

The Act on Prosecutors and Trainee Prosecutors obliges prosecutors to 'protect human dignity, fundamental human rights and freedoms' and to refrain from discrimination.[153]
A specific 'Ethical Codex' has been under preparation, but the project was recently put on hold.[154]

Prosecutors are under a general obligation to 'advance and protect the public interest'. They should discharge their functions 'duly, properly, impartially and without any undue delays'. The law contains a specific provision obliging the prosecutor always to take into account all relevant circumstances 'regardless of their benefits or detriments to the litigants'. Finally, although prosecutors are obliged to follow instructions from superiors, the law makes an express exception for instructions that would make the prosecutor commit a crime or a disciplinary offence.[155]

IV.6 Fundamental rights for prosecutors

As was mentioned before, prosecutors do not have the right to join a political party or movement. The Act on Prosecutors and Trainee Prosecutors forbids prosecutors to speak in public about specific cases, if that could jeopardise the correct handling of the case. Prosecutors may not engage in business activities, except for the management of their own estate or for scientific or literary activities.[156]

Prosecutors have a right to protection for themselves and their family, if necessary. Also, a prosecutor's features may not be published without his consent.[157]

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150 Phare Expert Mission, January 2002, meeting with prosecutors.
151 Phare Expert Mission, January 2002, meetings with prosecutors.
152 Art. 29 APTP.
153 Art. 26 APTP.
154 Phare Expert Mission, January 2002, meeting with the General Prosecutor.
155 All these provisions: art. 26 APTP.
156 Art. 26 APTP.
157 Art. 25 APTP.

IV.7 Disciplinary liability and disciplinary procedures

Prosecutors' disciplinary responsibility and disciplinary actions are regulated by Chapter XI of the Act on Prosecutors and Trainee Prosecutors. Prosecutors can be held responsible for 'professional misconduct'.[158] Professional misconduct is defined as a breach of the prosecutor's professional duties, conduct that raises reasonable doubts about his diligence and impartiality and conduct in public that would erode public confidence in the service or destroy the reputation of the service.[159]

Proceedings are initiated upon a petition or upon referral of the case by a 'law enforcement body'. Competent to file a petition are: the General Prosecutor for all prosecutors, the Secretary of Defence for all Military prosecutors, Regional Head Prosecutors for all regional and district prosecutors in his region and District Head Prosecutors for all district prosecutors in his office.[160]

Cases are brought before the disciplinary committee, established at the General Prosecutor's Office. The committee is composed of five prosecutors, all appointed by the General Prosecutor for a period of three years, upon proposal by the Council of Prosecutors.[161] The charged prosecutor has the right to defend himself or to be defended by an attorney-at-law.[162]

Sanctions that may be imposed are: an admonition, a written reprimand, a salary decrease of up to 15% for a period of up to three months, removal from the position as Head Prosecutor, transfer to another office of the same or of inferior rank, removal from his office of prosecutor.[163]

IV.8 Self governance of prosecutors; Council of Prosecutors

At all levels of the prosecution service, there are assemblies of prosecutors and 'Prosecutors' Councils' elected by these assemblies. Co-ordination and other specific tasks are performed by the Council of Prosecutors.[164]

Prosecutors' Councils comment on the draft budget of a prosecution office, a draft activities plan for a calendar year and the final evaluation of a trainee's performance. The Councils furthermore decide about objections raised by a prosecutor against his evaluation, if such objections were rejected by the appropriate Head Prosecutor, co-

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158 Art. 187 APTP. There are other grounds for liability contained in some very specific acts.
159 Art. 188 APTP.
160 Art. 197 APTP.
161 Art. 192 APTP.
162 Art. 195 APTP.
163 Art. 189 APTP.
164 All these bodies are governed by Chapter XII of the APTP. ('Prosecutors' Self-Governance').

operate with Head Prosecutors in the field of training and present opinions on complaints made against prosecutors.[165]

The Council of Prosecutors is composed of the presidents of the Prosecutors' Councils who elect their president among themselves.[166] The Council co-ordinates the activities of the other councils, comments on the draft budget and main activities plan and comments on draft bills related to the scope of powers or the organisation of the Prosecution Service. As has been seen above, the Council of Prosecutors has various other competencies, for example in nominating candidates for promotion, allowing the transfer of prosecutors and in nominating members for the disciplinary committee.[167]

[165] Art. 222 APTP.
[166] Art. 223 APTP.
[167] Art. 224 APTP.

MODULE 3

COURT PROCEDURES AND EXECUTION OF JUDGEMENTS

CHAPTER I

Access to justice

I.1 Efficiency of the court system

It is commonly thought that proceedings in the Slovak Republic take too long. The Slovak Republic currently faces the highest number of 'delay-complaints' per capita before the European Court of Human Rights in Strasbourg. One frequently cited possibility for speeding up trials would be the transfer of certain administrative and semi-judicial tasks from judges to legally trained staff.

The Ministry of Justice distinguishes between 'subjective' and 'objective' delays. Subjective delays are linked to the judiciary itself and the support structures. Objective delays are caused by the massive influx of cases after the cancellation of the 'voucher privatisation scheme' in 1997. The resulting 'tidal wave' 500.000 to 600.000 cases may realistically be deemed to be a singular event; an event that nonetheless still influences the length of court procedures till today.

According to the Ministry, the period between filing a claim and the first hearing in civil cases is six months. There seem to be significant differences between courts, that again can be attributed partly to the 'privatisation cases' and the fact that the courts that were newly established during the judicial re-organisation of 1997 did not have to take any old cases. On average, it takes around 3 years to obtain a final decision in civil and commercial cases (including appeal).

Parties may complain to the president of the court in case of excessive delays. Since the February 2001 constitutional amendment, parties may also file a complaint with the Constitutional Court for a breach of their fundamental right to a speedy trial. The Constitutional Court may award damages or oblige the normal court to act.

I.2 Legal representation and legal aid

Free legal aid was introduced in 1999 at the Regional Courts, where members of the Slovak Bar Association (SBA) provide fee basic advice once a week.

In civil law, there is no general legal provision establishing a right to free legal representation. There is no obligation to be represented in court, except in proceedings before the Supreme Court in an 'appeal on points of law'. In this type of proceedings, when one of the parties does not have sufficient means, the court obliges the president of the SBA to assign a lawyer. In such cases, the court may also decide to waive court fees. In criminal law, the Code of Criminal Procedure stipulates when defence is obligatory. Representation in these cases is paid for by the state budget and covers all stages of the proceedings. Some procedures against administrative decisions also require obligatory representation, but there are no provisions regulating the right to free representation in these cases.

I.3 Access to justice for victims

Victims can claim damages within the criminal proceedings. The claim should be brought at the beginning of the court session and the victim has a right to appeal against the decision on damages. If the claim cannot be substantiated fully by the evidence brought within these proceedings, the judge will refer the victim to a civil court.

The Act 255/1998 Coll. provides for financial compensation (by the state) to persons who suffer bodily harm as a result of deliberate violent criminal acts. The maximum amount that may be paid to victims is 50 times the minimum salary. The heirs of the victim also have legal standing to seek compensation.

CHAPTER II

Fair trial and due process in civil and criminal matters

II.1 Requirements of article 6 ECHR and the national constitutional order

Article 46 of the Constitution of the Slovak Republic guarantees the right to a fair trial before an independent and impartial judge. Article 48 contains the right to a trial without undue delays. Other constitutional provisions guarantee the rights to representation and interpretation and the right for everyone to be brought before his 'legal judge'. Article 7 of the Constitution provides that international treaties on human rights, which have been ratified by the Slovak Republic take precedence over national law, provided their scope of protection is greater than that of the national provision.

II.2 Specific rules of procedure in civil matters

A major amendment to the Civil Procedure Code entered into force in January 2002. One of the main changes concerns the presentation of evidence in the course of the procedure. In principle no new evidence is allowed in the appeal procedure, with the exception of evidence that could not have been presented earlier.

II.3 Specific rules of procedure in criminal matters

Important general provisions can be found in the art. 50 of the Constitution ('every defendant is considered innocent until the court establishes his guilt by means of a legally valid verdict') and art. 47 of the Constitution (the right to an interpreter in criminal proceedings).

Many prosecutors consider existing criminal procedural rules adequate for simple 'street' crimes but inadequate for most serious crimes and, especially, for new forms of economic crime. A project to draft a new criminal procedure code has suffered serious delays. Because of the upcoming elections, no new developments are expected in this area in the near future. A series of 'urgent amendments' is being prepared separately. These changes should prevent some of the current repetitions in the taking of evidence.

II.4 Pre-trial detention

Any individual has to be brought before a judge within 48 hours of his arrest. The judge then reviews the legality and the necessity of the detention. Grounds for detention are stated in art. 67 of the Criminal Procedure Code and include the reasonable fear of: escape, influence over witnesses or fellow accused, frustration of the investigation and continuation of criminal behaviour. Finally, an individual may also be placed in custody if he is being prosecuted for a crime that carries a sentence of at least eight years, even if none of the above grounds for detention are present.

After this initial judicial review, the detainee may file a request for release once every two weeks with the prosecutor. If the prosecutor does not grant the request, the file is submitted to a judge who must then decide. This regime is valid for the first six months of the detention. After these six months, the detainee is again brought before a judge who may allow custody for another six months. After two years, the detention needs to be reviewed by the Supreme Court. Pre-trial detention may not last more than three years in total, although for some very serious crimes a period of five years is permitted. Apart from the six-monthly review, there is no statutory obligation for judges to review the grounds for detention ex officio.

On average, pre-trial detention lasts 3.3 months before the beginning of proceedings in District Courts and 12.5 months before the beginning of first instance proceedings in Regional Courts. Some cases of excessive delays are reported.

CHAPTER III

Constitutional and administrative justice

III.1 Constitutional and administrative justice

As was mentioned in Module I, the Constitutional Court is an independent and self-governing authority, independent both of the legislature and the executive, set up to protect compliance with the Constitution. Its material jurisdiction includes decisions on: the conformity of laws with Constitutional provisions, compliance of secondary legislation with laws and the Constitution, the conformity of generally binding regulations of local authorities with those of higher executive bodies, the conformity of all generally binding regulations (including acts of parliament) with ratified international agreements. The court is also the competent authority for the impeachment procedure of the President of the Republic by Parliament for high treason.

The Slovak Republic does not know an independent system of administrative tribunals. All Regional Courts have a special section that exercises judicial review over executive decisions. This review is governed by the Code of Civil Procedure. The review takes the form of appeals against executive decisions and rulings on the legality of executive decisions.

III.2 The ombudsman

The Slovak Parliament recently adopted the Law on the Public Protector of Rights ('Ombudsman') in pursuance of the Constitutional Amendment of February 2001. The Parliament elects the Ombudsman. Candidates must be proposed by at least 15 members of Parliament. The Ombudsman may not be a member of a political party. Legal education is not a requirement. The Ombudsman is appointed for five years.

The Ombudsman is competent vis-à-vis the agencies of the central and local government. He is not competent to review actions by the Parliament, the Government, the President of the Republic, the Constitutional Court, the secret police, and concerning the deciding powers of the police-investigators, the prosecution service and the courts. He is, however, competent to review their administrative actions.

All natural and legal persons may address the Ombudsman with a complaint against the action or inaction of an organ of public administration on the grounds that his basic rights or freedoms were breached or that a certain decision was contrary to 'general principles of democratic order'. The Ombudsman may also act on his own initiative. The Ombudsman has specific rights to fulfil his duties, such as the right to enter premises of public authorities and the right to information. Breaches of rights are announced to the organ concerned, and, in the case of subsequent inaction, to the hierarchically higher organ. The Ombudsman reports once a year to Parliament.

CHAPTER IV

Execution of judgements

The Slovak Republic knows a double system of execution of judgements; through court executors and through private executors based on the French model. Private executors have been active in The Slovak Republic since 1996. Private executors must have had legal training. They are appointed by the judiciary and they are supervised by the Ministry of Justice. The Ministry may initiate disciplinary proceedings against an executor. In some cases, separate judicial supervision is required.

Although all types of judgements are suitable for execution by both court and private executors, the vast majority of judgements are executed by the private profession, mainly because of the fact that this procedure takes less time and because the claimant is not obliged to specify the mode of execution and the assets to be seized when using a private executor. Between the end of 1996 and the end of October 2001, court executors have executed 15.000 judgements, whereas private executors took up 480.000 judgements. The standard fee for private executors is 20% of the executed value, with a maximum of 1.000.000 crowns.

Slovenia

This report is based on information gathered up to November 30th 2001

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MODULE 1

AN INDEPENDENT JUDICIARY

OVERVIEW OF THE JUDICIAL SYSTEM

With the Constitution of 1991, a uniform, independent structure for the judicial system was re-established in the Republic of Slovenia. Article 3 of the Constitution guarantees the division of powers and article 125 guarantees the independence of the judges. The judges enjoy judicial immunity for any opinion they may express in court, according to article 134 of the Constitution.

Two major laws and several other regulations regulate the position of the judiciary. The Courts Act[1] institutes all the courts in Slovenia, with the exception of the Constitutional Court. It determines the organisation, jurisdiction and administration of the courts, and lays out basic principles for their procedural code and personnel matters. The Judicial Service Act[2] determines the statute of a judge, in particular access to office, elections, rights, responsibilities, dismissal from office and disciplinary procedures. Concerning this law, amendments are being prepared.

The principles of a professional and independent judiciary are guaranteed by appointing judges for their lifetime and by granting a Judicial Council far reaching personnel rights. The Judicial Council was founded in 1990 on statutory basis. With the Constitution of 1991, it received constitutional guarantees. It consists of 11 members. Five members shall be elected by the vote of the National Assembly on the nomination of the President of the Republic, from amongst practising lawyers or professors of law and other lawyers. Six members shall be elected from amongst judges holding permanent judicial office. The President of the Judicial Council shall be chosen by the members of the Judicial Council, from amongst their own number (article 131 of the Constitution).

A draft constitutional amendment from August 28, 2001 for the amendment of article 131 would enlarge membership of the Judicial Council to 15; six members would be nominated and elected by Parliament (and thus the State President would no longer be involved), seven members by judges, while the Minister of Justice and the President of the Supreme Court would be members ex officio. Critics of this proposal maintain that the new make-up of the Council and the new system of appointment will to some extent politicise the Council. This proposal has not been adopted yet.

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[1] Official Gazette of the Republic of Slovenia, nr 19/94.
[2] Official Gazette of the Republic of Slovenia, nr 19/94.

Regarding the organisation of courts, a distinction is drawn between courts of general and courts of specialised jurisdiction. There are at the moment 11 district and 44 county courts; four higher courts pass sentence in appeal. Furthermore, there are 4 labour and social courts and one higher labour and social court, which rules and administers justice in labour and social appeal procedures.

The Supreme Court is the highest court in the State. It is a court of appellate jurisdiction in criminal and civil cases, in commercial law suits and in labour and social security disputes. It is also the second instance in the cases of administrative review[3].
According to the Constitution, no extraordinary courts or military tribunals can be established in peacetime. The jurisdiction of local centres, which under Communism had authority over child support, adoption and other family matters, was re-allocated to the courts. Court proceedings are public and foresee in the participation of lay people as referees in judicial procedures.

The Constitutional Court is charged with ensuring that legislation is in conformity with the Constitution. The Constitutional Court shall be composed of nine judges, elected by the National Assembly in accordance with statute and on the nomination of the President of the Republic. Judges shall be elected from amongst experts in law and hold office for a period of 9 years. The President of the Constitutional Court shall be selected by the judges from amongst their own number, and holds office for a period of three years[4]. This Court was already founded in 1963. However, in the beginning the Court fulfilled mainly formal functions of the protection of constitutionality and guarding socialist legality. Its functions were strengthened somewhat with the Constitution of 1974 and became significant when Slovenia became an independent, internationally recognised state.

The new Constitution in 1991 added an effective guardianship with the constitutional complaint against violations of human rights, which is felt to be one of the institutional guarantees of the division of powers among the legislature, the executive and the judiciary. The Constitutional Court now has two competencies: constitutional review of acts and regulations and judgements on individual complaints.
Slovenia has signed and ratified most of the relevant European Conventions and has established the legal and institutional framework to deal with corruption, organised crime and money laundering cases, in accordance with the European standards[5].

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3 "Basic information on Slovenian Judiciary", information of the Supreme Court of the Republic of Slovenia, and Courts Act, Art. 98.
4 Constitution of the Republic of Slovenia, Artt. 163 and 165.
5 OCTOPUS II report on Slovenia.

CHAPTER I

The creation of a true balance of power

I.1 De jure and de facto division of competencies between judiciary, executive and Parliament

According to the recent amendment of the Courts Act, the judiciary is an independent budgetary user through the Supreme Court. The president of each district court, in consultation with the presidents of the county courts, the court of appeal and the Supreme Court prepare a financial plan for the next year. On the basis of these plans, the Supreme Court creates a draft budget for all courts and submits it to the government. The government is not bound by this proposal. At the moment there is nobody prescribed to defend the budget. Therefore, it is up to the Minister to decide whether or not he will take part in the negotiations over the judicial budget.

According to the OSI report, the Minister of Justice chose not to participate in the negotiations in 1998, which partly contributed to the near financial collapse of the county and district courts by the end of 1999. In 1999, the Minister of Justice did participate in these negotiations, which was positively reflected in the judicial budget allocation that year. In 2000 and 2001, the Minister again did not participate in negotiations over the judicial budget.

The Minister of Justice and his State Secretaries did participate in negotiations over the judicial budget for the budget years of 2002 and 2003 (both budgets were adopted by the National Assembly of the Republic of Slovenia in December 2001). For example, a State Secretary of the Ministry of Justice participated at several meetings of competent Committees of National Assembly, discussing and negotiating on judicial budget. He was carrying this out in co-operation with the President of the Supreme Court of the Republic of Slovenia and with the President of the Slovene Judges' Association. Also at the final stage when the Budget of the Republic of Slovenia (judicial budget included) was being passed in the National Assembly, the Ministry of Justice supported the proposal of the Supreme Court of the Republic of Slovenia.[6]

The president of each court is accountable to the Court of Auditors for the expenditure of budgeted funds. Court presidents are therefore not directly accountable to Parliament or to the Government for their spending. The Court of Auditors supervises state accounts, the budget and all public spending. The budget should be regarded as a framework however; the Minister of Finance controls the real budget[7].

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[6] Comment on the desk report by the Ministry of Justice of the Republic of Slovenia, 3 June 2002.

[7] Information received during the meeting with Mrs. A. Mlinar, Programme Officer EC delegation and Mr. N.M. Doukoff German PAA in Slovenia, 26/11/2001.

The management and supervision of courts operations, as well as control over its performance and efficiency, is divided between the Judicial Council, the Ministry of Justice and the presidents of courts. The court presidents, assisted by personnel councils, manage the individual courts, while the Judicial Council and Minister of Justice share management responsibilities on a national level. Courts still rely on the executive branch for a variety of services, such as drafting laws and regulations on the organisation and operation of courts, providing personnel, material and infrastructure support, as well as statistical research and enforcement of penal sanctions[8].

The Judicial Council

The Judicial Council has explicit statutory authority to administer courts and judges at the national level. It decides on matters relating to incompatibility with judicial service and is empowered, but not obliged, to adopt standard work norms. Upon the proposal of the Minister of Justice, the Council also decides on the number of judges in each court. The Council gives opinions on the judicial budget proposal and on statutes regulating the status, rights and duties of judges and of court staff.

Ministry of Justice

The Ministry of Justice ensures the general conditions for the successful functioning of the judiciary by preparing draft laws and regulations on court organisation and operation; providing human, material, and technical support; co-ordinating international legal aid; and enforcing penal sanctions. The Ministry also determines the need for new personnel and court facilities. The Ministry, together with the court presidents, is responsible for compliance with the Court Order, regulating the organisation of court records, archives, and statistics, unreasonable delay or other efficiencies in court operations[9].

Court administration on the court level

The day-to-day operations of a court are controlled and managed by the court president. Cases are assigned to judges at random. They are distributed according to the daily order of entry of petitions for legal action and assigned to judges in alphabetical order[10].
The Presidents of the Supreme Court and the courts of appeal exercise some limited supervisory control over the operation of their own and lower court presidents' administrative activities. However, the presidents supervisory competence is limited to the right to demand written reports about lower court presidents' performance of their administrative activities, and the right to review petitions filed by parties complaining of unnecessary delay in a particular case.

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8 OSI report on Judicial Independence in Slovenia, p. 451.
9 OSI report on Judicial Independence in Slovenia, p. 451.
10 Court Rules Artt. 160-170.

The Court president supervises the collection of statistical data, case flow, and the promptness of trials, which are linked to assessments of a judge's performance. The court president performs these monitoring or supervisory functions' powers in relation to individual judges in two contexts: in response to requests for assessment of the judicial service and in connection with disciplinary proceedings. In exercising his administrative and supervisory capacity, a court president is not allowed to infringe the independent position of a judge making decisions on cases; he may be dismissed if he infringes the principle of independence of judges by violating regulations in any other way. No complaint relating to a court president's conduct has been reported[11].

Personnel councils are created for every district court, court of appeals and the Supreme Court[12].
The personnel councils are composed of seven judges elected by their peers. At the district court, the council consists of four district and three county court judges. The competencies of the personnel councils differ at each level. In general, however, personnel councils decide on the assignment of judges to different divisions, and on the determination of judges' specialisation, on the proposal of court presidents. In addition, the personnel council of a district court gives an opinion on candidates for district or district court judgeships, while the personnel councils of higher courts also assess judges' performance.

Role of the executive with regard to the enforcement of judgements

The executive generally respects judicial decisions, but there have been several reported cases in which the Government or Parliament has failed to comply with court decisions. The lack of compliance with court decisions, even as increasing numbers and kinds of disputes are being referred to courts, is related to budget limitations. As of the end of 2000, thirteen rulings of the Constitutional Court were not being enforced, because the term of the legislature had expired before it replaced or supplemented the unconstitutional provisions. Parliament has a continuing obligation to enact legislation in conformity with the Court's rulings, but an automatic habit of compliance with court decisions does not appear to be ingrained in the political branches[13].

I.2 De jure and de facto division of competencies within the judiciary

Judges in lower courts are free to decide cases. There is no undue interference outside the normal process of appellate review. Upon review the court of appeal may affirm, amend or cancel a decision of a lower court. It may give binding instructions, but only as to which procedural action to carry out and which legal questions to deal with on retrial. Thus a system of full appeal exists[14].

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11 OSI report on judicial independence in Slovenia, p. 472.
12 OSI report on Judicial Independence in Slovenia, p. 453.
13 OSI report on Judicial independence in Slovenia, p. 436 and it appeared during several meetings in Slovenia during the mission from 26/11/2001 - 30/11/2001.
14 OSI report on Judicial Independence in Slovenia, p. 469.

The Constitutional Court only acts as a part of the judiciary when it is deciding on constitutional complaints by individuals alleging violations of their constitutional rights by the decision of another court. In this case, the Constitutional Court can annul a decision of the Supreme Court. This does not happen often, if it happens they "reverse and amend". Then the Supreme Court will render a new judgement[15].

CHAPTER II

The independent functioning of the judiciary

II.1 Incompatibilities

The judicial office is incompatible with office in any other state body, local government body or any organ of a political party. If a judge is elected or appointed to a political office, to the Constitutional Court, or as ombudsman, his office and all rights and obligations deriving from judicial service are suspended[16].

A judge may not accept any other employment that would obstruct his performance as a judge, harm the reputation of the judicial service, or create the impression that he is not impartial in administering justice. A judge is prohibited to work as a lawyer, notary, or any commercial or other profit-making activity, including positions in management, administration or supervisory boards[17]. Presidents of Courts are responsible for monitoring their possible activities, or allowing the performance of non profit activities. Possible reproaches must be addressed to the Court Administration and the Judicial Council, which is obliged to analyse regularly cases in which presidents of courts have allowed "extra-judicial" activities, or if judges have performed such activities without permission[18].

A judge may teach, publish, or conduct research or similar work within the legal profession, provided this activity does not interfere with his judicial performance. Judges are allowed to be members of political parties. In general, however, judges seem politically restrained[19].

The civil and criminal procedural codes prohibit judges from hearing cases in which they or a relative have been a party or witness, in which they have issued a decision in any

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15 Information received during meeting with Mrs. D.W. Lukiæ, President of the Constitutional Court of the Republic of Slovenia, 27/11/2001.
16 OSI report on judicial independence in Slovenia, p. 447.
17 Judicial Service Act, Artt. 37-43.
18 Opinion of the Ministry of Justice on strengthening the Rule of Law, date 26/11/2001, document received during mission 26/11/2001 - 30/11/2001.
19 OSI report on judicial independence in Slovenia, p. 447.

earlier stages of the proceeding, or if other circumstances raise doubt about their impartiality[20].

II.2 A judge should not be subject to any authority

Public criticism of judges occasionally occurs in the form of written articles or public statements, mostly from parties dissatisfied with a particular judicial proceeding[21]. A judge may not be prosecuted before a disciplinary court for actions taken and legal opinions expressed when judging on a matter in which he is deciding[22].

Lay judges shall, when taking part in the exercise of judicial authority in county courts, within the framework set by law, be equal in their rights and duties to judges[23]. Article 70 of the Code of Civil Procedure states that a judge or lay judge shall be prohibited to exercise the judicial function if he is permanently or temporarily employed by a party, or if he is a partner in a general partnership, limited partnership or a limited liability company, or the silent partner in a silent partnership which is party to the litigation.

II.3 Supporting facilities

It appears that the supporting facilities for judges are quite good. From the investigations for the Twinning Programme with Germany it appears that the circumstances in the courts differ a lot. For example, in the report regarding the Labour Courts it is said that some courts in the country are not so good, but that the one in Ljubljana is very impressive. In the report regarding the administrative justice, the court rooms are described as good in general apart from the division in Celje[24].

In general, courts have adequate equipment, such as computers, typewriters, and faxes; every judge has a computer, although not all have Internet connections. The Information Technology Centre of the Supreme Court has exclusive authority to select, buy and distribute personal computers. Case law, legal opinions of the Supreme Court, and Constitutional Court judgements are stored on computer; in addition, every judge receives an official legislative journal and printed collections of legislation[25].

A problem is that there is insufficient legally trained staff. This is caused by the lack of financial means. The Ministry of Justice determines the number of staff for courts on the basis of court presidents' proposals. However, court presidents do not have the right to

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[20] OSI report on Judicial Independence in Slovenia, p. 448.
[21] OSI report on Judicial Independence in Slovenia, p. 439.
[22] Judicial Service Act, Art. 6.
[23] Courts Rules, Art. 187.
[24] Twinning Programme with Germany, reports on the Administrative Courts and report on the Labour Courts.
[25] OSI report on Judicial Independence in Slovenia, p. 457.

employ new court staff – even if approved by the Ministry of Justice – if the annual court budget does not include finances for salaries for the court in question[26].

II.4 Independence vis-à-vis the parties

Parties can not influence the remuneration of the judges assigned to their case. Regarding the case allocation rules, it is not possible for parties to appoint specific judges for the settlement of their dispute[27].

CHAPTER III

The status of judges

III.1 General

A draft Code of Judicial Ethics was adopted at the general session of the Slovenian Association of Judges on 8 June 2001[28]. The Slovenian Association of Judges was established in 1971 and more than 90 percent of judges are members. To ensure its independence, the Association is funded solely through membership fees. The Association actively co-operates in all legislation projects concerning the judiciary and judges, and its expert observations and opinions have an important informal value during parliamentary procedures. There have been no reports of restrictions on the operations of the Association[29]. The Slovenian Association of Judges is member of the International Association of Judges since 1994.

III.2 Selection

The selection process for all court levels involves numerous steps with judicial, executive and legislative input. One month after the receiving a proposal of the president of the court, the vacant position for a judge shall be advertised by the Ministry of Justice. The Ministry of Justice determines which applicants meet the minimum criteria for candidacy, including an assessment of their training during the two-year apprenticeship. The Ministry then forwards a list of qualified candidates to the personnel council of the court with the vacancy. The personnel council chooses a shortlist and prepares a written justification for each choice. The shortlist, justification, and all relevant documents are returned to the Ministry of Justice, which formulates its own opinion on the candidates and submits both its opinion and that of the personnel council to the Judicial Council. When selecting candidates for appointment, the Judicial Council is not bound by either

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[26] OSI report on Judicial Independence in Slovenia, p. 456.
[27] Court Rules, Artt. 160-170.
[28] OSI report on Judicial Independence in Slovenia, p. 467.
[29] OSI report on Judicial Independence in Slovenia, p. 449.

opinion. The Judicial Council then nominates one candidate for each vacant judicial post to Parliament for a vote. The Judicial Council's nomination procedure is subject to review by the Administrative Court[30].

III.3 Appointment

The Ministry of Justice shall appoint Court Presidents on the recommendation of the Judicial Council[31]. The Judicial Council nominates 3 candidates and names the one it prefers. While nominating the candidates they look at organisational and management skills[32].

The President of the Supreme Court is appointed by Parliament upon the proposal of the Minister of Justice. The Minister of Justice consults the opinion of the Judicial Council and Plenary Meeting of the Supreme Court prior to making a proposal to Parliament[33]. This procedure, which affords the courts very little influence, has been ruled constitutional by the Constitutional Court[34].

III.4 Promotion

The Judicial Council decides on judges' promotions after completion of the procedure for establishing professionalism and success in judicial work. The promotion of a judge to the position of Supreme Court judge is decided upon by the National Assembly at the proposal of the Judicial Council[35].

A judge shall be promoted to a higher salary class every three years, unless during the assessment of the judicial work it is established that he does not meet the criteria for promotion.
The assessment of judicial service shall comprise the following criteria:
- professional knowledge and personal activity,
- working ability and the ability to correctly deal with legal questions,
- protection of the reputation of impartiality,
- ability for written and oral communication,
- ability for communication and work with parties involved,
- relationship with colleagues and behaviour outside work,
- ability to perform a leading post should the judge be appointed to such a post[36].

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30 Judicial Service Act, Artt. 15-23.
31 Court Rules, Art. 62.
32 Appeared during meeting with Mrs. M. Tratnik, member of Judicial Council and Judge at the Appellate Court in Ljubljana, local expert, 28 11 2001.
33 Court Rules, Art. 62.
34 OSI report on Judicial Independence in Slovenia, p. 461.
35 Judicial Service Act, Art. 24.
36 Judicial Service Act, Art. 29.

III.5 Professional security

The Constitution stipulates that the office of a judge shall be permanent[37]. Nevertheless, the principle of secure tenure has been called into question. On 23 July 1999, several Members of Parliament initiated a debate on the propriety of life tenure, and proposed amending the Constitution to abolish life tenure. Advocates of reform argued that the backlogs in the courts were a consequence of judges' irremovability, and proposed that judicial tenure should be based on performance.

The Slovenian Association of Judges strongly opposed the proposal, as did other legal experts and a former constitutional court judge. As a result, Parliament never initiated constitutional amendment proceedings, and the proposal has been dropped. The abolition efforts were a fairly isolated phenomenon, and probably did not reflect broad-based public or political sentiment. However, other attempts to curb tenure have received broader support. Current draft amendments to the Constitution would provide for permanent appointment only after five years in office, meaning that judges would not have tenured irremovability until they had served five years. Judges themselves have criticised the current tenure system, concerned that new judges are granted irremovability despite insufficient training. However, introducing probationary periods would create unnecessary risks to judicial independence that could well outweigh the benefits of screening new judges[38]. Mr. Bizjak, the current Minister of Justice is against the abolition of life tenure[39].
The Slovenian Association of Judges has suggested introducing a special judicial exam instead of relying on the general state legal exam, an idea supported in principle by the Minister of Justice and representatives of the Law Faculty of Ljubljana. The Judicial Service Act prescribes mandatory retirement at 70, and extensions are not allowed.

A judge may not be transferred to another court or allocated to work in another body without his prior written consent[40]. The transfer of a judge to work in another court can only take place upon a mutual proposal to the Judicial Council by the presidents of both courts concerned. Transfer of a judge without his consent is possible only as a temporary disciplinary measure, or in other enumerated instances such as the abolition of the court, a significant decrease in the volume of work, or a re-organisation of the courts, in which case his status and salary must be protected. In such cases, the judge may appeal to the Judicial Council[41].
Since the enactment of the Judicial Service Act in 1994, no Slovenian judge has been transferred without his consent, and exceptions appear to be founded on legitimate administrative concerns and contain sufficient safeguards against abuses[42].

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37 Constitution, Art. 129.
38 OSI report on Judicial Independence in Slovenia, p.462.
39 Appeared during meeting with Mr.Bizjak, Minister of Justice, 30 11 2001.
40 Judicial Service Act, Art. 66.
41 Judicial Service act, Artt. 66-71.
42 OSI report on Judicial Independence in Slovenia, p. 463.

Where a judge infringes the Constitution or commits a major breach of the law in the discharge of the duties and functions of the office, the National Assembly may, dismiss him upon the recommendation of the Judicial Council. Where a judge is found, by a duly constituted court, to have intentionally committed a criminal offence in the discharge of the duties and functions of his office, and thereby to have abused this office, he shall be dismissed from this office by the National Assembly[43].
To date, however, no judge has been impeached or convicted on any of these grounds. If criminal proceedings are initiated against a judge for an offence involving abuse of his judicial office, the President of the Supreme Court must order the temporary removal of the judge from service. The judge may appeal the decision of suspension to the Judicial Council[44].

A court president may be dismissed from his function, if he fails to administer his court in accordance with regulations or if he fails to perform them in due time, if he violates the principle of independence of judges in adjudication, or if he violates the rules concerning distribution of cases or allows them to be violated. The Minister of Justice can only dismiss a court president with the concurrence of the Judicial Council; if the Judicial Council opposes the decision, then the Minister may request the disciplinary court of second instance to decide on the dismissal[45]. Slovenia has not adopted a lustration law; thus, there is no procedure for the removal of a judge based on his having worked under the previous regime.

The Law on Judicial Service determines the salaries of the judges. They are calculated on the same basis as the salaries of the members of the National Assembly and may not be lowered for any reason but by a decision of a disciplinary court, composed exclusively of judges. A salary calculated on the basis of the pay group and the salary class of the individual judge, is increased by allowances for incompatibility of judicial office and length of service[46].

The president of the court shall have the right to demand disciplinary action against a judge. On the basis of the demand of the president, the disciplinary prosecutor is obliged to initiate disciplinary proceedings. The Minister of Justice may propose the initiation of disciplinary procedures if, in the conduct of supervision over the work of judges irregularities are established for which disciplinary procedures against the judge in question may be initiated.

Disciplinary sanctions for judicial misconduct are applied by the Disciplinary Courts, composed of judges elected by their peers, three to a Disciplinary Court of first instance and five to a Disciplinary Court of second instance. Disciplinary action may be taken against a judge for breaching his judicial obligations or for undefined irregularity in the

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43 Constitution, Art. 132.
44 OSI report on Judicial Service in Slovenia, p. 464.
45 Court Rules, Art. 64.
46 Basic information on Slovenian Judiciary", information of the Supreme Court of the Republic of Slovenia.

performance his duties. Disciplinary sanctions are transfer to another court for between six months and three years, denial of promotion for three years, and a 20 percent salary reduction for up to one year.
A judge may appeal decisions of the Disciplinary Courts. The Disciplinary Courts sit under a fixed set of procedural rules. The right to be heard and the right to defence counsel are secured by law[47].
Disciplinary procedures are difficult and lengthy. Amendments to the Judicial Service Act should improve the situation. These amendments have been proposed by the judges themselves[48].

CHAPTER IV

The training and retraining of judges

IV.1 Initial training

To become a judge one first needs to finish the Law faculty. Each year, 300 law students are admitted to the Law faculty. There is a numerus clauses. The regular duration of the undergraduate law programme is four years. In the first three years, students follow a general programme and in the last year they can choose a specialisation. Graduates obtain a Bachelor's degree in law.

For the professions of prosecutor, judge, notary, advocate and civil servant further specialisation is required. To become a judge, one needs two years of initial training of which one year in a general court. After that, one has to do the state exam. This is followed by three years of practise in the legal field, for instance as a court clerk or in a legal practise. Lots of students are taking the training for the judiciary, but not all apply to be a judge. The initial training is not given by the Judicial Training Centre. The minimum age to become a judge is 30 years[49].

IV.2 Professional training

In 1998, a Centre for Judicial Education was formed. This centre provides a kind of pool in which human resources, knowledge and finance of all its members are concentrated. The members of the centre are the Supreme Court, the State Prosecutor's Office, the State Attorney's Office, the State Senate for Misdemeanours, the Ministry of Justice and the associations of judges and prosecutors. The Centre is governed by the Programme

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47 Judicial Service Act, Artt. 80-94.
48 Information received during meeting with Mr. M. Deisinger, President of the Supreme Court, 28/11/2001.
49 Information received during meeting with Mrs. M. Tratnik, member of Judicial Council and Judge at the Appellate Court in Ljubljana, local expert, 28/11/2001.

Council, in which all of its members are represented according to their number of personnel and their importance in the process of training. For the time being the Centre is located at the Ministry of Justice. For the adoption of the annual programme, every institution prepares several proposals for the individual activities, taking into account the possible new developments in its area. The feasibility is discussed and evaluated by the Programme Council and eventually a joint programme is devised. At the moment, the Training Centre does not have any administrative capacity worth mentioning. However, the Centre is aiming at permanent, systematic financing.

At the moment, the most important form of education the Centre offers are the "Judicial Schools". They are major events with the goal to gather all judges specialising in the same major legal field. They are attended by 50 –100 participants, depending on the legal field and the number of judges specialising in it. They usually last for more than three days. A school usually begins with general themes, covering theoretical aspects of law and also some non-legal topics like the use of language or general aspects of communication. Furthermore, important novelties concerning the particular legal areas are presented, as well as common problems of the application of the law. These large gatherings are a good way to keep the judiciary up to date not only as far as the legislation is concerned but also regarding its practical application.

There are also specialised seminars covering individual topics. At each of the "judicial schools" an EU law related lesson is given, in order to create awareness of the fact that Slovenian judges will be entering an entirely new legal system, when Slovenia become an EU Member State. Slovenian judges have also participated in various activities of European and International Institutions.

For judges who have only been in the bench for a short time there are the so called "introductory schools" that cover the typical problems of junior judges[50].

[50] "An outline of some judicial training activities in the republic of Slovenia", document received from Mr, Kmecl, representative of the Judicial Training Centre.

MODULE 2

STATUS AND ROLE OF THE PUBLIC PROSECUTOR[51]

CHAPTER I

Position of the state prosecutor

I.1 Relationship with the executive power

There are legislative guarantees and measures in place to ensure that state prosecutors can perform their duties without unjustified interference by executive powers and bodies. These guarantees are laid down in the Law on the Office of the State Prosecutor and the Code of Criminal Procedure. The Law on the Office of the State Prosecutor will be amended.

The main points of amendments are substantive changes in some provisions in the interest of efficient criminal prosecution and the introduction of the equality of female and male sexes in the law.[52] Furthermore, they shall provide for the better mobility (transfer) of state prosecutors to other state prosecutor's offices and to the Group of state prosecutors for special affairs (Article 10 of the State Prosecutor's Office Act), they shall regulate more precisely cases of substitution of the Head of the state prosecutor's office, they shall more precisely regulate the affairs of state-prosecutorial management (administrative management of state prosecutor's offices by Heads of these Offices), of justice supervision (supervision of the Ministry of Justice over the affairs of state-prosecutorial management, which also included provisions providing that Ministry of Justice cannot encroach on the self-dependence of state prosecutors and state prose prosecutor's offices), the abolition of high (appeal) state prosecutor's offices and transfer of their jurisdiction, high state prosecutors and personnel to the State Prosecutor's Office of the Republic of Slovenia, better provisions on informing the media and the public, and a possibility of contribution of state prosecutors (in the form of a temporary

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[51] In Slovenia, the official term for public prosecutor is state prosecutor.

[52] "Working draft of amendments to the State Prosecutors Act", document received during mission November 2001, by P. Pavlin, Ministry of Justice of the Republic of Slovenia.

allocation with their consent) to the international civil missions (i.e. Kosovo, East Timor...).[53]

The Legislator (in relation to the State Prosecutors' Act) and theory of law in Slovenia have placed state prosecutor's offices in the executive authority. The state prosecutor's offices are situated between the judicial and executive authority. According to the case law of the Constitutional Court and the Supreme Court, state prosecutor's offices and state prosecutors are not a part of the judicial authority, they are rather a part of the so called "justice in the wider meaning". State prosecutors have to perform their tasks in accordance with the Constitution and the statute (Article 1, paragraph 2 of the State Prosecutor's Office Act). They are also bound to the general instructions of the State Prosecutor General (Article 64 of the State Prosecutor's Office Act) and can in certain conditions demand to be removed from the decision-making in the case.[54]

The basic role and task of the state prosecution is to lodge and present criminal charges and carry out other procedural activities of a prosecutor in criminal proceedings, unless otherwise stipulated by law. Within this basic function, a state prosecutor shall be competent to perform all the procedural acts of an entitled prosecutor pursuant to the Law on Criminal Proceedings, to participate at hearings and sessions, and to take the necessary measures to uncover criminal offences and their perpetrators[55].
In carrying out the task of prosecuting the perpetrators of criminal offences and other activities subject to penalty, a state prosecutor shall co-operate with and direct the bodies of law enforcement (the Police), and take the necessary measures connected with the uncovering of criminal offences or their perpetrators within the competencies of a state prosecutor in preliminary proceedings as stipulated by the Law on Criminal Proceedings[56].

The state prosecutor has no competence in the enforcement of sentences, although one of the supreme state prosecutors is a member of the probation commission (article 105 of the Enforcement of Penal Sentences Act)[57].
The law establishes other powers of the government with respect to the state prosecutor. Apart from carrying out activities of a prosecutor in criminal proceedings, the state prosecutor shall also lodge initiatives for prosecution and legal remedy in matters pertaining to misdemeanours, where stipulated by law, and lodge procedural acts in civil and other judicial proceedings and in administrative proceedings. He has the right to lodge an important extraordinary legal remedy both in criminal and in civil procedures, that is, a request for the protection of legality[58].

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53 Addition to the desk report from the Ministry of Justice of the Republic of Slovenia, 3 June 2002.
54 Addition to the desk report by the Ministry of Justice of the Republic of Slovenia, 3 June 2002.
55 Law on the office of the State Prosecutor articles, Art. 8 paragraph 1.
56 Law on the office of the State Prosecutor articles, Art. 8 paragraph 2.
57 Slovenian response on the first draft of the inception report.
58 Law on the office of the State Prosecutor.

The General State Prosecutor, in addition to having general responsibility for the functions outlined above:
- shall head the Office of the State Prosecutor of the Republic of Slovenia[59]
- shall issue general instructions on the activities of state prosecutors relating to the uniform application of the law in state prosecutor's offices and to the co-ordination of prosecution policy[60]
- is de iure a member of the personnel commission[61]
- shall, in consent with the Minister for Justice, issue instructions for the organisation and work of the group of state prosecutors for special cases[62]
- has the right to demand the initiation of disciplinary proceedings against a state prosecutor[63]
- can propose the establishment or abolishment of an external department of a state prosecutor's office by the Minister of Justice[64]
- can propose the appointment by the Minister of Justice of a deputy of the head of a state prosecutor's office[65].

As was said above, the General State Prosecutor is not subordinate to the Minister of Justice. The Minister of Justice cannot give external guidance or instructions to the General State Prosecutor. In addition to his responsibilities mentioned above (propose appointments of state prosecutors, demand reports by state prosecutors, supervision of the administrative operation of state prosecutors' offices), the Minister of Justice shall ensure the development, unity and functioning of informational support for the operation of state prosecutor's offices[66]. Article 69 of the State Prosecutor's Office Act provides for the inspection of files, records and other documentation of the state prosecutor's offices also to the employees of the Ministry of Justice, but only to those who were as state prosecutors assigned to it. This inspection is in the function of performing the supervision over the administrative operation of the as state prosecutor's offices and the limitations regarding the personnel to perform it are in the function of the protection of privacy of personal data and other human rights.[67]

I.2 Relationship with the legislative power

In Slovenia, there are no institutional or functional links between the General State Prosecutor and the Parliament, other than the authority of the National Assembly to appoint the General State Prosecutor at the proposal of the government. To ensure that state prosecutors do not have legislative competencies, the functions of the state

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59 Law on the office of the State Prosecutor, Art. 57.
60 Law on the office of the State Prosecutor, Art. 64.
61 Law on the office of the State Prosecutor, Art. 21.
62 Law on the office of the State Prosecutor, Art. 10a.
63 Law on the office of the State Prosecutor, Art. 42.
64 Law on the office of the State Prosecutor, Art. 53.
65 Law on the office of the State Prosecutor, Art. 56.
66 Law on the office of the State Prosecutor, Art. 59.
67 Addition to the desk report by the Ministry of Justice of the Republic of Slovenia, 3 June 2002.

prosecutor are laid down in the Constitution and in the Law on the Office of the State Prosecutor.

I.3 Relationship with the judicial power

There are provisions in the Constitution and in the Law on the Office of the State Prosecutor to ensure that state prosecutors can perform their duties without unjustified interference from judges. State prosecutors enjoy a far-reaching autonomy. These provisions also guarantee that state prosecutors do not have judicial competence. The Constitution ensures that a state prosecutor cannot at the same time act as a judge[68]. State prosecutors may become judges and vice versa. There are no specific conditions apart from the general conditions, which apply to any person applying to become a judge or a state prosecutor. Shifting is not common practice. A specific provision can be found in the law in case a state prosecutor is elected to become judge of the Constitutional Court[69].

I.4 Relationship with the police

The authority of the prosecutor over the police is limited. Article 45 of the Code of Criminal Procedure says that the State Prosecutor can request that investigations are undertaken. However, the State Prosecution has no sufficient sanctions against the police to enforce his demands. The police is hierarchically subordinated to the Ministry of the Interior.

At the moment, an act is drafted that will describe in more detail the obligations the police has towards the state prosecutors. To improve the co-operation between the two organs even before this new law comes into force, the Director General of the Police and the General State Prosecutor signed a Memorandum of Understanding on 10 December 2001. According to this Memorandum, the police has the obligation to inform the state prosecutor within an appropriate deadline, and according to proper procedures. The state prosecutor has to be informed immediately by the police, when the crime requires it; the police has to inform the state prosecution service within three days if the crime is sentenced by more than five years imprisonment. The state prosecutor also has to be involved when the arrest is planned or the person is brought for the investigation judge. An exception is when the police officer or the state prosecutor is accused of having committed a crime him/herself; in that case the police needs to inform immediately. Besides that, the police needs to explain why a document has not been submitted, once a month. In case of rejection, the police needs to explain the reason(s). Whenever a state prosecutor needs to consult an external expert, there's a possibility to form an interdisciplinary group.
Sanctions are the responsibility of immediate superiors at both sides.

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[68] Constitution, Art. 136.
[69] Law on the Office of the State Prosecutor, Art. 126.

Once a year the heads of regional police directorates and district state prosecutors meet to improve communication between them. The General State Prosecutor and the Director General of Police chair this meeting[70].

The text of the Memorandum of Understanding is an open text, giving room to different procedures. However, the document is of an informal nature. The memorandum has been drafted without the contribution of politicians. The next step is to incorporate these provisions in the Criminal Procedure Act. The police officials and state prosecutors who are expected to implement the Memorandum, have been informed about this agreement.

The principle of legality applies to the police as well as to the state prosecutor. The police perform their duties of detecting crime in compliance with the Police Act and the Criminal Procedure Act. Operational duties are performed by the police and are clearly defined by the Criminal Procedure Act[71].

The state prosecutor is entitled to scrutinise the work of the internal affairs agencies (police)[72]. The state prosecutor assesses all evidence, also by the way it was obtained. If the evidence was obtained by breaching constitutional rights and fundamental freedoms, the state prosecutor can not take it into account. Since most illegal interventions of the police in fundamental human rights may represent legal signs of officially prosecutable criminal offences, and because a state prosecutor is bound by the principle of legality, the latter assesses the police treatment also for reasons of eventual prosecution of this kind of criminal offences[73].

CHAPTER II

The office of the state prosecutor

II.1 In criminal law

The tasks, responsibilities and competencies of the state prosecutor in the criminal process are established by law. No specific instructions in individual criminal cases can be given to state prosecutors. The General State Prosecutor and the heads of regional or higher state prosecutor's offices are entitled to issue general instructions. These instructions must first be debated at a meeting of regional and higher state prosecutors[74]. Article 65 of the Law on the Office of the State Prosecutor empowers the state prosecutor to raise objections when he believes that following the instructions would

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70 Information received during meeting with Mrs. Z. Cerar, General State Prosecutor, 29/11/2001.
71 Slovenian response on the first draft of the inception report.
72 Code of Criminal Procedure, Art. 161.
73 Slovenian response on the first draft of the inception report.
74 Law on the Office of the State Prosecutor, Art. 64.

lead to a decision that would be a violation of the Constitution or the law. The prosecutor can be absolved of further work on such particular case, except in cases when irreparable delay of a necessary procedural act or measure would appear.

II.2 In administrative and civil law

The tasks and competencies of the state prosecutor in administrative and civil procedures are established by law[75]. There are limitations on the responsibilities and tasks of the state prosecutor in administrative and civil processes. There is judicial control over these tasks and responsibilities[76]. The principle of legality applies to tasks in administrative and civil cases.

II.3 Secondary tasks and supervisory functions

In January 1999, the new article 161a of the Code of Criminal Procedure introduced a new settlement/mediation system in criminal procedures to avoid all cases to be brought to court. In this procedure, the state prosecutors supervises the work and reports of the settlement officers, who, appointed from outside the judiciary, are independent in their work. In the Code, the limitations on these supervisory functions are described. There is judicial control over all the supervisory functions.

II.4 International tasks

The Slovenian state prosecutors have participated in various activities of European Institutions. They are engaged in the activities of the Council of Europe programmes OCTOPUS I and II and PAKO, at the seminars of the European Legal Academy in Trier, in the European Union educational programme TAIEX, and in the European Twinning Programme, as well as various national regional conferences including the annual conference of state prosecutors from the EU and the Council of Europe[77].

The Criminal Procedure Act allows direct international co-operation. If reciprocity applies, and if it is so defined by an international treaty, international criminal law assistance may also be provided directly between the national and the foreign bodies co-operating in the preliminary and the penal procedures[78]. There is a special contact person within the European Judicial Network to co-ordinate mutual legal assistance procedures. The prosecutor who deals with a certain case is in charge of the international co-operation based on the real and local competence and the position of the state prosecutor in the Republic of Slovenia[79].

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75 Code of Civil Procedure, Art. 385.
76 Information received during meeting with Mrs. Z. Cerar, General State Prosecutor, 29/11/2001.
77 Slovenian response on the first draft of the inception report.
78 Code of Criminal Procedure, Art. 515 paragraph 3.
79 Slovenian response on the first draft of the inception report.

From the OCTOPUS II report and the Second Assessment mission in the fields of Justice and Home Affairs it appears that there are prosecutors who specialise in international co-operation. For organised international crime there is a Special Affairs Group within the State Prosecution Service, according to the mission report. State prosecutors are under certain conditions entitled to the scholarship for the postgraduate study of law, for specialised study of law and for professional training in some other professional field related to the judicial service, either at home or abroad. In the last eight years, 69 scholarships were awarded on such grounds.

The Association of State Prosecutors of the Republic of Slovenia is an organisational member of the International Association of Prosecutors. Members of the Association attend the conferences of the IAP and members of the IAP participate in Slovenia in the Annual Meetings of the Association. Annually, a group of some 30 members of the Association visit colleagues abroad during working visits.

II.5 Ethical code/statute for prosecutors

State Prosecutors are bound to perform their office honestly, objectively, without any political, social, religious, racial, cultural, sexual or any other discrimination. They are bound to do so not only based on the provisions of the Prosecutors Ethic Code adopted by the Association of State Prosecutors of the Republic of Slovenia and respecting the adopted standards of the IAP, but also based on legal provisions which define acts and procedures to ensure honesty and objectivity. These include the provisions of the Constitution of the Republic of Slovenia, the Criminal Procedure Act and the State Prosecutor Act. Provisions in the Constitution guarantee equality before the law, the use of language in proceedings, the rules on the prohibition of accepting gifts, securing confidentiality and so on[80].

CHAPTER III

The legal status of the state prosecutor

III.1 Working conditions

The state prosecutor has life tenure. In respect of the entitlements deriving from his employment by the Republic of Slovenia, a state prosecutor shall be equal to a judge. He shall also be entitled to other incomes and compensations in the same cases and in the same amount as for a judge[81].

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[80] Slovenian response on the first draft of the inception report.
[81] Law on the office of the State Prosecutor, Artt. 3, 17, 18 and 20.

In 2000, the occupation of systematised state prosecutors' posts in the State Prosecution Service was 82%. Each state prosecutor has his own office-computer. Each regional or higher office has an office network.

III.2 Independence and impartiality within the organisation of the state prosecution service, centralised and decentralised

The General State Prosecutor heads the Office of the State Prosecutor of the Republic of Slovenia; he is supported by Supreme State Prosecutors in his office, followed by 4 Higher State Prosecutors, heads of higher state prosecutor's offices, and 11 heads of regional state prosecutor's offices. The state prosecutor's offices are organised to mirror the court structure.

III.3 Promotion or downgrading of prosecutors

Being appointed to the state prosecutor office means obtaining the right to be promoted[82]. The promotion includes promotion to payment classes, promotion to a superior position, and promotion to the position of counsellor. Promotion is decided by the "Personnel Commission", after having accomplished the procedure of establishing the professionalism and the efficiency of a prosecutor's work[83]. A prosecutor is promoted to a higher payment class every third year, save when it is established that he no longer meets the conditions of promotion. A prosecutor may be promoted to a higher position after his second promotion to a higher payment class.

Before each promotion, the "Personal Commission" asks for a performance evaluation of a particular prosecutor. A higher or a supreme prosecutor who is chosen to carry out verification based on a special decree, reviews the work – in line with the supervisory authority granted by the law – and produces a report. This report is then submitted to the "Personnel Commission", before it makes a final decision on promotion.

The performance evaluation of the prosecutor is made using the following criteria
- professional knowledge and professional activity;
- working skills and the ability of correctly handling the legal issues;
- maintaining the reputation of a neutral prosecutor; conscientiousness, reliability, decisiveness and devotion in performing duties;
- ability of verbal and written communication;
- ability of communicating and working with clients;
- relationships with colleagues;
- ability to perform executive duties if a prosecutor is promoted to such a post[84].

The 'Personnel Commission' is composed of prosecutors (article 21 of the Law on the Office of the State Prosecutor).

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[82] Law on the office of the State Prosecutor, Art. 23.
[83] Slovenian response on the initial desk report.
[84] Slovenian response on the initial desk report.

III.4 Possibility of dismissal

The Government, at the proposal of the Minister of Justice in the case of a state prosecutor, and the National Assembly on the proposal of the Government in the case of the State Prosecutor General can dismiss a prosecutor.[85] The grounds for dismissal of a state prosecutor are conviction of a criminal offence committed through the abuse of his office, imprisonment for more than 6 months, or shorter imprisonment or a non-custodial sentence if the criminal offence is such that he is unsuited to hold the office of state prosecutor[86].

III.5 Possibility of exercising fundamental freedoms and rights.

State prosecutors are allowed to join a political party, but they are not allowed to hold an office in a party. They are also allowed to join or form local, national or international organisations and attend meetings of such organisations.
In the exercising of his rights and liberties, a state prosecutor must always act to safeguard the reputation and dignity of his office[87]. A state prosecutor shall not be liable to disciplinary measures for opinions he expresses in his work on any matter which he is dealing with[88].

III.6 Disciplinary proceedings

The disciplinary proceedings against prosecutors are governed by:
- The Law on the Office of the State Prosecutor (Chapter 3, Section 6).
- The Courts Act
- The Law on the Judicial Service
- The Criminal Procedure Act

The General State Prosecutor and the Minister of Justice have the right to demand the initiation of disciplinary proceedings against a state prosecutor. In disciplinary proceedings decisions are taken in the first instance by a disciplinary tribunal and the provisions applying to disciplinary proceedings against a judge shall apply accordingly[89]. The decisions in disciplinary cases are subject to judicial review. Removal from one part of the service to another, with or without consent, cannot be imposed as a disciplinary penalty.

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[85] In individual cases the State Prosecutor General can also be excluded from the decision-making by the decision of the Minister of Justice (Art. 44 (2) Criminal Procedure Act).
[86] Law on the office of the State Prosecutor, Artt. 40, 42 43 and 62.
[87] Law on the office of the State Prosecutor, Art. 24.
[88] Law on the office of the State Prosecutor, Art. 42 paragraph 2.
[89] Law on the office of the State Prosecutor, Art. 46.

CHAPTER IV

Recruitment and education

IV.1 Selection of state prosecutors

The provisions for the selection of candidates by the "Personnel Commission" are regulated in the Law on the Office of the State Prosecutor to ensure the principles of fairness and impartiality in the recruitment process[90]. The Minister of Justice shall make a proposal for appointment of a state prosecutor after receiving an opinion from the "Personal commission" of the state prosecutor's office. The Constitution safeguards against any form of discrimination[91].

IV.2 Initial training

The provisions of the Law on the Judicial Service apply accordingly to the training of state prosecutors[92]. All prosecutors are required to be fully qualified lawyers.

IV.3 Permanent training

Training within the framework of the Judicial Training Centre is intended for judges and prosecutors. For further information, see module 1, chapter 4IV.

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[90] Law on the office of the State Prosecutor, Art. 20.
[91] Constitution, Artt. 2, 5, 8, 14.
[92] Law on the office of the State Prosecutor, Art. 32

MODULE 3

COURT PROCEDURES AND THE EXECUTION OF JUDGEMENTS

CHAPTER I

Access to Courts

The biggest problem regarding the access to courts are the backlogs of the courts and thus the long time before a procedure can start at a court[93]. There are several explanations for these backlogs. The fact that Slovenia gained independence and has to deal with a period of transition, resulted in a lot of new laws, of which many were adopted and implemented very rapidly without a thorough analysis of the consequences. During the period when the backlogs accumulated, there was a shortage of judges. This problem was resolved quite soon by raising the salaries of the judges. Nevertheless, the backlogs still persisted because the new judges were young and inexperienced. The fact that some laws contain detailed prescriptions or extensive procedures to protect individuals are now sometimes a cause for long court procedures. Another reason for the backlogs is the fact that the cases of land registry have to be dealt with by the judiciary as well. Besides that, there are 500.000 new cases every year. In addition, it appeared that judges have to spend a considerable amount of time on administrative matters, as they do not have enough legally trained staff.

The Court Statistics for the year 2001[94] shows the number of all cases, that courts had to handle in 2001 as being 1,063.246 cases altogether. 533.190 were cases from previous years. On 31 December 2001 there were 532.969 unresolved cases, so the courts have solved 530.277 cases in the entire year 2001. In the year 2001 the courts were solving among the aforementioned numbers 335.428 cases concerning the land registry. Among those, 158.606 were new cases from the year 2001 and 176.822 cases were from previous years. They have solved 136.620 cases and 198.808 cases remain unresolved at the end of 2001.

Besides that, it is necessary to distinguish clearly between the number of pending cases and the backlogs. The number of pending cases is decreasing slowly, but continuously.

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93 Information received during several meetings during the mission 26/11/2001 - 30/11/2001 in Slovenia, a.o. Office of the Ombudsman and the Legal Information Centre.

94 Published in 2002.

Furthermore, it is a question of statistical definition what a pending case is. For example, in Slovenia a criminal proceeding against a fugitive is a pending case until the detention and conviction or the limitation, while in Germany such a case is removed of the statistic immediately. The high numbers of backlogs in land register and executorial matters are partially to be seen in connection with new laws and the problems of their implementation.
There are courts that do not have a backlog. Especially in the larger cities courts have backlogs.

The Slovene Administration has taken long and short-term measures which should reduce the backlogs:
- preparing of changes of the Civil Procedure Code for acceleration of the proceedings[95];
- preparing of changes of the Execution and the Interim Protection of Claims Act[96] for acceleration of the enforcement;
- so-called Hercules-Programme for reducing the backlogs by seconding well experienced judges to courts with high backlogs;
- draft of an amending law to the Judicial Service Act to realise the Hercules-Programme on the legal level[97];
- digitalisation of the land register with the support of the World Bank;
- further improvement of the good work of the Judicial Training Centre;
- establishment of a working group to investigate the reasons for the backlogs[98].

In addition, Parliament considers how to stimulate out of court settlements. Also, the Supreme Court is stimulating out of court settlements.

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95 The Proposal of the Act on Changes and Amendments to the Civil Procedure Act was sent on 11 April 2002 to the National Assembly (First Reading). The Proposal includes the widening of the application of one of the most efficient institutes for acceleration of civil proceedings and eliminating court backlogs – Alternative Dispute Resolution. It has widened the possible application of already existing court settlement provisions and has included a new hearing for the settlement procedure and extension of possibilities of concluding the court settlement also after the conclusion of the first instance proceedings. Institute of court settlement is also widened regarding the subject matter and parties; parties can consensually propose the suspension of the civil proceedings due to the possibility of reaching a settlement in any of the alternative forms of dispute resolution.

96 The second reading of the amended "Protection of Claims Act" shall probably be finished by the end of June 2002. The new name of this Act shall be "Enforcement of Judgements in Civil Matters and Insurance of Claims Act". (Additional information from the Ministry of Justice of the Republic of Slovenia, 3 June 2002).

97 For the so-called "Hercules Programme" an amendment to the Judicial Service Act was passed in 2001 and this amendment is applied since 28 June 2001 (additional information from the Ministry of Justice - 3 June 2002).

98 Information received during meeting with M. Starman LL. M. (MA), state secretary, European and International affairs, Ministry of Justice, 29 11 2001. In June 2002, Mr. Starman sent information that the research done by this Working Group already finished and sent to the National Assembly in May 2002.

I.1 Efficiency of the court system and regional accessibility[99]

The access to courts is eased by an appropriate court system comprising the different levels and the competencies on each level. The courts of general jurisdiction are widely distributed in the country. The Administrative Court and the Higher Labour and Social Court have their main seats in Ljubljana[100]. The Administrative Court as well as the Labour and Social Courts have external departments[101]. The internal organisation of the courts includes the utilisation of computers and electronic data banks[102]. The computerisation of land register began on 1 January 2000.

I.2 Provision of free legal aid

A new development regarding the provision of free legal aid occurred in 2001.[103] A new Act was adopted in May 2001 – Free Legal Aid Act[104] and it entered into force on 13 September 2001. For the purposes of this Act, legal aid encompasses the exercise of the right to judicial protection, based on the principle of equality and taking into account the social position of persons that are not able to exercise this right without causing harm to their livelihood and the livelihood of their families.

Free legal aid according to this Act encompasses legal counselling, legal representation and other legal services determined by statute[105] relating to all forms of legal protection at all courts of general jurisdiction and specialised courts in the Republic of Slovenia, at the Constitutional Court of the Republic of Slovenia and before all bodies, institutions and persons in the Republic of Slovenia having jurisdiction for out-of-court settlements, as well as exemption from the payment of the costs of a legal procedure. In addition, it is possible to approve legal aid for procedures at international courts or arbitration.

Those entitled to free legal aid are persons who with respect to their financial position and the financial position of their family would not be able to cover the costs of a legal proceedings without harming their own financial situation and that of their family. The financial position of an applicant is determined by taking into account his or her income and the income of his or her family, and the property owned by the applicant or his or her family.

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99 For a description of the judicial system see "Overview of the judicial system" in Module 1.
100 Administrative Disputes Act, Art. 7 paragraph 1.
101 Administrative Disputes Act, Art. 7 paragraph 2 and 3 and Labour and Social Courts Act, Art. 8.
102 Court Rules, Artt. 146, 150-155.
103 Additional information received from the Ministry of Justice of Slovenia, 3 June 2002.
104 Published in: Official Gazette of the Republic of Slovenia, No. 48/2001.
105 Act of Parliament (National Assembly).

An application for free legal aid has to be submitted on a special form determined by the minister responsible for justice.[106] Forms can be obtained at all competent courts with jurisdiction to decide on the allocation of free legal aid, as well as at bookstores.

There are no governmentally financed institutions that provide legal information. One source of information for citizens is the Legal Information Centre, but this Centre lack financial means. The attitude of lawyers is not always open to giving free legal aid[107].

I.3 Interference with access to court on the grounds of state security considerations

Reasons of state security do not lead to a denial of access to court. Courts are able to judge on the legality and expediency independently of classifying information as a state secret.

CHAPTER II

Fair trial and due process in civil and criminal matters

II.1 Compliance with Art. 6 § 1 ECHR

Fair and public hearing (meaning equal status in the access to the courts, right to be heard before the court, statements made under pressure are no evidence) are guaranteed by the Constitution and procedural laws are also practised. The main problem in this area is caused by the backlogs of the courts.
Judgements are pronounced in a public manner. There are only few reasonable legal restrictions to this[108].

II.2 Specific rules of procedure in civil matters

The role of the state in civil and commercial matters is merely to provide for proper institutions, and courts- and procedural rules, save for specific exceptions. The parties can decide whether they want to have recourse to the court and decide about the scope of action, about the filing of an appeal and the termination of proceedings[109].

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[106] Rules on the Form of an Application for Free Legal Aid and the Submission of Documents (Official Gazette of the Republic of Slovenia, No. 75/2001).
[107] Information received during meeting with Mr. P. Sporar, Director of the Legal Information Centre, 29/11/2001.
[108] Constitution, Art. 24; Civil Procedure Code, Art. 322; Criminal Procedure Code, Art. 360.
[109] Civil Procedure Code, Artt. 3 paragraph 1 and 2; 333 and 367.

According to article 9 of the Law on the Office of the State Prosecutor, prosecutors can intervene in civil or other matters pursuant to the law. Under article 385 et seq. of the Civil Procedure Code the state prosecutor may intervene in the civil or commercial procedure in cases of severe violation of civil procedure or substantive law with a so-called "petition for protection of legality" to the Supreme Court as an extraordinary judicial review.

To secure a later enforcement of monetary or personal claims, the law contains provisions on seizure/attachment and on provisional injunction[110]. Furthermore, the judge has the possibility to pronounce a provisional regulation in a specific quick procedure[111]
Simplified procedures exist in case of small claims, up to 200.000 SIT, without limiting the parties' right to be heard[112]. As a specific procedure for monetary claims basing on documents that are expected to be undisputed the so-called issue of payment order is foreseen[113].

II.3 Compliance with article 6 paragraph 2 and 3 ECHR in criminal matters

In penal procedures, article 6 paragraph 1, 2 and 3 ECHR are observed.
- presumption of innocence[114]
- information about accusation [115]
- adequate time and facilities for defending[116]
- right of defence in person or through legal assistance[117]
- right to examine witnesses[118]
- free assistance by an interpreter[119]

The judges are aware of the options available and the practicalities each type of sentence entails, and prosecutors are aware of what sentences can be reasonably demanded for specific crimes.

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[110] Execution and Interim Protection of Claims Act, Artt. 256 et seq.
[111] Execution and Interim Protection of Claims Act, article. 266 et seq.
[112] Civil Procedure Code, Art. 442 et seq.
[113] Civil Procedure Code, Art. 431 et seq.
[114] Constitution, Art. 27 and Criminal Procedure Code, Art. 3.
[115] Constitution, Art. 19 paragraph 1; Criminal Procedure Code Art. 5 paragraph. 1; Art. 227 paragraph 2.
[116] Constitution, Art. 29 and Criminal Procedure Code, Art. 12 paragraph 4; Art. 67 paragraph 1and 2.
[117] Constitution, Art. 29 and Criminal Procedure Code Art. 12 paragraph 1.
[118] Criminal Procedure Code, Art. 16 paragraph 3 and Art. 334.
[119] Constitution, Art. 19 paragraph 2; Criminal Procedure Code Art. 4 paragraph 1and 3 and Art. 233.

II.4 Compliance with article 5 ECHR in case of pre-trial detention

The rules of article 5 ECHR are observed in the case of pre-trial detention[120].

II.5 Compliance with article 12 paragraph 1 (ex. Art. 6) EC Treaty (non-discrimination)

A general prohibition of discrimination on grounds of nationality is regulated in article 63 paragraph 1 of the Constitution. Special regulations concerning the language and other national peculiarities are to be found in the Artt. 13, 14, 61, 62 of the Constitution.

CHAPTER III

System and procedures of administrative justice

III.1 Internal administrative review procedures

The activities of the administration can be reviewed by internal administrative control on their legality and expediency[121]. A suspending effect of the objection is foreseen in article 236 of the General Administrative Procedure Act.

III.2 Court procedures

The recourse to the court is opened to any party whose rights are injured by the administration[122].
The administrative court procedure law is established with respect to the requirements following from EC law.

III.3 Provisional remedies/injunction procedures

The law foresees judicial orders before lodging an action if there is a risk that the realisation of the applicant's rights were prevented or severely impaired by a change of the existing situation. The judge can suspend an enforcement of a challenged

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[120] See:
- regarding Art. 5 para. 1 ECHR: Constitution, Art. 20 paragraph 1 and Criminal Procedure Code art. 200 para. 1
- regarding Art. 5 para. 2 ECHR: Criminal Procedure Code, Art. 12 paragraph 1 and Art. 203 paragraph 1
- regarding Art. 5 para. 3 ECHR: Constitution, Art. 20 paragraph 2 and Criminal Procedure Code art. 203 para 1
- regarding Art. 5 para. 4 ECHR: Constitution, Art. 30 and Criminal Procedure Code, Art. 13.

[121] General Administrative Procedure Act, Artt. 13, 229-281 (Official Gazette of the RS 80/99).

[122] Administrative Dispute Act, Art. 18 paragraph 1.

administrative act until a decision of the court in the main proceedings has been passed[123]. The judge has the possibility to pronounce these provisional regulations in a specific quick procedure[124].

CHAPTER IV

Enforcement of judgements

IV.1 Compliance with rules covering all enforcement procedure

The law defines unambiguously which enforcement organ is competent for which kind of enforcement. The courts have sufficient means and powers to prevent any undue delay in the enforcement of their judgements and to prevent any undue delay caused by one of the parties or the administration[125]. The proper enforcement of judgements is made possible by adequate facilities.
The parties have the opportunity to file remedy/appeal against the way of enforcement and against the court decisions made in this procedure[126].

IV.2 Enforcement in civil and commercial matters

In principle, the state provides for proper procedural rules that allow an effective enforcement of court decisions in civil and commercial matters. Rules and specific organs for enforcement of judgements are provided. The procedures and organs protect the justified interests of the debtor as well as any third party that may be involved. They respect the principle of proportionality. Creditor and debtor as well as third party have the possibility to have enforcement measures reviewed by court[127]. The law ensures that the debtor is left the necessary financial means for living, though modestly[128]. The respective acts of procedure regulate that the enforceable title must indicate the identity of creditor and debtor, to which act, toleration, omission or declaration of intent the debtor is committed as well as that it is enforceable[129]. A title can be declared provisionally enforceable if the law prescribes that an appeal against the decision does not suspend the enforcement thereof[130]. Different forms of enforcement, for example

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123 Administrative Dispute Act, Art. 69 paragraph 1 and 2.
124 Administrative Dispute Act, Art. 69 paragraph 4.
125 Cf. Execution and Interim Protection of Claims Act, Art. 11 paragraph 1 and Civil Procedure Code, Art. 11 which is generally applicable according to Art. 15 of the Execution and Interim Protection of Claims Act.
126 Execution and Interim Protection of Claims Act, Art. 9.
127 Execution and Interim Protection of Claims Act, Artt. 9 and 10.
128 Execution and Interim Protection of Claims Act, Artt. 32 paragraph 2 No. 5 and 79.
129 Execution and Interim Protection of Claims Act, Art. 44.
130 Execution and Interim Protection of Claims Act, Art. 19 paragraph 5.

pecuniary claims, movable and immovable, are clearly regulated and defined in the individual case.

Free legal aid for a creditor who cannot bear all the costs of enforcement due to his personal situation is not foreseen expressly in the law[131]. On the other hand, article 168 et seq. of the Civil Procedure Code are applicable according to article 15 of the Execution and Interim Protection of Claims Act. The enforcement of foreign court decisions is foreseen in article 13 of the Execution and Interim Protection of Claims Act.
A great problem is the enforcement within a reasonable time as the high number of backlogs proves. As mentioned, before this problem is partially to be seen in connection with the new law and the problems of its implementation. Another important cause is that a creditor cannot execute a title without further ado, rather he must file with the court the obligatory "application of enforcement", according to article 40 et seq. of the Execution and Interim Protection of Claims Act. This means a second procedure[132] including the possibility of remedies[133]. Regarding this problem, the Ministry of Justice of the Republic of Slovenia is preparing a change of law.

IV.3 Enforcement in criminal matters

The enforcement of penal sanctions is based on the new Penal Sanctions Enforcement Act (PSEA), which covers uniformity and effectiveness of enforcement, planning of enforcements, date of release of the prisoners, ordering and recovery of fines, administration of files.
The enforcement of all penal sanctions[134] respects principles common to the Member States, e. g. lawfulness of administration, legal certainty, equal treatment, proportionality[135] and legal remedies[136].

The enforcement of penal sanctions restricting liberty in prisons or in psychiatric clinics respect, in addition, fundamental rights and, where applicable, the conditions of their restriction, esp. in view of articles 3, 4, 5, 8, 9, 10 and 12 ECHR[137].

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131 Cf. Execution and Interim Protection of Claims Act, Art. 38.
132 Cf. Execution and Interim Protection of Claims Act, Art. 52 et seq.
133 Cf. Execution and Interim Protection of Claims Act, Art. 9 paragraph 2.
134 E. g.
- prison sentences, PSEA, Art. 11 et seq.
- probation, PSEA, Art. 105 et seq.
- fines, PSEA, Art. 119 et seq.
- confiscation, PSEA, Artt. 141 and 162
- prohibition to practice a specific profession, PSEA, Art. 158 et seq.
- disqualification from driving, PSEA, Art. 124 et seq., 138 et seq., 160 et -seq.

135 PSEA, Art. 4.
136 PSEA, Art. 83 et seq., 210 et seq.
137 PSEA, Art. 4, 70 et seq.

Training of prison staff[138], probation officers and social workers is foreseen[139]. The regulations regarding prison buildings[140] comply with specific western standards, e. g. the size of cells, sanitary conditions, the conditions of the premises, security installations.

IV.4 Enforcement in administrative matters

The enforcement in administrative matters is provided for in article 92 of the Administrative Dispute Act and in the Execution and Interim Protection of Claims Act[141]. Proper procedures and organs allow the enforcement of judgements by individuals against the state, public authorities and local communities.

The law determines which authority may act as enforcing authority and which means it has to enforce administrative acts. The enforcement of administrative orders and decisions of the administrative court have always a clear statutory basis. The court decides on the enforcement measure in all cases of enforcement against the state if this is not voluntary fulfilling[142]. Procedures exist to review the enforcement measure in court, in case a public authority is authorised to enforce an administrative court judgement.

IV.5 System of bailiffs

The enforcement of judgements is carried out through a system of bailiffs[143]. The bailiffs exercise a free profession and obtain their income from the fees they derive[144]. The state is liable for any breach of duty by a bailiff[145]. The bailiff is under the jurisdiction and control of the court[146]. It is possible to subject his activities in the individual case to court control, by means of creditor or debtor's remedy. Bailiffs are also under factual supervision[147]. According to article 7 of the Execution and Interim Protection of Claims Act, a bailiff has to perform immediate acts of enforcement and the protection of claims. However, it is reported that the bailiff's system does not function effective in practise. A bailiff must inform the judge about every step he wants to take, which is time consuming. In addition, the courts are overloaded and do not have time to order enforcement[148].

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138 PSEA, Art. 213 et seq
139 Cf. PSEA, Art. 232 et seq.
140 PSEA, Art. 42 paragraph 1.
141 Execution and Interim Protection of Claims Act, Art. 1 paragraph 2.
142 Administrative Dispute Act, Art. 92 paragraph 2.
143 Execution and Interim Protection of Claims Act, Artt. 7 and 280-296.
144 Execution and Interim Protection of Claims Act, Artt. 291and 292.
145 Constitution, Art. 26 paragraph 1.
146 Execution and Interim Protection of Claims Act, articles 8 and 294 et seq.
147 Execution and Interim Protection of Claims Act, Art. 293.
148 Information received during meeting with Mrs T. Krivec Tavèar, bailiff in Slovenia, 27/11/2001.

MODULE 4

FINAL REPORTS

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Bulgaria

8 - 12 April 2002

Like other countries in transition, Bulgaria experienced a rapid increase in reported and recorded crime after 1989. Stankov observed that crime, which 'used to have a low rate and uncomplicated composition, has become one of the country's most serious problems.'[1] Sexual and violent offences against women bulk large,[2] and there is significant repeat victimisation. For the purposes of the fourth module of the mission, it is also important to note that much of that crime is crime against property. According to an analysis of a number of crime surveys conducted in the 1990s, Bulgaria's population had a relatively high risk of exposure to burglary (5.8% of the population in a year) and attempted burglary (5.7%); moderately high rates of robbery (3.1%), assault with force (2.5%) and sexual assault (1%). It had high rates of consumer fraud – especially in the retail sector – and the highest rate of theft of and from cars (34%) of all the 20 countries in transition that participated in the survey. Bulgaria was also reported to have endemic organised crime and the highest rate of corruption.[3]

Indeed, surveys of Bulgarians suggest that it is corruption which is thought principally to distinguish the public character of the country.[4] 'Corruption', said the 2001 *Regular Report on Bulgaria's Progress Towards Accession,* 'continues to be a very serious problem (...).'[5] So-called 'Mafia' are believed to enjoy substantial immunity from arrest. There is widespread formal and informal intimidation of witnesses which dissuades people from reporting crime. The police are reported to be brutal on occasion, and especially towards Roma.[6] Expectations of justice are said to be very low.

We concentrated, first, on the extent to which the work of the criminal justice system of Bulgaria has anticipated or complied with the provisions of the 2000 European Union Framework Decision on the Standing of Victims in Criminal Procedure; and we sought, second, to make recommendations about closing the gaps between those provisions, on the one hand, and present activities and activities planned by criminal justice agencies and the Government of Bulgaria, on the other.

Inter alia, discussions were held with police officers; prosecutors; judges; officials of the Ministry of Justice and the Ministry of the Interior; the Minister of Justice; staff of the

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1 B. Stankov; 'The International Crime Survey in Sofia (Bulgaria)', in O. Hatalak *et al.* (eds.); *The International Crime Survey in Countries in Transition',* UNICRI, Rome, 1998, p. 83.
2 *Country Reports on Human Rights Practices - 2001: Bulgaria,* US Bureau of Democracy, Human Rights, and Labor, March 2002.
3 U. Zvekic; *Criminal Victimisation in Countries in Transition,* UNICRI, Rome, 1998.
4 *National Human Development Report, Bulgaria 1999,* Volume II, p, 29.
5 Commission of the European Communities, Brussels, 2001.
6 *Country Reports on Human Rights Practices - 2001: Bulgaria, op. cit.*

European Commission Delegation; Tony Regan, PAA of the British Embassy; the Bulgarian Bar Association; the president of the Union of Judges in Bulgaria; staff of the Magistrates' Training Centre; special investigators; and members of NGOs centred on human rights and victims service matters. Those we met were invariably more than helpful and candid, and we came to some firm conclusions, although it must be appreciated that our stay in Bulgaria was of short duration, we were able to peruse very few documents before the mission, and some of our impressions are necessarily superficial.

So entrenched and systemic are many of the problems of crime and criminal justice that we were advised by some that piecemeal reform of the criminal justice system would not suffice to achieve the ends of the Phare Horizontal Project, and that wholesale restructuring is necessary on the pattern of the recent reforms introduced in Northern Ireland by the commissions on the police and criminal justice system. However, we shall follow our brief and concentrate on the specific matter of the treatment of victims and witnesses.

In the main, institutions in and around the Bulgarian criminal justice system recognise no broad formal or informal responsibility for the welfare of the victims and witnesses with whom they have dealings, and they do not recognise that that lack of responsibility poses a problem. Apart from the general want of provision, there were a number of practices which gave cause for serious concern. Not least among them was the unfettered right in law of defendants publicly to cross-examine all victims, including children and the victims of serious sexual offences.

The Bar Council, and many (but not all) prosecutors, judges and the police disclaimed any official stake in issues affecting victims and witnesses.[7] There were no provisions in the Bar Code of Conduct for the proper treatment of victims of witnesses. There were no provisions for including the treatment of victims and witnesses in the new curriculum of the Bulgarian Magistrates' Training Center. There are no codes of conduct or guidelines for police officers to direct them about the proper treatment of victims of witnesses.[8]

The Union of Judges has no subcommittee or officer responsible for advancing the proper treatment of victims of witnesses. We were told by the Specialised Investigation Agency that the treatment of victims and witnesses is 'up to the good will and ethics of people in the criminal justice system'. There are no interdepartmental or inter-agency committees to discuss the proper treatment of victims of witnesses other than children. NGOs are not necessarily assumed to have a special expertise which could be of value to the State or practitioners, although officials of the Ministry of the Interior did display

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7 A number did not indeed seem to recognise that Module 4 was part of the programme of the mission or part of the agenda of our meetings.

8 All the more surprising because the curriculum was designed under the auspices of USAID.

some appreciation of their potential worth. There is, in short, a want of what North American criminal justice officials would call 'victim sensitivity' or 'victim awareness'.

Four principal types of reason were advanced in meetings for such a position: a formalism that cited the absence of specific duties prescribed by the law; references to a lack of resources; the brevity of the period of time that has elapsed since the passing of the old regime; and the pressing nature of other problems. It was accepted as reasonable to claim that nothing could be done without a precise legal authority. The only area of vigorous activity in the area covered by Module Four was that of child protection which was indeed covered by a relevant Act, the Child Protection Act of June 2000. Improvisation, the creative interpretation of law, and action taken without a minute reference to law were rare. We uncovered a number of obvious instances in which improvements in the situation of victims and witnesses could have been effected without significant cost, but no initiative had been displayed in identifying or implementing them. It would, for instance, have been quite feasible to have set aside secluded spaces for the interrogation of witnesses in prosecutors' and police offices; and to have segregated victims and defendants in the waiting areas of courthouses, but nothing had been done because the law had not prescribed it. Not only – and quite understandably – were there no expensive video-conferencing facilities anywhere in Bulgaria to protect vulnerable witnesses undergoing examination and cross-examination, but there were no screens which would not have been expensive at all.

There were, to be sure, a few exceptions to a largely uniform trend. In Plovdiv, the prosecutors had established links with a local NGO catering for the female victims of domestic violence, as had the police in certain parts of Sofia and a number of towns elsewhere in Bulgaria. Officials of the Ministry of the Interior expressed interest in collaborating with NGOs. Otherwise, there was an absence of enterprise and an apparent dearth of appreciation that enterprise needed to be displayed.

Those areas in which the needs and rights of victims were acknowledged revolved around claims to financial compensation from the offender under a *parti civile* procedure; the assumption of an auxiliary prosecutor role; the mounting of private prosecutions; and rights of legal representation and access to documents that would support those other activities. The right to compensation was of uncertain benefit because it may be presumed that most offenders are indigent and unable to recompense the victim. No statistics are kept on how many orders for compensation are made or discharged. There is no system of State compensation to the victims of violence. The right to legal representation can be exercised only when the victim pays for it himself or herself (and it is the function of a number of NGOs to provide legal advice without charge). The right to launch a private prosecution is also of uncertain benefit because it centres chiefly on actions against those accused of domestic violence, which is treated formally as a 'private crime', a 'breach of public policy' was how it was described at my meeting with officials of the Ministry of the Interior, and it amounts, in effect, both to a depreciation of the importance of the offence but also to a multiplication of the obstacles lying before those of its victims who wish to prosecute it.

There were, in addition, rights to anonymity and to police protection for intimidated witnesses, including, in principle, the witnesses of volume crime, and the right of judges to clear courtrooms of the public where there was a threat of intimidation or prurience. However, in these cases, and in all other cases where questions were asked about the frequency with which measures were applied, we were told that no figures were available. It is evident that there is a need for the most basic data about the prevalence and scale of such procedures as the granting of anonymity, the provision of police protection, and the making and discharge of compensation orders. It is impossible to assess the situation or make progress until more is known about the position of victims and witnesses and base line data are established. One strong recommendation would be that proper data are collected and collated to ascertain, first, what actually does happen in the Bulgarian criminal justice system and, second, to recommend and monitor appropriate improvements.

There are the beginnings of a third sector in the area of victims and witnesses, but it is unevenly developed; concentrated in urban areas; almost entirely made up of specialist organisations,[9] some of them lacking experience and the capacity to deliver services in bulk; lacking cohesion and critically incomplete in its coverage of the unmet needs of victims and witnesses. There seems to be virtually no NGO provision for the male victims of violence (or any other offence); for victims of property crime, fraud and corruption; or, indeed, for any victims of volume crime. Most surprisingly perhaps, and quite against the grain of other accession states, we were told that there is no NGO for child victims of abuse or cruelty. There is, to be sure, a very new NGO which resembles in embryo a conventional service delivery organisation on the model of members of the European Victims Forum, the Foundation for Supporting the Victims of Crimes and Struggle against Corruption, but it is only a few months old, staffed by a mere seven volunteers, and its potential reach and capacity to survive must be more than a little doubtful.

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[9] Examples may be helpful. ACET, the Assistance Centre for Torture Survivors, began work in 1997 to provide medical rehabilitation for torture victims, including refugees and the victims of the Bulgarian communist regime. In 2001, it received 151,000 leva (equivalent to a little less than £50,000) from the European Commission, CVT Minnesota, the British Embassy, DFID, UNHCR and the IRCT OAK Centre Support Program. The Animus Association, starting work in 1997, maintains a helpline and a rehabilitation centre for women, adolescents and child survivors of violence; lobbies in support of women survivors of violence and trafficking; trains NGOs and journalists, and professionals in conjunction with the Tavistock Clinic and the Cambridge Hospital, Harvard; and other activities. It had an income of 363,000 leva in 2000 and is supported by the European Commission, the MATRA programme of the Dutch government, the Dutch Ministry of Foreign Affairs; the British NGO VSO; the Democratic Commission for Financing of Small Projects; the Ludwig Boltzman Institute on Human Rights and others. The Nadja Centre was established in 1996 to give medical, psychological, psychiatric and social assistance to help women victims of abuse. It maintains one shelter with accommodation for 18 women and children. Its principal funding comes from the Dutch NOVIB and the Iskar municipality in Sofia.

All Bulgarian NGOs are new. Few are younger than two or three years. Many are unsophisticated and untried; politically and practically inexperienced; and liable to fail to thrive. Outside their own functional clusters, and particularly the cluster focused on domestic violence, members of different NGOs do not appear to know one another and can not accurately describe the composition of the Bulgarian third sector, exchange experience or collaborate with one another. One step forward would be to arrange a conference of NGOs in the victims and witnesses sector to take stock and deliberate about how to consolidate and strengthen what is a very vulnerable fragment of Bulgarian society. There is, for example, no apparent regulation, effective monitoring or assurance of quality, standards and training, other than what has been set by funding organisations and the professional associations to which the members of the NGOs may be affiliated. The quality and reliability of the services provided, particularly by the newer and more marginal NGOs, will have to be a matter for attention, especially if they have any prospect of becoming more firmly established and more widely accessible to the Bulgarian public.

The exceptions are the human rights organisations, on the one hand, and a concentration of NGOs centred on domestic violence and other serious offences against women and children, on the other. Many of those bodies are impressive. They have pedigrees and templates and support offered by well-established sister organisations elsewhere. Indeed, substantially because of campaigns waged by NGOs, the treatment of domestic violence and sexual offences against women appears generally to have improved in recent years.[10] Those bodies are vital, and they perform a valuable service, but they are only segments of what should be a more comprehensive system of support and advice, and the greater part of victims and victims' needs are not satisfied at all.

The prospects for constructing such a system are bleak. Funding has been entirely supplied by foreign donors for limited periods on a 'pump-priming' basis; and the Bulgarian State and criminal justice agencies claim they have no available resources and no likelihood of dedicating such resources in future. The Minister of Justice did assure us personally that he would have wished the position to be different, but financial constraints laid down by the Government, under pressure from the IMF,[11] permitted no latitude.

A few NGOs have entered into what they described as 'contracts' or agreements to deliver services to prosecutors or police. By that was meant an understanding that the agency would refer victims for legal advice and, or, psychological counselling and, on occasion, that the NGO would participate in the training of the agency's staff. There could be a limited reciprocity. For example, some police forces have undertaken not to search for, or disclose the address of, the victims of domestic violence who have escaped the home, perhaps into a shelter, and been declared missing to the police by parents or partners. Unlike any conventional contract, or indeed other such contracts in other

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[10] Country Reports on Human Rights Practices - 2001: Bulgaria, op. cit.

[11] See International Monetary Fund; *Bulgaria: Request for Stand-By Arrangement,* Washington D.C., March 2002, esp p. 4.

accession countries such as the Czech Republic, no payment was made for the services. Given the likely economic future of the NGO sector in Bulgaria, it does seem both exploitative and, in the long run, unhelpful to both parties, to insist on such one-sided arrangements. We will return to the funding of NGOs below.

Apart from those few agreements, some limited consultation, and the legally-compulsory procedures instituted by the Child Protection Act, it was not apparent that NGOs and criminal justice agencies worked together as productively as they should; that the agencies had identified the unmet needs of victims and witnesses; or that they had appreciated the kind and quality of services that could be provided by the NGOs.

Relations between policy officials in Ministries and NGOs were rudimentary. There had been discussions between politicians and the Bulgarian Foundation for Gender Research about a proposed, and much needed, Protection Against Domestic Violence Act, but they seem to have tailed off into inconsequentiality. Meetings between NGOs and politicians and officials were certainly not institutionalised, and members of NGOs told us that they were generally unable to identify the responsible officials in their area with whom they might have dealings. *Pari passu,* when asked to stipulate what Bulgarian victims' and witnesses' needs might be, and to recommend how they might be met, almost every official from every sector of the criminal justice system was at something of a loss for a reply. There was almost invariably an inability to grasp the implications of the question.

We were told by judges at Plovdiv that there were enough provisions for victims already extant in legislation, and the only outstanding problem was their implementation. We were told that justice was overly-weighted in favour of the offender and against the victim and, more generally, that developments in Bulgaria lagged behind those in Europe, as if these were processes beyond any official's or practitioner's control. No particular groups of victims and witnesses could be singled out by officials as being in special need of aid. Those few recommendations which were made to us referred only to the immediate practical problems of the agency in which the official worked, not to the difficulties faced by victims themselves. It was said merely that victims and witnesses are a problem that is only just starting to surface, and our impression was that it was one that was considered to could be safely in suspense for some time. This, we were told by the President of the Union of Judges, was 'a problem for the future'.

Links between NGOs, on the one hand, and criminal justice agencies and the State, on the other, were not systematic but personal and *ad hoc*, not the result of routine consultation and collaboration, but haphazard and unorganised. No officials in the organs of State claimed any formal property in the problems of victims and witnesses other than those laid down very precisely in legislation, such as the frequently cited rights to compensation by the offender. Such a state of affairs is unsatisfactory. It renders the adequate identification of problems and development of policy vulnerable to the vagaries and movements of individual officials. It was clear that there was no organised mechanism within the State to foster the consideration, generation and nurturing of policies for victims and witnesses.

There are consequences which pose problems, not only for the welfare of victims and witnesses, but also, and more formally, for Bulgaria's eventual compliance with the European Framework Decision on the Standing of Victims in Criminal Procedure. Bulgarian victims and witnesses are at a marked disadvantage in comparison with their counterparts in the European Union and most other accession states. There is certainly no evidence that the practical, cultural, financial, legal and administrative implications of the Framework Decision have been appreciated other than by token statements that the Decision will become part of a bundle of European Community instruments which will be incorporated in due course in Bulgarian law. That incorporation was treated as a matter for those officials in the criminal justice ministries who dealt with international law, not for those concerned with the proper functioning of the Bulgarian criminal justice system and the populations it served.[12] There *is* evidence that there are no plans to fund the implementation of the Decision or, as one of its components, the sustenance of victim support organisations.

That last matter occasions special concern because no Bulgarian NGO we examined had received domestic financial support, external funding is of limited duration, there is no native tradition of charitable giving by individuals, the Phare programme does not finance the core staffing and accommodation costs of NGOs, and it is not entirely certain what strategy, if any, the Government will come to adopt to maintain support when foreign sources of aid are withdrawn.

Since the State itself offers little support to victims and witnesses, the third sector is the only array of organisations offering some succour now and some prospect of more in the future. I was told at my meeting with officials of the Ministry of the Interior that contacts and collaboration with the NGOs are important to them, and that when the Ministry steps out of its area of competence, the NGOs step in. It was encouraging to learn that they would like a stronger third sector. Their position is promising, but it has not yet been matched by significant action, and there must be a risk that much of that sector will collapse, including those organisations that are required for adherence to European Union minimum standards in the area. There will then be an undoing of what extremely modest progress has been accomplished so far and victims and witnesses will be left destitute.

The State's citing of problems of a lack of resources may not be wholly persuasive. A developed third sector specialising in victims and witnesses is not at all expensive when set against other items of criminal justice expenditure or of criminal justice expenditure as a whole. Even in England and Wales, where the NGO Victim Support is well established, reaching some 1,000,000 victims a year, and where the State criminal injuries compensation scheme made awards of £79,000,000 to the victims of violence, monies spent on victim support and compensation amounted to a trifling 1.7% of

[12] It was not even apparent that officials making that reply did always know of the Decision and its content.

criminal justice system expenditure in 1997-8.[13] Given that only some 3% of crimes actually arrive at court, and that the sole contact almost all victims and witnesses have is with the police and NGOs, it may be argued that that 1.7% to cater for 97% of crimes is not a disproportionately severe drain on resources. It is not unreasonable to recommend that the resource argument be waived and that the Government of Bulgaria considers how to re-apportion resources within the existing budget to devote, as a beginning, 1% of the criminal justice system budget to the appropriate NGOs within its own much smaller and consequently comparatively inexpensive third sector.

One caveat should be made. There appears to be a nascent policy which may or may not have a possible future bearing on the issue of funding for victim support.

We understand that a draft Charter for Co-operation Between the Civil Society Sector and Public Authorities in the Name of Society Interest has been adopted by the Citizens' Council at the Commission on Civil Society Affairs at the National Assembly and is on the table for approval by the National Assembly. The initiative stems from the work of the Ministry of Foreign Affairs, the Chairman of the Commission on Civil Society Affairs at the National Assembly, and representatives of a number of prominent NGOs, including the Open Society Foundation, the George Marshal Foundation, and the Bulgarian Helsinki Committee. The text we were shown states that 'The Charter's purpose is to regulate terms of cooperation between authorities at local and state level, on [the] one side and [the] civil sector, on the other'. The initiative was described as a response to the 2001 White Paper on European Governance.

We were given only a short summary of the draft in English and detail is lacking. It would be important to establish precisely what timetable and resources, if any, are envisaged, whether the charter entails any firm commitment of new expenditure by the Bulgarian State, and what the actual scale and possible beneficiaries of such expenditure might be. Given the emphatic statements made to us by the separate criminal justice agencies and by the Minister of Justice itself, we suspect that the Charter will actually prove to have no bearing on our recommendations, but we thought it prudent to allude to it as a remote means of resolving the difficulties confronting Bulgaria.

We recommend that:

- Services provided by properly accountable and certifiably competent NGOs to the State and criminal justice system should be financially compensated;

- NGOs in different functional areas should collaborate with their counterparts in the European Community to devise, disseminate and enforce minimum standards of service, publicly advertised. The most appropriate co-ordinating body for that task would be the European Victims Forum, and the Forum should by paid by the Community for undertaking such work.

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[13] *Information on the criminal justice system in England and Wales: Digest 4,* Home Office, London, 1999.

- Named officials at a senior level in the Ministries of Justice and the Interior be charged with formal responsibility for promoting and safeguarding the welfare and interests of victims and witnesses, and that, together with senior officials from the police, prosecutors, the bar, judiciary and NGOS, they should meet and consult regularly to ascertain needs, devise policies and programmes, and co-ordinate their implementation. Such planning and implementation must be accomplished by appropriate managerial techniques, including the formulation of precise strategies, budgets, aims, targets, performance indicators, and regular reporting and accounting procedures.

- That programme of work be supported by fundamental research into the distribution, prevalence and character of victimisation; into victims and witnesses' experiences and needs, including the experiences and needs of defence witnesses; and the securing of adequate statistical data on the material legal or administrative measures affecting victims and witnesses.

- A conference be convened of NGOs dealing with victims and witnesses to establish a national federation which can deal, *inter alia,* with the better co-ordination, expansion, financing and enhancement of services.

- The Government of Bulgaria allocates 1% of its existing criminal justice budget to the development and maintenance of NGOs in the victims' and witnesses' sector.

Czech Republic

4 - 8 February 2002

The Czech Republic experienced a significant increase in the volume of reported crime since 1989. According to the 1996 *Czech Republic Human Development Report*, there was a quadrupling of recorded crime between 1990 and 1993 and a substantial decrease both in crime reporting[1] and in the recorded clear-up rate. The *Report* gave heightened emphasis to the growth of drug-related crime, crimes involving prostitution and sex work, fraud, motor thefts, and the smuggling of people across borders, and a later victim survey reported those trends continuing into 1996.[2]

We concentrated, first, on the extent to which the work of the criminal justice system of the Czech Republic has anticipated or complied with the provisions of the 2000 European Union Framework Decision on the Standing of Victims in Criminal Procedure, followed the models of good practice laid down by the European Victims Forum, and implemented the articles of the 1985 United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuses of Power. We sought, second, to make recommendations about closing the gaps between those provisions and models, on the one hand, and present activities and activities planned by the Government of the Czech Republic, on the other.

Inter alia, discussions were held with police officers; prosecutors; judges; officials of the Ministry of the Interior and the Ministry of Justice; the Ombudsman; staff of the British Embassy; and members of NGOs centred on issues of human rights, and the support of women and child victims and of victims at large. Those we met were invariably helpful and candid, and we came to some firm conclusions, although it must be appreciated that there were few documents which might have been of use to our report and written in English, and our mission to the Republic was of short duration.

The Czech Republic is in rapid transition, and, in the last two years, especially, there has been an accelerating programme of Government activity focused in large part on the preparation of an appropriate legislative framework for accession to the European Union. One consequence of such a pace of change has been a proliferation of new laws and decrees, and it was our impression that officials themselves sometimes found it difficult to keep abreast of new developments. If the Czech population, including the one in three Czechs who are estimated to be victims of crime each year,[3] are to be properly served by the new laws, it is vital that they be informed in an accessible manner about the

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1 Reporting rates were highest for crimes where insurance could be claimed: car and motor-cycle theft and burglaries. See J. Valkova; 'Czech Republic', in O. Hatalak *et al.* (eds.); *The International Crime Victim Survey: National Reports,* UNICRI, Rome, 1998, p. 182.

2 *Ibid.*

3 *The International Crime Victim Survey: National Reports, op. cit.,* p. 186.

more important new provisions which may affect them. We recommend that attention be given to the better dissemination of information about legislative change.

In such a legislatively-driven environment, it is not remarkable that the bulk of questions about victims and witnesses were referred to the newly-drafted Criminal Procedures Act that was approved in June 2001 and which came into force on 1 January 2002, but not yet available in an English language version, and their needs and rights were understood almost wholly in terms of the provision of financial assistance and compensation. It was a narrow official interpretation that neglected a number of wider issues of victim support dwelling on emotional and practical needs.

Pari passu, there has been the recent emergence of a strong NGO sector centred on the provision of legal and counselling services to the victims of crime. Some bodies, such as La Strada, an organisation devoted to women who have been the victims of trafficking, specialise in supporting particular populations, others, like Bílý kruh bezpeèí, the White Circle of Safety, support victims defined quite generally. The White Circle was founded in September 1991, and provides free professional help, including emotional and moral support, in its six branches in Prague, Brno (founded in 1996), Olomouc (1994), Pardubice (1999) and Pilsen (1998). It was contacted by 800 people in 2001, and by a total of 3377 since its inception, the offences involved including assaults, thefts, rape, fraud, murder and robbery.[4] That there is a need for such organisations is clear. In 1996, only some 2% of burglary victims surveyed stated that they had received support, but 34% said that support would have been useful; and comparable figure for robbery victims (2% and 44%), sexual incidents (7% and 33%), and assaults (0% and 27%) were as marked.[5]

The police are supposed to provide information about the progress of a case after a month should the victim have been responsible for reporting the crime and requests that he or she be notified, and that was an arrangement that appeared to be working satisfactorily. (There is, however, no obligation to inform a victim about an offender's date of release from prison, and that is a matter that should be remedied.) The police may also inform the victim about services provided by NGOs, but the practice appears to be haphazard and often late, and staff of the White Circle believe that most people refer themselves only after learning about their organisation through the mass media or through informal channels. We recommend that the police be required to provide the victims of crime with a leaflet listing organisations providing services at the time of the initial reporting of a crime or incident.

Government and the Private Sector

It is evident that the legal and institutional environment of victim support is fluid and changing. Almost all the relevant organisations are in their infancy, at the beginning of what promises to be a period of sustained expansion. Since the transition, and with the

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4 *Basic Information about the White Circle of Safety.*

5 *The International Crime Victim Survey: National Reports, op. cit.,* p. 193

encouragement of the Phare programme itself,[6] it has been Government policy to assign many new activities to the private sector, the State's responsibilities for victim and witness care being limited largely, as we have remarked, to the provision of financial assistance and monetary compensation, and the NGOs have in consequence begun to occupy a strategic role in victim and witness support. It was our impression that relations between officials of the Government, criminal justice agencies and relevant NGOs were cordial and fruitful. The Government not only provides some funds (amounting, we were informed, to some 5,000,000 CZK annually) but also appears frequently to consult and incorporate members of the NGOs in its deliberations. La Strada, for instance, reports *inter alia* that it was invited in 1998 by the Ministry of the Interior to help prepare draft legislation on prostitution; and in 2001 to participate in a public hearing on trafficking in women organised by the Senate of the Czech Republic.[7] Similarly, the White Circle claims that it 'has good working relations with the Ministry of Health and Home Office.'

Criminal justice agencies are starting to make use of the staff of NGOs, including La Strada, the White Circle and the Czech Helsinki Committee, in training trainers, exposing practitioners to issues touching on the proper treatment of general and specific groups of victims. These new ties are to be welcomed, representing as they do the encouraging beginnings of a change in professional culture and customary practice. They should be strengthened further by a move towards multi-agency working in especially sensitive areas of crime, involving, for instance, the police, prosecutors, social workers, psychologists and the staff of voluntary organisations routinely co-operating in response to such offences as child abuse, domestic violence, rape and racially-aggravated assaults.

It is only a few years since the fall of the old regime, and it is inevitable that the Government and criminal justice agencies are only just beginning to appreciate the complex and problematic nature of victimisation. It would be sensible to enhance and focus the work of police and prosecutors by establishing dedicated and appropriately staffed domestic violence, rape and child protection units in the larger police forces. It cannot be right, for instance, that rape victims can be interrogated by male officers or examined by male medical practitioners.

The Czech voluntary organisations are all young and still attempting to find their feet. We would further recommend that they should, if they wish it, receive financial support to enter into twinning arrangements with their better-established counterparts in the European Union and elsewhere. One such arrangement, for example, could be between the National Society for the Prevention of Cruelty to Children of the United Kingdom and the Our Child Foundation – Safety Line of the Czech Republic.

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6 See 'The Phare Programme: An interim evaluation', Evaluation Unit of the European Commission, European Commission, 1997, Ch. 5, 'Rolling Back Government'.

7 *Final Report, La Strada (1998-2001),* Prague, 2001.

The Administrative Arrangements for Policy-Making

It is apparent that individual officials in the Ministries of Justice, the Interior, Health and Welfare are becoming sensible of the needs of victims and witnesses. We were told that responsibility for policy development in this area is currently lodged informally in the Crime Prevention Department of the Ministry of the Interior, although, formally, no such responsibility is acknowledged. Accordingly, we would recommend the better consolidation and targeting of official work in the general area of victim and witness support, legislation touching on victims and witnesses, financial assistance and compensation, witness protection and the like. It would be sensible to organise such a new department within the Ministry of the Interior because of its lead on police matters. It would also be sensible to ensure interdepartmental collaboration with officials from cognate departments, including the Ministries of Justice, Welfare and Health, and from criminal justice agencies and leading NGOs. Such an interdepartmental body could ensure the better planning and coordination of Government responses, and the monitoring of progress in existing and new initiatives, particularly in the setting of the new obligations that will exist when the Czech Republic joins the European Community and, like all other members, is covered by the European Framework Decision on the Standing of Victims in Criminal Procedure.

Vulnerable and Intimidated Victims and Witnesses

Courtroom design seemed fairly well adapted to the special needs of vulnerable and intimidated witnesses, and we understand that there is now money to hand to install video links in all courthouses. It is possible for judges to order defendants to leave the courtroom when particularly vulnerable witnesses are about to testify. Our visit to the regional court at Brno suggested that such a resort to video links and the dismissing of defendants is most exceptional and entirely at the discretion of the judge, aided where necessary by an expert, and we wonder whether consideration should not be given to a formal review of the procedures now in use to assess the needs of vulnerable and intimidated witnesses. Although children do seem properly to be protected, the police being obliged to advise social services where a child is involved, young vulnerable adults, the victims of offences of rape and indecency, adults with learning difficulties and others do not. Steps should be taken at the very inception of an investigation to ascertain and accommodate any special needs that victims and witnesses may have.

Funding Issues

There are no separate waiting rooms or areas for victims and prosecution witnesses and their supporters, on the one hand, and defendants and defence witnesses and their supporters, on the other. We understand that a reconstruction programme for courthouses is in train, but that recent budgetary cuts have made it impossible to set aside such dedicated areas. Prosecution and defence witnesses and victims can well be exposed to intimidation whilst waiting to testify, jeopardising their willingness and competence to give evidence when the time comes, and, indeed, to report crimes in

future,[8] and we recommend that any proposals for renovating old courthouses and constructing new courthouses should, at the least, be flexible enough to accommodate a proper provision for victims and witnesses and the segregation of potentially antagonistic groups.

Although resources are limited, in comparison with a number of other accession states, funding does not seem to be a significant problem for the third sector or Government. Indeed, the voluntary organisations are more than occupied with busy programmes of work, and it would not be prudent to accelerate yet further their current rapid expansion. What is required instead is that the State guarantees a secure financial foundation not only for what is already in progress but also for steady and sustainable growth.

The one other major area where resources are problematic is in the provision of crisis centres for women and children forced out of their homes by domestic violence. STEM's crime survey of 1700 respondents, conducted in 2001, estimated that some 16% of the male and female population had been subject to domestic violence during the year, and the volume of need must be considerable in proportion.

Where it is the man who is responsible for domestic violence, it is imperative either that he quit the home or that women and children should be able to move to a place of safety. At present, there are some 300 places for women in crisis in shelters in Prague. The State should conduct an audit of the need for places in the country and do its utmost to provide refuges. There should certainly be a long-term commitment to make that provision when funds are available.

There were allegations of ethnic discrimination in and around the criminal justice system, particularly against Roma.[9] Some of the allegations made about the improper treatment of Roma victims could as well be made about the treatment of Czech citizens in general. According to the *EC 2001 Regular Report Czech Republic*, the Ministry of the Interior estimated that in 2000 the number of racially-motivated crimes had risen to 364 compared with 316 in 1999 and 133 in 1998. It may be presumed that racially-motivated crime is generally under-reported and that extraordinary measures, such as victim surveys, might be required to unearth a more reliable estimate of its incidence and distribution. The data protection regulations which are in force stem from a perfectly proper preoccupation with the right to privacy, but it is unsatisfactory that ethnic monitoring procedures are not in place to afford a better grip on the problem. We recommend that ethnic monitoring measures be introduced to ascertain whether and to what extent Roma and other national minorities are subject to extraordinary

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[8] See R. Knudten *et al.*; *Victims and Witnesses: Their Experiences with Crime and the Criminal Justice System,* Law Enforcement Assistance Administration, US Department of Justice, Washington, DC., 1977; and F. Cannavale and W. Falcon; *Improving Witness Cooperation,* Government Printing Office, Washington, DC., 1976.

[9] See, for instance, *Report on the Situation of Roma and Sinti in the OSCE Area,* High Commissioner on National Minorities, The Hague, 2000, pp. 37-39; and B. Bukovská; 'Romani men in black suits; racism in the criminal justice system in the Czech Republic', *Roma Rights,* Number 1, 2001.

discrimination and, if that should prove to be the case, what further steps should be taken to improve their situation.

Compensation and Financial Assistance

The Czech Republic is a party to the European Convention on Compensation to Victims of Violent Crime, but arrangements for financial assistance and compensation to victims can be complicated and often protracted, requiring the victim to make use of the Ministry of Justice in an adhesion process. The latest version of the text of the relevant Act, Act No 209/1997 Coll. on Provision of Monetary Aid to Victims of Crime, as last amended, describes how compensation can be paid to victims (including foreign victims) or the survivors of deceased victims who have suffered damage to their health as a result of a criminal act.

Compensation will be paid only if the victim has exhausted all legal remedies to secure damages directly from the offender, although the State does assist the victim financially in his or her attempts to obtain such redress, and the prosecutor can arrange for the assets of the offender to be frozen. In common with other schemes elsewhere, compensation may be reduced if the victim is deemed to have been complicit in the offence. It is noteworthy that only 100 claims for criminal injuries compensation were paid by the Czech Government last year, and the inference may be drawn that procedures for restitution by the offender and the State could beneficially be severed, being replaced by a right to prompt compensation by the State. At present, the basic 'flat amount' payable in compensation is 25,000 CZK, but more can be awarded to a maximum of 150,000 CZK.

Mediation

Steps are being taken to institute mediation, principally as a strategy of conflict-resolution representing an alternative to the criminal trial, and perhaps partly in response to crowded court calendars. In 2001, the Probation and Mediation Service worked on 24,961 cases, of which some 74% were new cases from the beginning of the year.

The victim's consent is required before mediation can take place. It was not evident how victims are prepared for mediation, but the White Circle has no formal role in preparing, advising or supporting participating victims, and we recommend that it should be invited to work closely with Government in the drafting of standards, the training of mediators and in assisting victims who consent to mediation.

The Ombudsman or Public Defender of Rights

The office of ombudsman was established in late 1999 to defend people against the actions of official bodies in the Czech Republic. It encompasses the police force and prison service, but not state prosecutors and the courts, with the exception of the state

administration of the courts.[10] The boundary between the judicial and state administrative functions of courts is inevitably rather fine, but the ombudsman assured us that the only complaint which the victims and witnesses of crime could properly bring against the courts is about delays in criminal procedure. No such complaint, or any other, had been brought by a victim or witness in the brief history of his office. It was his contention that delays in criminal trials were uncommon and reasons for complaint were correspondingly few, but we did learn that the Republic is 200 prosecutors short of its proper complement, and noted that figures supplied by the Ministry of Justice showed that the average duration of court proceedings in criminal matters in the district courts was 251 days in 2000 and 265 days in 2001, and in the regional courts 506 days in 2000 and 627 days in 2001. Those data do seem to indicate that the trial process is attenuated and we wonder whether there might not be a fuller exploration of the ways in which the ombudsman might be of assistance to victims and witnesses.

Conclusions

The Government of the Czech Republic and NGOs have begun profitably to collaborate in supporting the victims and witnesses of crime. The Government is not yet a signatory to the European Framework Decision, but it has started to draft relevant documents in anticipation of accession, and our judgement is that in a short period of time it has made impressive progress towards meeting its standards.

We recommend that:

- The public be better informed about important new provisions in criminal law as they affect defendants, victims and witnesses.

- There should be a move towards adopting multi-agency methods of working in especially sensitive areas of crime, involving the police, prosecutors, social workers, psychologists and the staff of voluntary organisations, in response to child abuse, domestic violence, rape and racially-aggravated assaults.

- If they so wish it, a number of the new Czech voluntary organisations should receive financial support to enter into twinning arrangements with their better-established counterparts in the European Union and elsewhere.

- Dedicated child protection, rape and domestic violence units be established in the larger police forces.

- There should be better co-ordination and consolidation of official work in the general area of victim and witness support, legislation touching on victims and witnesses, financial assistance and compensation and witness protection. It would be most appropriate to organise such a new department within the Ministry of the Interior because of its lead on police matters. It will also be necessary to ensure

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[10] *Public Defender of Rights (Czech Republic),* Brno, 2000, p. 14.

interdepartmental collaboration with officials from cognate departments, including the Ministries of Justice, Welfare and Health, and from criminal justice agencies and leading NGOs.

- Consideration should be given to a formal review of the procedures now in use to assess the needs of vulnerable and intimidated witnesses.

- Designs for renovating old courthouses and constructing new courthouses should be flexible enough to accommodate proper provision for the segregation of waiting areas for victims and witnesses.

- The State should conduct an audit of the need for places of safety for the victims of domestic violence and provide enough places to meet such need.

- Ethnic monitoring measures be introduced to ascertain whether and to what extent Roma and other national minorities are subject to extraordinary discrimination and, if that should prove to be the case, what further steps should be taken to improve their situation.

- There should be a fuller exploration of the ways in which the ombudsman might be of assistance to victims and witnesses.

- The police should be required to provide the victims of crime with a leaflet listing organisations providing services at the time of the initial reporting of a crime or incident.

- The victims of crimes of violence and sexual crimes be informed of their offenders' date of release from prison.

Estonia

14 - 19 January 2002

Attention was devoted primarily to Estonia's compliance with the articles of the Framework Decision on the Standing of Victims in Crime Procedure and to recommendations flowing from apparent gaps between Estonia's formal provisions and actual practice (present and future). Discussions were held with the Legal Chancellor/Ombudsman, officials of the Ministry of Social Affairs and the Ministry of Justice; with senior prosecutors and police officials, judges of a regional court; criminological researchers; and members of four NGOs (one concerned with victims in general, and the others of a more specialised nature, not only concerned with victims, but focusing on human rights and on the problems of women and children including sexual and other violence).

As will become apparent, the problems facing victims of crime have been given some attention within government and wider society, although this topic does not seem to have a high profile.

We did not discover whether Estonia had ratified the European Framework Decision although its general thrust is provided for in Estonia's burgeoning victim support arrangements and in criminal procedure laws both current and projected. However, in the response to the inception report Mr Eerik Kergandberg is quoted as writing that the (new post-Soviet) draft Criminal Procedure Code will reduce the rights of victims. This is not necessarily contrary to the Framework Decision, but more needs to be discovered about the proposed changes before a clear view can be taken on this. We have not been successful in contacting Mr Kergandberg. We were particularly surprised that:

- None of the officials or police officers who we met appeared to know how the draft changes to the Code would affect victims. However, the fact that the police officers did not have enough knowledge on the victim issues does not reflect adequately the overall situation in the police, though it should be admitted that there are only few real experts. Victim support issues are now covered by the police training programme, so no new police officers should be without the required knowledge and the police officers already working will have supplementary training on these issues.
- No meeting had been arranged for us with relevant officials of the Ministry of Social Affairs (we arranged a meeting with officials of this Ministry ourselves when, by chance, we discovered it has a role in the delivery of victim policy).
- No relevant officials of the Ministry of Social Affairs or of relevant NGOs (including Ohrvriabi, the main Victim Support NGO in Estonia) have been involved in discussions concerning draft changes to the Code.

It appears, in other words, that legislative planning in criminal matters has not to date considered the implications of proposed changes for victim policy, and the victim perspective has no place as of right in the higher levels of government. This is despite the

existence of a Victims' Council, chaired by the Minister of Social Affairs, which meets quarterly. Ohrvriabi does appear to be represented on this Council. However, according to one informant, the Ministry of Justice does not see the rights of victims as a priority.

General Victim Support

There was no general victim support organisation in Estonia until recently. As part of the National Crime Prevention Programme, organisations were asked to tender for a 3 year contract (2001-3) to provide services and training for victim support. The Centre for Social Rehabilitation (CSR) successfully bid for the contract and established Ohvriabi for this purpose. CSR is an NGO that is described as being 'nourished by its close working relationship with the Christian Faith communities in Estonia' (CSR publication 1999). It is related to, but not an integral part of, the Lutheran Church.

However, Ohvriabi is small, as the grant is of only 500,000 EEK/year (approx 30,000 Euros/year). Nonetheless, with this small sum of money Ohvriabi has produced excellent training materials, which appear to be based on UK Victim Support materials. Their services, philosophy and guiding principles appear to be similar to those of UK VS. Like UK VS, Ohvriabi's services are delivered by volunteers. However, there are very few (we do not know the numbers). Assistance to clients is therefore largely via telephone counselling. There is also provision of written information and court witness support. Ohvriabi is also involved in some Victim Offender Mediation Programmes.

Ohvriabi appears to have made good progress in a short time and with very limited funds. However, until the organisation generates a large body of trained volunteers to deliver services, and is funded sufficiently well to support those volunteers and their services, they will not be able to support specific victims to the level implicitly required by the European Framework Decision. Ohvriabi is currently working to join the European Forum For Victim Services, and is likely to meet the necessary criteria to do so.

For the future Ohvriabi sees its priorities as:
1. The delivery of services via volunteers across Estonia,
2. The Training of Police and other CJ players
3. Promotion of victim rights

Specialist Victim Support

There are a few specialised organisations that cater for victims of crime as well as other persons in need. We met members of *Tugikeskus* and *Noustamiskeskus*. The former is a support centre for abused children, but does not restrict itself narrowly to children. If, for example, a woman with children sought help regarding domestic violence, help would be provided for this whole family problem. *Noustamiskeskus* is a well established (21 year old) organisation for people in crisis, including women and children who are victims of sexual and other violence.

Both organisations are multi-disciplinary, and include several professional staff each, mostly part-time - lawyers, psychologists, psychiatrists, speech therapists and

nutritionists – and volunteers. *Tugikeskus* has child psychology and paediatric specialisms in particular, and has strong links with local schools, police and prosecutors. There is a similar organisation in Tallinn, and two more are planned in other regions. They are government funded.

Bearing in mind the large non-crime-victim client-bases of these organisations, they are very small to bear these heavy responsibilities. Resource constraints make it necessary for *Noustamiskeskus* to charge clients after the initial crisis consultation. They also preclude home visits and court support (although referrals can be made to social workers for these purposes, although we do not know what services are then provided). There is a 'Life Line' operated by this group along with others.

Tugikeskus, however, does provide direct support in court (and before) in important cases – such as one involving a child sexual abuse case that was eventually successfully prosecuted. There is no formalised system for ensuring that needy cases are referred to these organisations.

Compensation

The Framework decision (Art 9) requires States to ensure that there are adequate arrangements for victims to secure compensation from offenders. Estonian procedures do seem to provide this as victims are parties to prosecutions (see below). There appears to be no State compensation scheme, but this is not required by Art 9. It does not appear to be difficult for victims to secure an order that the offender compensate them (as we were told that prosecutors pursue compensation during criminal proceedings). The main problem for victims appears to be that most offenders are too poor to pay compensation. We could not discover whether there are problems in enforcing compensation orders. However, when fines and compensation are ordered, fines are paid first (in the UK, compensation is paid first).
The State compensation scheme is not completely missing, as the victims have the possibility to apply for compensation according to the *State Compensation of Victims of Crime Act*, which entered into force on January 1st, 2001.

The role of victims in criminal proceedings

Estonia currently operates a 'legality' system under which all cases are in theory accorded equal priority. Thus there should be full investigation in all cases, and prosecutions should always follow if there is sufficient evidence unless (in less serious cases) certain conditions allow the prosecutor or judge to warn or divert the offender or unless the victim and offender reach a settlement. In theory, then, initial prosecution decisions, in which victims may wish to be involved, are currently usually unproblematic.

Amendments to the Criminal Code, apparently likely to be implemented late in 2002, will create an 'opportunity' system. This will, for example, allow far more prosecution discretion to divert and to drop prosecutions than is currently accorded, and it will allow more scope for plea bargaining to take place without the permission of the victim. These

are examples of the projected reductions in the rights of victims to which we referred earlier, although it appears that the precise changes have not yet been agreed. We could not discover any other changes that would affect victims, or ascertain details of these proposed changes. Although we were told that under the new Code victims will no longer be 'parties' to prosecutions, but will be 'witnesses' (where relevant) and 'civil plaintiffs' (see Part 5 of the Code), it seems that under Art 17 victims will remain parties. The main current (and, we assume, future) safeguard for victims regarding initial prosecution discretion is that victims have the right of appeal against police and prosecutor decisions to 'close' cases. But the appeal is to a higher prosecutor and we could not discover how often this was exercised or how often appeals are successful.

An important feature of the Estonian Criminal Code which potentially gives these rights considerable substance is the right of victims to scrutinise prosecution files when they are passed from the police to the prosecutor. A form is provided for victims to make comments and, if they wish, requests. The prosecutor should then state on the form what action, if any, s/he has taken in response. Further, victims may offer comments at trial, ask judges to ask witnesses questions, and question defendants directly. Judges decide whether or not suggested/attempted questions are appropriate and on the appropriate level of charge where this is a discretionary matter. It appears that victims may question defendants about matters that are not strictly 'evidence' in adversarial systems – such as why the defendant victimised that victim. Similarly they may tell the court about matters that would not be regarded as 'evidential' but which are matters of 'impact' and opinion. We were told that there would be no changes to these provisions under the new Code (Art 37).

The Framework Decision does not require that victims be allowed to communicate their views on cases to the authorities, still less does it require that victims be allowed to influence decisions. These are matters for each State. However, Art 2 requires that victims be accorded 'respect and recognition'. Recognition is currently well provided, and it is hoped that this will not be diluted by the proposed changes. 'Respect' is more problematic if victims are no longer to be 'parties' in the same way as hitherto, although this is a problem that many justice systems grapple with inadequately.

We found it difficult to discover who has formal responsibility for the management and care of victims. We were told by a Ministry of Justice official that the police have responsibility prior to trial, and the judge has responsibility during trial. However, the new Code would, we were told, shift responsibility to the prosecutor. As another Ministry of Justice official said, "The interests of society and of the victim are represented by the prosecutor…. That is why it is so difficult to make the interests of the victim important in the proceedings."

It is not clear to us how well informed victims are of their rights or in relation to the other information required by Art 4. The human rights NGO we saw was concerned that many victims probably did not understand their rights, and that there is little opportunity to assist them in this respect. Prosecutors inform victims of decisions to 'close' their cases, and judges inform all parties of their trial rights at the start of the trial. We do not know how comprehensible information provided in these ways is, or what possibility, if

any, exists, for victims to seek elaboration. However, because victims are 'parties', it seems that it is usual for them to attend trials, and they are therefore more likely than victims in adversarial systems to be told of, and be able to seek elaboration of, their rights

There is no doubt that there is legal provision for victims to make their interests, voices and views heard by police, prosecutors and courts. However, we were unclear as to how far victims in general are encouraged to do this, and what notice, if any, is taken of victims. Similarly, we were assured that victims are informed of important developments in 'their' cases, but it was not clear what mechanisms are in place for providing information if they are not in court to hear it for themselves. We do not know what is the situation regarding release dates when offenders are sent to prison.

Vulnerable victims

All victims are potentially vulnerable, and many feel vulnerable in the presence of the alleged offenders in their cases. This is why Art 8 and 15 of the Framework Decision requires appropriate arrangements to avoid victim/defendant contact in court buildings and, in general, seeks to minimise secondary victimisation. Resource constraints mean that compliance in Estonia with these provisions is poor.

As far as 'officially' vulnerable victims are concerned, we understand that some court room are equipped with video conferencing/CCTV equipment so that child victims need not appear in court. Further development, and the extension of this type of measure to other vulnerable victims, is currently under discussion. Estonia is clearly moving towards compliance with the relevant part of the Framework Decision (Art 2 (2)), but (rightly) is doing so whilst bearing in mind its European Convention obligations towards suspects and defendants. Where appropriate, witnesses are allowed to remain anonymous (Criminal Procedure Code, Art 79-1).

The main cities have specialist interviewing facilities for child victims, but these facilities appear to not be extensive nor to extend to mildly handicapped or mildly mentally ill adult victims. According to *Tugikeskus*, the success of the child abuse prosecution referred to earlier was path-breaking and something that would have been most unlikely in earlier times.

All victims appear to be allowed to have someone speak for them, whether lawyers or carers, there not being the same problems in inquisitorial systems as in adversarial systems with witnesses who have difficulty in giving oral evidence. All victims should be regarded as potentially vulnerable and thus in need of support in and before court, there being no such provision in Estonia.

Regarding domestic violence, the Estonian Women's Studies and Resource Centre and Iris Pettai were very informative. It seems that there are very few prosecutions for domestic violence. This is due to a combination of under-reporting by victims, lack of police action and inadequate legal powers for police and courts. It seems that there is a culture of 'victim blaming' and acceptance of low-level violence, particularly in relation to domestic violence. As a result of research and publicity on this issue, the Ministry of

Social Affairs has provided funds for police training. However, a proposed national violence against women programme has not been implemented.

Victim Support after criminal proceedings and complaints

As noted earlier, the only organisation with general responsibility for victims – *Ohvriabi* – is small and under-resourced. It therefore does not provide post-proceedings support. Thus there is, at present, no compliance with Art 13 (2) (d). This requires that States encourage organisations or specially trained personnel as regards "assisting victims, at their request, after criminal proceedings have ended".

Estonia has a 'Legal Chancellor', combining the office of Ombudsman and Constitutional Law watchdog. A few citizen complaints are from victims of crime, but the office-holder told us that he can do little about these complaints other than ask the prosecutor to investigate. It was not clear to us why complaints by victims were treated differently from, for example, complaints by suspects and defendants. However, this was consistent with the view expressed to us that no-one saw this body as one that could protect or advance the rights of victims.

Conclusion and Recommendations

Institutions exist to protect the constitutional rights of citizens, notably that of the Ombudsman, but those rights do not extend to the rights embodied in the European Framework decision.

There is, in Estonia, no forum in which victims can express their views, whether positive or otherwise, except in respect of their own particular case. It is likely that only when such a forum, or general victim support organisation, exists, and when constitutional rights coincide with, or are extended to touch upon, the rights of victims that these will become the subject of legitimate action or complaint.

We conclude that Estonia does have victim support organisations in embryo, but that more funding is needed for them. While the Framework decision does not require a general victim support organisation, Art 13 does require such organisations in the context of proceedings, to be discussed below. Further, the preamble to the Decision states "Suitable and adequate training should be given to persons coming into contact with victims …" (para 10). In the absence of victim support organisations with a broad reach, compliance requires that police and/or prosecutors have such training. In our discussions it became apparent that such training was only now beginning. Again, significant funding is needed for this training to be reach the numbers of personnel in the depth required to satisfy Art 13.

Our judgement is that Estonia is making progress towards compliance with standards affecting victims, but there are also a number of areas in which improvements should be made. We therefore make the following recommendations:

- Ohvriabi or an equivalent organisation needs to be provided with both funding and access to government and prosecutorial councils in order to develop both its practical and policy/research work.

- There should be closer liaison between Government departments and NGOs in victim matters. In domestic violence and child abuse, in particular, where there are often multiple complex problems (such as housing and personal finance), criminal justice responses should be co-ordinated with those of other social services so that victims are properly protected.

- There should be a proper provision of those resources which will lead to an implementation of the European Framework decision: most notably to the police, prosecutors and other criminal justice agencies for forensic equipment and training; to measures in and around courtrooms to bring about the segregation of defendants and victims and their supporters, and to introduce more fully measures – such as video-conferencing and screening – to protect vulnerable and intimidated witnesses; and, as a matter of some urgency, to NGOs to ensure their survival and future development, providing always that they meet with reasonable standards of efficiency and diligence.

- Consideration needs to be given to the way compensation for victims is handled during criminal proceedings.

- The circumstances under which arrest and prosecution discretion is used, and the extent to which the interests and views of the victim are taken into account, should be defined and monitored. Appropriate mechanisms need to be developed and/or maintained which give every victim the right to challenge prosecution decisions (both initial and later decisions) that are contrary to their interests.

- The process that will, under the new Criminal Procedure Code, allow victims to make their views known to prosecutors and judges, and to be heard in trials, is unclear to us. The interests of victims should be taken into account when finalising these proposals.

- Consideration should be given to the provision of legal aid and representation, when resources permit, for victims in serious cases (such as domestic violence and sexual assault) and/or where victims are vulnerable. The need for independent advice is particularly acute while there is no independent victim support organisation that can advise.

- Consideration should be given to the 'fast-tracking' of cases in which speed is of the essence either because of danger to the victim or because of the domestic circumstances of the case.

- A fuller use of appropriately trained women police officers and medical staff should be made in the medical examination and interviewing of child victims and women victims of violence, rape and other serious sexual offences. There is a need for

enhanced training of the police in the needs of victims both at large and in particular groupings (although such training would have undoubted resource implications).

Hungary

18 - 23 November 2001

Attention was devoted primarily to Hungary's compliance with the provisions of the Framework Decision on the Standing of Victims in Crime Procedure and to recommendations which flowed from seeming gaps between those provisions and present and apparent future practice. *Inter alia,* discussions were held with officials of the Prosecutor General, the Ombudsman, the Ministry of the Interior and the Ministry of Justice; with members of the Constitutional Committee of the Hungarian Parliament; academics; a shelter for women and children; and members of NGOs focused on issues of human rights, and the treatment of minority ethnic populations, women and children. This report is thin, and particularly, for example, on the question of the extent of provision of resources for victims. Its thinness reflects the extreme paucity of accessible information touching Module 4 and the difficulty of securing further amplification on the issues we examined.

According to the 1996 International Crime Survey,[1] Hungary has relatively low rates of consumer fraud, burglary and other property crime, and very low rates of corruption and contact crime, but Hungarian crime rates have increased significantly since 1989, and there was said to have been some public alarm at the rise in violence and corruption.[2] Whilst work has been undertaken on crime issues, existing PHARE Justice and Home Affairs programmes have concentrated on the trade in drugs, border controls and organised crime, and there is no report of work in those programmes being directed expressly at victims.

Hungary ratified the European Framework Decision in March 2001, and its provisions will be implemented in stages over the next five years, although some have already been foreshadowed in domestic legislation, and particularly in Articles 53, 54 and 58 of the Criminal Procedure Act of 1973 which touch on the victim's rights to intervene and see papers in and after the trial process, the victim's role as a private prosecutor, and the victim's right to independent legal representation. The ratification of the Decision is relatively recent and its full implementation lies in the future, and delegates formed the impression that, although official interest is being increasingly drawn towards victims issues, and there is an intention to realise its objectives, there may not as yet be a proper appreciation of the cultural, administrative and financial scale of the changes that the decision will entail. A number of Government departments and organs did not wish to assume formal responsibility for the management and care of victims, reflecting, on the one hand, understandable reservations about the appearance of partisanship in conflicts between the State and defendant and, on the other, a conservatism of practice which

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[1] U. Zvekic; *Criminal Victimisation in Countries in Transition,* UNICRI, Rome, 1998.

[2] I. Kertész; 'Budapest (Hungary)', *The International Crime Survey: National Reports,* UNICRI, Rome, 1998

does not fully accommodate the victim. Whilst there is a new office for victims affairs, which should act as a catalyst and focus for activity in future, there are problems of funding, evaluation, organisational infrastructure and practical execution that do not as yet seem to have received adequate attention.

One semantic issue did arise repeatedly, possibly as a result of mistranslation or our own incomprehension. Victim support as it is interpreted in many parts of the world, and particularly by the European Victims Forum, seems to have been understood in Hungary to mean victim and witness protection, an allied but quite separate matter. The emotional and practical support of victims is not to be confused with victim and witness protection. Neither should that support be confined to the victims and witnesses of more serious offences who may be under physical threat.

It appeared that central Government and the criminal justice agencies effectively delegated much of their responsibility for victim support to NGOs. This is not necessarily a problem, but funding was frequently reported to be meagre and precarious. The reach of these NGOs is consequently limited, and their survival cannot be assured. There is a range of such NGOs attending to the needs of specific victim populations such as women and Roma, but they tend variously to provide support, shelter and legal representation to very small numbers, in particular the victims of especially aggravated crimes. Some of the recipients of such specialist services seemed to have become beneficiaries chiefly for reasons of geography, chance access to informational networks or some other contingency. Provision is not comprehensive. The 1996 International Crime Survey reported that Hungarians solidly approved the idea of establishing support services for victims, and the White Ring does provide a measure of such support, but it also diverts considerable attention to crime prevention and assistance in gaining monetary compensation. The State's funding of the White Ring is currently very modest.

There was evident interest at Government and NGO levels about the very special problems of the victimisation of Roma. Indeed, the problem of assaults and abuse of Roma by citizens and police, sometimes persistent, were reported in a 2000 OSCE report.[3] However, as a result of stringent data protection regulations it is impossible to make informed judgements about the extent of the problem, differential rates of victimisation, and the effectiveness of anti-discrimination measures.[4] New and informed ethnic monitoring procedures must be installed if discriminatory practices are to be checked.

There were mixed reports about the extent and quality of the criminal justice system's recognition of, and responsiveness towards, victims and victims' needs. Confidence in

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[3] *Report on the Situation of Roma and Sinti in the OSCE Area,* OSCE, High Commissioner on National Minorities, The Hague, 2000.

[4] A. Krizsán; 'Ethnic Monitoring and Data Protection: The Case of Hungary', in *Ethnic Monitoring and Data Protection: The European Context,* Central European Press, Budapest, 2001.

the police was reported generally by the 1996 International Crime Survey to be somewhat low in comparison with other accession states. More specifically, the police were said by the staff of those NGOs whom we met variously to take the problems of domestic violence seriously and to manage them with appropriate sensitivity, and also to treat them as private matters in which the State had little interest or responsibility. Although Hungary has a 'legality' system under which the police should possess no prosecution discretion, it appears that, in domestic violence cases at least, discretion is often exercised to not arrest and prosecute in circumstances where this might disadvantage the victim. We were told that women victims were not infrequently interviewed by male officers, and sometimes in the presence of the men against whom complaints had been made. We were also told that prosecutors vary in the extent to which they co-operate with the lawyers of victims.

Such inconsistent reports made it difficult for us to make an informed judgement, but it is clear that police and prosecution practices are less than entirely satisfactory, and what was said forcibly was that there is a need for enhanced training of the police in the needs of victims both at large and in particular groupings (and such training would have undoubted resource implications). What would be of undoubted additional value is the institution of dedicated police units focused on domestic violence, child protection and 'hate crimes' such as attacks on homosexuals and minority ethnic populations, together with increased multi-agency working to extend and co-ordinate the criminal justice system's responses to particular populations.

It was reported to us that resource problems affected the supply of the most basic forensic equipment, such as cameras to photograph the injuries sustained by crime victims, as well as the more expensive equipment required for video-conferencing and CCTV interviews. Courthouses make no provision for separate waiting areas for victims, witnesses and defendants, and intimidation and insecurity have undoubtedly ensued.

Other problems highlighted for us included difficulties with child abuse cases where the accused family member continued to live with the victim(s) of the offences. The problems are exacerbated by the length of many trials, reported to us as sometimes lasting up to three years after the offences were first reported to the police.

There is no doubt that there is legal provision for victims to make their interests, voices and views heard by police, prosecutors and courts. However, we were unclear as to how far victims in general are encouraged to do this, and what notice, if any, is taken of victims. Similarly, we were assured that victims are informed of important developments in 'their' cases, but it was not clear what mechanisms are in place for providing information if they are not in court to hear it for themselves. The same is true of release dates when offenders are sent to prison.

Institutions do exist to protect the constitutional rights of citizens, notably that of the Ombudsman, but those rights do not extend to the rights embodied in the European Framework decision and other instruments outside the constitution. It is likely that only when constitutional rights coincide with, or are extended to touch upon, the rights of

victims that these will become the subject of legitimate action. The Ombudsman reported no victims having lodged a complaint.

Our judgement is that Hungary is making satisfactory progress towards compliance with standards affecting victims, but that there are a number of areas in which improvements should be made. To effect those improvements, we make the following recommendations:

- A Victims Resource Centre should be established, preferably in an NGO but adequately supported by the State (as is the case in Norway, for instance), to commission, assemble, review and disseminate materials reporting examples of good and bad practice in the handling of State and private responses to the problems of victims, to develop NGO services and commission research.

- The needs of victims of bulk, mundane crime such as burglary, theft and robbery must always be addressed in any broad future policies and programmes for victims of crime.

- There should be closer liaison between Government departments and agencies in victims matters so that the problems of victims do not get lost in the interstices of departmental mandates. In domestic violence and child abuse, for example, where there are often multiple complex problems (such as housing and personal finance), criminal justice responses should be co-ordinated with those of other social services so that victims are properly protected.

- There should be a proper provision of those resources which will lead to an implementation of the European Framework decision: most notably to the police, prosecutors and other criminal justice agencies for forensic equipment and training; to measures in and around courtrooms to bring about the segregation of defendants and victims and their supporters, and to introduce more fully measures – such as video-conferencing and screening – to protect vulnerable and intimidated witnesses; and, as a matter of some urgency, to NGOs to ensure their survival and future development, providing always that they meet with reasonable standards of efficiency and diligence.

- More detailed consideration should be given to the strategic planning, administrative support and evaluation of the measures to which Hungary is committed under the Framework Decision.

- Consideration should be given to relaxing or modifying data protection regulations to permit a better appreciation of the victimisation of, and official responses towards, Roma and other minority ethnic groups, and to assess the impact of any policies and programmes intended to reduce that victimisation and improve those responses.

- The circumstances under which arrest and prosecution discretion is used, and the extent to which the interests and views of the victim are taken into account, should be defined and monitored. Appropriate mechanisms need to be developed which give

every victim the right to challenge prosecution decisions (both initial and later decisions) that are contrary to their interests.

- The process that allows victims to make their views known to prosecutors and judges, and to be heard in trials, appears to be rather haphazard. It is not clear to us what the rights are of victims, and their lawyers when they have them, in trials. A more transparent system would be advantageous.

- Consideration should be given to the provision of legal aid and representation, when resources permit, for victims in serious cases (such as domestic violence and sexual assault) and/or where victims are vulnerable.

- Consideration should be given to the 'fast-tracking' of cases in which speed is of the essence either because of danger to the victim or because of the domestic circumstances of the case.

- A fuller use of appropriately trained women police officers and medical staff should be made in the medical examination and interviewing of child victims and women victims of violence, rape and other serious sexual offences.

Latvia

16 - 21 December 2001

Attention was devoted primarily to Latvia's compliance with the provisions of the Framework Decision on the Standing of Victims in Crime Procedure and to recommendations flowing from apparent gaps between those provisions and practice (present and future). Discussions were held with officials of the Ombudsman, the Ministry of the Interior and the Ministry of Justice; with members of Legal Committees of the Latvian Parliament; a senior regional prosecutor, judges of two regional courts and Supreme court judges; senior police officials; criminological researchers; and members of an NGO focused on people in crisis, particularly women and children who are victims of sexual and other violence.

This report lacks detail partly because there was little accessible information touching Module 4 available, either in written form or in discussion. This seems to reflect the fact that there is little provision for victims other than that laid down in Latvia's Code of Criminal Procedure and a lack of awareness (on the part of the police and others) of the fact that victims might not report the crime in the first place, or face problems in entering the criminal justice process.

The European Framework Decision has been included in the list of *Acquis* of 2002 to be implemented. We are informed that ratification will be considered only if its requirements are inconsistent with Latvian legislation; if no amendments are needed to the laws, no ratification procedure is required Framework According to the Government "some of its general thrust is provided for in criminal procedure laws both in existence and projected." The government believes that the provision that there is for victims in current and projected laws is adequate.

One semantic issue that arose repeatedly in discussion, possibly as a result of mistranslation or our own incomprehension, concerned 'support' and 'protection'. Victim support as it is interpreted in many parts of the world, and particularly by the European Victims Forum, seems to have been understood in Latvia to mean victim and witness protection, an allied but quite separate matter (the same problem arose in the mission to Hungary). The emotional and practical support of victims is not to be confused with victim and witness protection. Neither should that support be confined to the victims and witnesses of more serious offences who may be under physical threat. In other respects, support for victims appears to be rarely, if ever, considered. In discussions in Riga's main Police Board and the Ministry of the Interior, for example, questions about support for victims – or even victims in general – were met with blank looks and shrugs.

We are not suggesting that Latvian official documents confuse the separate issues of 'support' and 'protection'. However, this distinction does not appear to be appreciated by large numbers of officials and others working in and in relation to the legal system.

General Victim Support

There is no organisation – whether governmental or NGO – which has as its general role the support of victims of crime. This is acknowledged by government: "Currently, no special programme for victim support is developed." Apart from two shelters for battered women that attempt to cater for the whole country we found information on (and had a fruitful discussion with) only one organisation that saw victim support as part of its role. This was 'Scalbes', an organisation for people in crisis, including women and children who are victims of sexual and other violence. The professional staff totals one lawyer, three psychologists and three social workers. Approximately 20% of its clients suffer domestic violence. Bearing in mind its large non-crime-victim client-base, this organisation is a very small one to bear this heavy responsibility. Based in Riga, and funded largely by Riga city council, it takes clients from all of Latvia as there is no other organisation fulfilling its functions elsewhere. One third approx of its clients are from outside Riga.

There is no formalised system for ensuring that needy cases are referred to Scalbes, although sympathetic police officers do give victims of domestic and sexual violence Scalbes' leaflets. The extent of 'unmet need' is indicated by the response to a telephone campaign on domestic violence it ran – it received 300 phone calls from victims in one week.

In addition to Scalbes there are the two shelters mentioned above (one of which is reported to provide some general support), an organisation for children's welfare (including crime victimisation), one or more tenants' associations providing protection against harassment, and a university legal advice clinic (where again there would be a limited, but specialist, victim support element). We were informed by government after our mission ended that there were more organisations on these lines, and that "co-operation with these organisations proved to be very effective, especially in the organising of seminars and training for police officers and social officials." It is regrettable that no-one who we met in Latvia was able to tell us about these activities at the time so that we could visit and ask about these other organisations.

We conclude that Latvia has only one organisation that includes support for victims within its remit. This is limited in its geographical reach, in resources, and in respect of the types of crime and victim it caters for. While the Framework decision does not require a general victim support organisation, Art 13 does require such organisations in the context of proceedings, to be discussed below. Further, the preamble to the Decision states "Suitable and adequate training should be given to persons coming into contact with victims …" (para 10). In the absence of a victim support organisation with trained personnel, compliance requires that police and/or prosecutors have such training.

It was evident in discussion that there was a lack of awareness of the complexity of issues faced by victims of crime and that little relevant training existed, even in highly specialised areas such as child victims and sexual offences. As a senior police officer said, "Maybe we should think about it." Further discussion with government indicated that there have been training courses and seminar programmes carried out jointly between

the police and Scalbes (and, as indicated above, with other NGOs), especially in relation to sexual offences. However, the lack of knowledge of these among the police officers and officials with whom we spoke indicates that much more work on these lines is needed. We were told after the Mission ended that, as a result of this training, all victims of sexual offences "in the city of Riga, the region of Riga, Jurmala and Valmiera … can turn to these specially trained police officers with their problems." We were not able to verify this, however, on our Mission.

Victim Support after criminal proceedings

As noted earlier, there is no organisation with responsibility for victims at all. Thus there is no compliance with Art 13 (2) (d). This requires that States encourage organisations or specially trained personnel as regards "assisting victims, at their request, after criminal proceedings have ended".

Compensation

The Framework decision (Art 9 requires States to ensure that there are adequate arrangements for victims to secure compensation from offenders. Latvian procedures do seem to provide this as victims are parties to prosecutions (see below). There appears to be no State compensation scheme, but this is not required by Art 9. It does not appear to be difficult for victims to secure an order that the offender compensate them (as we were told that prosecutors pursue compensation during criminal proceedings), although some criminal justice officials did comment that some victims expected the police and prosecutors to do all the work for them such as proving the value of goods stolen. This made us wonder whether the system for securing compensation orders was unnecessarily bureaucratic or complicated, but we could not obtain information on whether or not victims encountered unnecessary obstacles as there is no victim support organisation that, in other countries, would raise such concerns. The main problem for victims appears to be that most offenders are too poor to pay compensation. We could not discover whether there are problems in enforcing compensation orders; nor, when fines and compensation are ordered, which are paid first (in the UK, compensation is paid first).

The role of victims in criminal proceedings

Latvia currently operates a 'legality' system under which all cases are in theory accorded equal priority. Thus there should be full investigation in all cases, and prosecutions should always follow if there is sufficient evidence unless certain conditions allow the prosecutor or judge to warn or divert the offender (primarily if the offender is no threat to the public – for example if the offence is not serious, particularly when the offender is a juvenile). In theory, then, initial prosecution decisions, in which victims may wish to be involved, are usually unproblematic.

An amendment of 1999 allowed victims and offenders to reach a 'settlement', although not in serious cases. Where victims wish to withdraw entirely, prosecutors are supposed

to ascertain that there is no intimidation, but we could not discover how this provision works in practice. Amendments to the Criminal Code, apparently likely to be implemented early in 2002, will allow a greater percentage of prosecutions to be diverted than at present. Prosecutors will be able to 'conditionally suspend' prosecution subject to the offender agreeing to certain conditions (including restorative and reparative elements such as compensation and apologies). This should be unproblematic from the victims' point of view as this will only be done if the victim consents (thus complying with Art 10).

The main current (and, we assume, future) safeguard for victims regarding the initial prosecution discretion is that victims have the right of appeal against police and prosecutor decisions to 'close' cases. But the appeal is to a higher prosecutor and we could not discover how often this was exercised or how often the appeal was successful. We were told by a senior prosecutor that occasionally cases are returned for further investigation through this route, and that cases that are initially 'closed' are, consequently, sometimes subsequently prosecuted. After completion of the Mission the government informed us that appeals against police decisions to close cases are considered at least once a month, but we do not know what proportion of these appeals are successful.

The Ministry of Justice told us that the right of appeal would be restricted in future as the State should have the right to control the use of its resources on matters of sole concern to itself (which, it was stated, included prosecution decisions). We could not discover the precise plans for change to this right, but were told, "We will listen to victims but they will not have the right to influence cases." After completion of the Mission the government responded by saying that the right of appeal will not be restricted.

An important feature of the Latvian Criminal Code which potentially gives these rights considerable substance is the right of victims to scrutinise prosecution files when they are passed from the police to the prosecutor. A form is provided for victims to make comments and, if they wish, requests. The prosecutor should then state on the form what action, if any, s/he has taken in response.

Similarly, we were told that victims can give their views on the appropriate sentence, and can appeal against what they see as excessively lenient sentences. We were told (by judges of the Supreme Court) that such appeals were very rare. Figures were promised but have not yet been provided. It is not clear whether this right of appeal is also likely to be restricted in future.

Victims can be 'parties' in criminal proceedings (Art 100 (3) (4) Criminal Procedure Code) and may therefore offer comments at trial, ask judges to ask witnesses questions, and question defendants directly. Judges decide whether or not suggested/attempted questions are appropriate and on the appropriate level of charge where this is a discretionary matter. It appears that victims may question defendants about matters of concern to many victims that are not strictly 'evidence' in adversarial systems – such as why the defendant victimised that victim. Similarly they may tell the court matters that would not be regarded as 'evidential' but matters of 'impact' and opinion.

The Framework Decision does not require that victims be allowed to communicate their views on cases to the authorities, still less does it require that victims be allowed to influence decisions. These are matters for each State. However, Art 2 requires that victims be accorded 'respect and recognition'. Recognition is currently well provided, and it is hoped that this will not be diluted by the proposed changes. 'Respect' is more problematic if victims' views are heard but not acted upon, although this is a problem that many justice systems grapple with inadequately. Thus in relation to sentence one judge stated (in common with judges in many other jurisdictions) that the victim's views and harm suffered were taken into account along with all other factors, but would not specify whether or not the views of victims influence sentences.

There is no one agency with formal responsibility for the management and care of victims. An official told us that "The interests of the victim are protected by the public prosecutor." It does seem that the only agency with a direct victim concern is the public prosecution office, although the police also claimed responsibility for victims as they are crucial for the success of prosecutions. However, this appears not to recognise the conflicts of interest that sometimes arise between police/prosecutors and victims. An agency with responsibility for victims without a conflict of interest is not required by the Framework Decision, but victims will sometimes need access to independent help if their needs are to be catered for and their rights protected, particularly in respect of Art 4 (the right to receive information) and 5 (ensuring that victims understand relevant steps of their criminal proceedings).

Art 6 of the Framework Decision requires that victims have access to advice, provided free where appropriate, and have free representation where it is warranted. We were told that no such advice or representation is provided in Latvia, something that the Ombudsman identified as problematic in some cases. After completion of the Mission the government stated that "The victim can turn to a lawyer and the Bureau for Human Rights to receive independent advice. There is also a bureau at the University of Latvia Law Faculty that provides consultations for free. Article 34 of the law On Advocacy provides for law consultations for people with low income." We have no information on how many victims know of these provisions (since no-one we spoke to in Latvia appeared to know of them), how many seek to use them, or whether these limited facilities can cope with the demand (or would be able to if all victims knew of their availability).

It is not clear to us how well informed victims are of their rights or in relation to the other information required by Art 4 (although the police should provide assistance and relevant information). We were told by a prosecutor that around a third of all victims exercise their right to scrutinise their files, which suggests that many victims are well-informed, but we have no robust data on this. Similarly, we could find no figures on the extent to which victims appealed against decisions they found unpalatable, which would also shed light on how aware they are of their rights (and how accessible they are in practice). A prosecutor told us that the police should tell victims about their rights and give them a leaflet but do not always do so. If this is a widespread problem (something, again, on which there appears to be no robust data) then it would indicate a need for better training and monitoring of the police. Prosecutors inform victims of decisions to

'close' their cases, and judges inform all parties of their trial rights at the start of the trial. We do not know how comprehensible information provided in these ways is, or what possibility, if any, exists, for victims to seek elaboration. However, because victims are 'parties', it seems that it is usual for them to attend trials, and they are therefore more likely than victims in adversarial systems to be told of, and be able to seek elaboration of, their rights. Nonetheless it was (sensibly in our view) suggested to us that many victims, if they are distressed, do not 'take in' matters in the way they would under normal circumstances.

Regarding domestic violence, the police were said by some (notably the police themselves and prosecutors) to take this seriously and to manage these cases with appropriate sensitivity. However, Scalbes and others said this was not so – although they observed that many problems lay outside the power of the police. Substantive and procedural law made it difficult to secure convictions, cases often take a long time, offenders remain at home whilst cases are pending, and punishments are lenient and of little value in reducing the propensity to be violent. Thus many victims feel the police are little use, a view shared by the police themselves and illustrative of the fact that there is little they can do about it. Because of this, few cases are prosecuted. This allows prosecutors and police to say, as they did to us, that such cases are pursued with vigour but that the problem is insignificant. Indeed, a senior prosecutor even stated that most domestic violence is committed by women against men.

It was reported to us that resource problems affected the supply of the most basic forensic equipment, such as cameras to photograph the injuries sustained by crime victims, as well as the more expensive equipment required for video-conferencing and CCTV interviews. Courthouses make no provision for separate waiting areas for victims, witnesses and defendants, and intimidation and insecurity have undoubtedly ensued. According to the government, "in the framework of reconstruction of old court buildings and construction of new court buildings, separate waiting rooms are foreseen."

Other problems highlighted for us included difficulties with child abuse cases where the accused family member continued to live with the victim(s) of the offences. The problems are exacerbated by the length of many trials, reported to us as sometimes lasting up to three years after the offences were first reported to the police.

There is no doubt that there is legal provision for victims to make their interests, voices and views heard by police, prosecutors and courts. However, we were unclear as to how far victims in general are encouraged to do this, and what notice, if any, is taken of victims. Similarly, we were assured that victims are informed of important developments in 'their' cases. Although the Code provides that police officers while carrying out any investigatory activity **must** inform persons involved in them about their rights and duties (and a record should be made of this by the police officer) it was not clear what mechanisms are in place for providing information if victims are not in court to hear it for themselves.

The requirement in Art 4 (3) of the Framework Decision to notify victims, who might be in danger, about the release of offenders from prison is not part of Latvian law or procedure unless the victim is in a special protection programme.

Vulnerable victims

All victims are potentially vulnerable, and many feel vulnerable in the presence of the alleged offenders in their cases. This is why Art 8 and 15 of the Framework Decision requires appropriate arrangements to avoid victim/defendant contact in court buildings and, in general, seeks to minimise secondary victimisation. Resource constraints mean that compliance in Latvia with these provisions is poor.

As far as 'officially' vulnerable victims are concerned, one court room is already equipped with video conferencing/CCTV equipment so that child victims need not appear in court. Further development, and the extension of this type of measure to other vulnerable victims, is currently under discussion. Latvia is clearly moving towards compliance with the relevant part of the Framework Decision (Art 2 (2)), but (rightly) is doing so whilst bearing in mind its European Convention obligations towards suspects and defendants. According to the police, vulnerable and intimidated victims are provided with legal and other help, as needed, by the State. As the government told us, protection of child victims has received significant attention in recent years.

An example of this is that the prosecutor or court can ask a "counsellor" to represent the child victim, and this is paid by the state (Criminal Procedure Code, Art 254). We do not know how often, and in what types of case, this provision is invoked, or what the role is of the counsellor. Another example is the 'fast-tracking' of cases in which speed is of the essence either because of danger to the victim or because of the domestic circumstances of the case. The government states that "We agree with the need for acceleration of the speed of trial procedure. Due to that there are amendments in the current Criminal Procedure Code and the Criminal Procedure Law is soon about to come into force." However, we do not know what these accelerated procedures involve, whether they apply specifically to cases in which there are vulnerable victims, or how well they are likely to work.

The police have a specialist psychological service, and this can be made available to help vulnerable victims. However, the service is small (4 specialists) and based in Riga. It therefore has limited coverage and we were unable to ascertain how many had accessed this service. Riga police also have a specialist rape suite and a video-recording suite. There are no specialist units, nor is there special training. The police were unaware of the problems (recently identified in States such as the UK) of mildly disabled victims whose disability makes it difficult for them to cope with normal criminal justice procedures, but where the mildness of the disability enables them to disguise it. They appeared to be keen to learn more about this.

The police claim that they inform the prosecutor of vulnerability and intimidation (when they know about it) but "the question is to what extent the prosecutor is willing to take this into account." All victims appear to be allowed to have someone speak for them,

whether lawyers or carers, there not being the same problems in inquisitorial systems as in adversarial systems with witnesses who have difficulty in giving oral evidence. All victims should be regarded as potentially vulnerable and thus in need of support in and before court, there being no such provision in Latvia.

Conclusion and Recommendations

Institutions, notably that of the Ombudsman, exist to protect the constitutional rights of citizens but those rights do not extend to the rights embodied in the European Framework decision. It was stated (by Supreme Court judges) that victims were generally satisfied by court actions – the criticism of alleged leniency in sentencing, for example, in public opinion surveys, coming from the *general* public, rather than victims.

However, there is, in Latvia, no forum in which victims can express their views, whether positive or otherwise, except in respect of their own particular case. In our opinion, only when such a forum, or general victim support organisation, exists, and when constitutional rights coincide with, or are extended to touch upon, the rights of victims that these will become the subject of legitimate action or complaint. The Human Rights Ombudsman reported no victims having lodged a complaint. The view of the government, as expressed to us, however, is that "The rights of victims are ensured on a reasonably high level and so far there has been no need for a special forum." This view misses the point that, until victims perceive themselves, and are generally perceived, to be entitled to a wide range of rights and services, their dissatisfaction will not be widely expressed in public, and so the need for a forum will not be apparent.

We are concerned that Latvia is making insufficient progress towards compliance with standards affecting victims. We therefore make the following recommendations:

- The establishment of an umbrella victim support organisation with trained personnel, broad offence coverage and full geographical coverage. This organisation should be available to support victims after the offence, and during and after criminal and civil proceedings. It should cater for victims whose crimes are not reported, and cover all crimes. This organisation should also incorporate a resource centre to commission, assemble, review and disseminate materials reporting examples of good and bad practice in the handling of State and private responses to the problems of victims, to develop NGO services and to commission research.

- Specialist services for victims of domestic and sexual violence are currently geographically and financially restricted. Services on the 'Scalbes' model should be provided across the whole country.

- There should be closer liaison between Government departments and agencies in victims matters. In domestic violence and child abuse, in particular, where there are often multiple complex problems (such as housing, health and personal finance), criminal justice responses should be co-ordinated with those of other social services so that victims are properly protected.

- There should be a proper provision of those resources which will lead to an implementation of the European Framework decision: most notably to the police, prosecutors and other criminal justice agencies for forensic equipment and more extensive training than has been possible thus far; to measures in and around courtrooms to bring about the segregation of defendants and victims and their supporters, and to introduce more fully measures – such as video-conferencing and screening – to protect vulnerable and intimidated witnesses; and, as a matter of some urgency, to NGOs to ensure their survival and future development, providing always that they meet with reasonable standards of efficiency and diligence.

- Consideration needs to be given to the way compensation for victims is handled during criminal proceedings.

- The circumstances under which arrest and prosecution discretion is used, and the extent to which the interests and views of the victim are taken into account, should be defined and monitored. Appropriate mechanisms need to be developed and/or maintained which give every victim the right to challenge prosecution decisions (both initial and later decisions) that are contrary to their interests.

- The process that allows victims to make their views known to prosecutors and judges, and to be heard in trials, appears to be rather haphazard. It is not clear to us what the rights are of victims, and their lawyers when they have them, in trials. A more transparent system would be advantageous.

- Consideration should be given to the provision of a systematic system of legal aid and representation, when resources permit, for victims in serious cases (such as domestic violence and sexual assault) and/or where victims are vulnerable. The need for independent advice is particularly acute while there is no independent victim support organisation that can advise.

- The proposed new accelerated procedures need to be monitored to see whether they adequately cater for victims where fast-tracking would be particularly beneficial.

- A fuller use of appropriately trained women police officers and medical staff should be made in the medical examination and interviewing of child victims and women victims of violence, rape and other serious sexual offences. There is a need for enhanced training of the police in the needs of victims both at large and in particular groupings (although such training would have undoubted resource implications, and the training that has already taken place is acknowledged).

- The requirement in Art 4 (3) of the Framework Decision to notify *all* victims who might be in danger about the release of offenders from prison should be incorporated into law and procedure.

Lithuania

4 - 8 February 2002

Lithuania has been free from Soviet control for only 11 years and continues to celebrate its independence. Many aspects of social development are severely constrained by the lack of resources, but there is extensive evidence of restoration and regeneration, both in the buildings and in the social institutions we encountered.

It was impressed upon us that various aspects of Lithuanian culture have a direct bearing on the issues we were there to examine. For example:

> Successive generations of oppression have resulted in a culture of privacy. Personal problems are rarely discussed outside of the family, and it would only be in extreme situations that crimes such as sexual or domestic violence would be reported to the Police. Family has a high priority, but the concept of 'community' was not familiar - for example in the context of witness protection.
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> Public policy places a high priority on services for children, who are the future of the new Republic. There are therefore considerably more provisions for child victims than for any other category of victims and witnesses.
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> Lithuania is proud of its culture of equality. Men and women are respected equally and the women we met (including the Women's Crisis Centre) did not refer to discrimination in either the employment or social position of women. We were told that, as a small country, surrounded by five other States, migration is part of their history and there are no known problems related to racial difference.

In a population of 3.8million, Lithuania has a recorded crime rate of 88,000 p.a., an increase of approximately 30% over the past ten years. Figures provided by the Law University informed us that in a recent crime survey 26.7% of the population reported having experienced a crime in the past year suggesting a very high rate of attrition. In 2001, 378 murders and attempts were recorded and 176 rapes. There has been a marked increase in street crime, particularly robbery, in recent years, which is partly related to the increasing use of drugs.

Our investigations were concentrated on the provisions of the Framework Decision on the Standing of Victims in Criminal Proceedings adopted by the Council of Ministers of the European Union on 15th March 2001. Where significant gaps in provision have been identified or where relevant question could not be answered, these are included in our recommendations.

Throughout the week, we were treated with the utmost hospitality and given considerable help by our hosts. We were fortunate in being able to meet the most senior

representatives in the various government departments and agencies of criminal justice and they answered our many questions with generosity and attention to detail. However, as in other missions, we were constantly constrained by the absence of relevant documentation. In particular, there were repeated references to the new Criminal Code, which is due to be enacted later in the year but which is still in draft form and not yet translated into English.

There is no clear statistical information relating to the age, sex and ethnicity of victims and witnesses. More particularly there is no information regarding the number of people who actually benefit from the various rights and services which are available other than the contact records maintained by the relevant NGOs. This is not surprising as similar data has only become available in Western countries in recent years. Most of this report is therefore based on the statements of the various respondents whom we met and the extent to which their evidence was corroborated by different agencies.

The right to information relating to criminal proceedings

The system of justice in Lithuania is based on the Inquisitorial model and the current law provides for victims to be full parties to the criminal proceedings. The Police have a legal responsibility to inform victims about the progress of their inquiries and the victim has the right to request particular lines of investigation. The Police must also inform the victim of their final decision as to whether or not a charge will be brought and any reasons for that decision. The victim is required to sign a statement that this information has been provided to them. Similarly, the Prosecution Service is required by law to keep victims informed of any decisions relating to the case. The victim, as a full party to the case, has a right of access to the Prosecution file and may question aspects of the investigation.

Victims have a right to appeal against a decision, either by the Police or at a later stage by the Prosecutor. Their appeal will normally be dealt with by a higher authority within the agency concerned, although ultimately there is a right to take the appeal to a court. Our respondents were not aware of cases where the latter remedy had actually been used.

The courts have a duty to inform all victims of the dates and place in which hearings will be held and also to notify the victim of the final outcome.

We had no reason to doubt that victims were kept fully informed of the progress of their case, or of their status in law. There was far less clarity, however, about the extent to which victims were able to appeal against decisions at any stage, or the amount of support or assistance they would get if they did so.

Regarding the release of offenders from a custodial sentence, we were told that victims would be given information if they ask but that no formal procedures are in place.

Protection of victims and witnesses in the community

Lithuania has established laws on the protection of parties to criminal cases, enacted in 1997. Parties may include defendants, victims, witnesses, judges, etc., and to date 50 people have received protection. The responsibility of implementation lies with the Police. The programme is part of a joint agreement with Latvia and Estonia and currently relates only to the most serious crimes of war crimes and genocide. The trafficking of human beings is now also defined as a serious crime and parties are covered by the provisions.

Protection measures include physical protection, re-location (either temporary or permanent), psychological counselling and, in the most serious cases, change of identity. Travel and subsistence costs are paid for by the State. The new code, which is due to be enacted later this year, will cover all serious crimes. Domestic violence is regarded as a serious crime only when it results in in-patient hospital treatment for more than 21 days. All measures can only be applied with the full consent of the person concerned.

There are no provisions for protection of victims or witnesses in the community other than those covered by the Act referred to. The Police did not think that community "cocooning" would work in the culture of Lithuania.

The law provides that the intimidation of witnesses is a criminal offence, but we had no data as to how often this law is used.

We raised the issue of victim protection with the prison authorities in the context of threats and intimidation which may occur during a prison sentence. The issue had not been considered and it appears that no complaints have been made. Under the terms of the European Human Rights provisions, prisoners have only recently been given the freedom to communicate by telephone or letter without censorship and it is possible that problems of this sort may now arise.

The rights of victims during the criminal hearing

As full parties to the case, victims have a right to be heard at any stage of the criminal proceedings. We were told that all victims have a right to legal representation at court, but all respondents stated that they were only aware of this right being exercised where victims had the ability to pay their own legal fees or free of charge in the most serious of cases or in the case of particularly vulnerable victims.

By law, all victims attend a criminal trial, except where there are pressing reasons why this is not possible and where there has been a written agreement from the court in advance. It was not clear whether this legal requirement applied only in cases in which victims were required to give evidence, in which case the position of the victim might be similar to that of a compellable witness in any other country.

Apart from the duty to give evidence, most legal rights of victims in the criminal trial relate to their position as civil parties and their entitlement to claim compensation. We

were told that it was normal for compensation to be considered during the criminal trial and that orders are frequently made against the offender. Senior judges at the Court of Appeal claim that 95% of cases involve compensation, but this may have been related to the level of crime dealt with in that court. Other respondents, particularly the NGOs, confirmed the rights of victims in this context, but were dubious as to whether or not much compensation was actually received in the majority of cases. Victims have the right to be represented in their applications for compensation, but this would normally only occur in the circumstances listed above. The prosecutor has a duty to advise unrepresented victims of their rights and to assist them in making their claims.

There are no special waiting areas for victims or prosecution witnesses and apart from child witnesses, there is no provision for either preparation or protection at court. Judges and court officials we met had not considered these issues and were not aware of any problems. Expenses are paid for victims and witnesses to attend court. Technically, this provision extends to foreign nationals who are victims of crime in Lithuania although our respondents were not aware of any cases in which this had applied.

Enforcement of compensation payments

The enforcement of all financial orders is the responsibility of bailiffs. The bailiff system is currently the subject of reform. The system is intended to be self funding and all victims are required to pay a fixed fee of 50 Litas (£20) for the service. Bailiffs are empowered to seize property or enforce payments from bank accounts providing there are sufficient funds to pay for a defendant's outstanding debts. Compensation to victims and legal fees have equal priority followed by the payment of fines.

We were told that in the future, there are plans for the bailiffs fees to be available from the new compensation fund, subject to a means test.

Mediation and restorative justice

Apart from the provision for compensation payments, there are no opportunities for mediation or restorative remedies. Respondents suggested that although most victims were more interested in restitution than punishment, society was not ready to accept such alternatives at present.

State compensation

Currently, there is no state compensation for victims of crime. Medical services including psychological treatment are available, free at the point of delivery and there are limited social security provision for all in need. These provisions include emergency payments for subsistence, and free essential services such as water and electricity supplies.

There are plans for a new Compensation Fund to be financed from levies upon offenders appearing in court. The proposals are not yet finalised and there is no information as to

how payments will be distributed but all victims will be eligible regardless of whether or not their offender has been identified.

Free legal assistance

All parties to a criminal case are entitled to free legal advice and support, subject to a means test. In practice, it appears that for most victims this would normally be limited to a one-hour consultation. Representation in court will normally only be available in the most serious cases or for particularly vulnerable victims.

The funding of free legal advice is the responsibility of local government at the municipality level. In Vilnius, the service was provided through two agents: the Lithuanian University of Law and the Police Academy. Our respondents, representatives of the Lithuanian Open Fund, were concerned about the quality of legal advice which is available through this programme. They believe that most advice is given by law students at the two academic institutions who are acting as agents. Only the very broadest of statistical information is available – e.g. the University of Law provided advice to 4,000 people last year and the Police Academy 3,000. There is no information about the type of legal advice which was needed or the status of the people asking for information. It is therefore impossible to know how many of the cases involved parties to a criminal action, and certainly no indication of how many of those might be victims.

The general view of the practitioners we spoke to is that legal advice is so limited, the majority of people would not bother to go through the lengthy procedures and elaborate forms which have to be completed in order to obtain such limited advice. It is reasonable to assume that there is very little support available from this source to assist victims in accessing their rights.

Child victims

There was a general consensus among all respondents that children's rights are given a very high priority in Lithuania. Local government is responsible for the provision of services for children who are abused or at risk and there is a Children's Ombudsman to ensure that children's rights are protected. Children who are victims of serious crime are expected to be supported by social workers employed by local government and specialist psychological services and counselling are provided. We had no reason to doubt that these services were available and probably of a good standard.

If a child is required as a witness in court, it is required by law that a responsible adult, either a social worker or a school teacher will attend the court with them. The role of the adult supporter is to prepare the child for the hearing and to support them while they give their evidence. They do not answer questions on behalf of the child, but can intervene in the proceedings if they feel that the special needs of the child are not being properly acknowledged. Everyone appeared to be satisfied that this arrangement was working well. There were no additional requirements on either the Police or the Prosecution Services to undertake special preparation or support.

We asked if this type of provision could be extended to vulnerable adults, particularly those with learning disabilities. Without exception, none of our respondents had considered this special category of witness. There was a general view that they "could" have this type of support, but there appeared to be no experience in practice.

The law provides that evidence can be given through a closed circuit television link in certain cases, although in practice there is very little equipment available and hardly any experience of this provision actually being used. Evidence is, however, frequently given in camera.

Non Governmental organisations for victims

Representatives of government departments reported the existence of a number of highly-valued NGOs dealing with victims of crime. Most are specialist services for women victims, mainly of domestic violence, as well as a small number of organisations for sexual, ethnic or religious minorities. One crisis centre provides services for male victims of domestic violence. There is also a Missing Persons Helpline, which is aimed mainly at trying to trace the missing person rather than providing other personal services.

There appears to be a fundamental problem regarding government funding for NGOs. We were told on several occasions that it is not legally possible for the government to provide permanent funding, as there is no appropriate budget line available for this purpose. Funding, when it is available, appears to be for one-year projects only and cannot therefore form a suitable basis for establishing regular or reliable services. It is possible that a change in the law may be required before the government is able to play its part in contributing to the stability and growth of what otherwise appear to be very professionally run organisations.

Lithuanian Victim Support Association

This organisation was repeatedly cited as the only agency providing a generic service to all victims of crime. The Association was set up in 1998, under the auspices of the Law University of Lithuania. The President is the Dean of the Faculty of Police Science and all members of the committee are staff at the University. The key worker, who is already well-known to the European Forum for Victim Services, is both a lawyer and a psychologist. In all, there are 53 members of the Association, all of whom are either staff or students of the University. 20 more students are due to join in the near future. A careful selection programme is employed, requiring that all volunteers are already trained in either psychology or law in order to provide both emotional support or legal advice.
There is no additional training available to the members at the moment.

The organisation has no source of income other than the fees paid by its members. The University provides accommodation and administrative facilities and the members provide their time.

The aim of the Association is to improve the law of Lithuania to be more sensitive to the needs of victims; to change public attitudes to victims through both the written and broadcast media, and to provide direct support to victims. Their services are promoted through posters and leaflets which are widely available through the Police and Prosecution Services.

The basic leaflet sets out all the rights that victims are entitled to, including the rights in a criminal court; their involvement in procedures following a crime; complaints against the Police, and the right to ask for protection. A telephone number is provided for everyone who needs either extra information, legal advice or personal support. There is an agreement that everyone who reports a crime to the Police will be given this leaflet. The procedure was confirmed to us independently by the Police authorities and the system appears to be working reasonably well. The telephone number is available to victims throughout Lithuania, although there are no offices outside Vilnius. The line is open from 9.00a.m.-5.00 p.m., Mondays-Fridays, and on average ten calls are taken each day -more after there has been publicity.

Victims needing legal advice may receive this directly from a legally trained volunteer or they are referred to the free legal advice centre run by the Law University previously referred to. People are offered personal interviews if they need additional advice and people needing emotional support are invited to come to the University to meet a suitably trained volunteer. The staff and volunteers are willing to travel to other parts of Lithuania to meet victims who need this personal service. There also appears to be a very good relationship with other NGOs – for example there are regular referrals between the Women's Crisis Centre and the Victim Support Association.

Clearly, the Crime Victims Association would like to expand its work. It would benefit from having a more independent status and also from the ability to expand into other areas of Lithuania. Given the size of the organisation, it is remarkable that it has already achieved a considerable status within government and Police circles.

Women victims

To some extent, the special needs of female victims of domestic violence have been acknowledged in Lithuania. There appears to be less recognition of the special needs of victims of rape and sexual assault, few of which actually come to the notice of the authorities or the NGOs. It is impossible to know if this is due to a low incidence of these crimes or the lack of reporting.

There is some evidence that the training of Police has been changed in recent years to include special training for Police officers dealing with female victims of both rape and domestic violence. All Police training is carried out either within the Police Department of the Lithuanian University of Law or the Police Academy in Vilnius. As already noted, the Dean of the Faculty of Police Science at the University of Law is also the President of the Lithuanian Crime Victims Support Association and that there is a strong emphasis on victims' rights within that faculty. New training programmes have been developed, based on international research and experience, aimed at helping Police to be more

sensitive to the special problems produced by these crimes and supportive to the women who report them.

We were told that, following the end of the Soviet control of Lithuania, there has been an almost complete turnover in personnel in the Police Service. More than 75% of all current serving Police officers are under the age of 30. This means that most have been trained during the last ten years and that reforms in Police training can have an almost immediate impact on the service being provided.

The Women's Crisis Centre in Vilnius confirmed that the Police response to the women they are dealing with is usually rapid and sympathetic. There is far more concern, however, about the action which is actually taken. It is generally agreed that there are few prosecutions, although most respondents suggested that this was as much to do with the unwillingness of women to proceed in legal action against their husbands as it was the responsibility of the authorities. We were told that it is culturally unacceptable for people to go outside the family to seek help in these situations and it would only be in the most extreme cases, where no other protection is available, that a woman would go to the Police.

There also appears to be a problem with the law, in that there are no provisions whereby a male offender can be removed from the family home during the critical period of investigation, particularly if he is the legal owner or tenant. In all cases where protection is required, it is the woman and children who have to leave. The law provides for the property to be divided if the abuse persists over an extended period. Our evidence, from the both the Police and the Prosecution Service, was that no specific protection programmes are available to help female victims of domestic or sexual violence, other than that provided by the Women's Crisis Centres.

There are five Women's Crisis Centres in Lithuania, including the centre in Vilnius which we visited. This centre was set up in 1993 and is run by two paid staff (a psychologist and a social worker), supported by 15 trained volunteers. They are open from 9.00a.m -5.00p.m., Monday-Friday, and are currently dealing with 300 cases per-annum. The women who go to them are seeking help with domestic problems which include economic, psychological abuse or physical or sexual violence. There is no separate organisation dealing with rape and a small proportion of the cases coming to the
Women ' s Crisis Centre involve non-domestic rape. They have received considerable support from the Scandinavian countries. The house in which they work was brought by the Norwegian government and is still partly owned by them. The extensive renovations were carried out with finance from Danish women's organisations. The training of the staff and volunteers took place in Denmark. Running costs were originally provided from Norway, but their only income currently is from a United States charity and a contribution from the Lithuanian government. The government contribution is provided on an annual basis and there is no guarantee that this will continue.

The house comprises an office and a comfortable counselling room which can also be used for training and volunteer support. There is also a small family room at the back of

the building which was intended as a shelter for one family at a time. However, it has recently been condemned by the health authorities, as there is no natural light, and they therefore have no accommodation to offer to any women in danger.

Given the very limited resources and the lack of financial security provided to the Women's Crisis Centre, it is interesting to note that all the authorities and officials we spoke to confirmed that they rely entirely on this voluntary work to provide all the necessary services and protection to female victims of crime.

Conclusion and Recommendations

It is clear that the provisions for criminal justice in Lithuania provide extensive rights to victims of crime insofar as they are kept informed of all stages of the process and have opportunities to both intervene and to complain when they are not satisfied with the process of investigation or trial. As so often commented, it was difficult to obtain clear information about the number of occasions on which victims choose to intervene or complain, or the extent to which victims are able to access either free legal advice or representation.

We therefore recommend that:

- Steps are taken to monitor all these provisions so that data can inform both the authorities and the NGOs of aspects of their role with which victims may need more information and support.

- There was no information available about the position of victims or witnesses who are resident in another State and who need support to assist them in taking part in the legal process. We were told that provisions exist, but there was no means of knowing if they are used. This should also be monitored.

- Consideration should be given to providing secure waiting areas in court buildings. Some initial research, aimed at identifying the level of concern experienced by witnesses, would be helpful in assessing the need.

- Consideration should be given to developing means by which victims who receive unwanted contact from prisoners can be protected.

- Similarly, in cases where victims or witnesses may be in danger, they should be actively informed when an offender is due to be released.

- Means need to be found for requiring an offender to leave the home where abuse has taken place, pending enquiries or proceedings. It is possible that the law may need to be changed to provide for this.

- The training programmes currently in place for Police officers in the Lithuanian Law University should be extended to all Police training, with similar sensitisation for prosecutors.

- The government should consider means by which permanent funding can be given to relevant NGOs, such as the Women's Crisis Centres and the Lithuanian Victim Support Association, to enable them to develop their essential services to victims of crime in the community.

Poland

11 -15 March 2002

Like other countries in transition, Poland experienced a rapid increase in reported and recorded crime after 1989. According to the European Commission's Regular Report of November 2001, there was, for instance, a 105% increase in recorded crime between 1989 and 1999, with a 20% rise in domestic burglary between 1995 and 1999.[1] There is evidence from victimisation surveys that these trends are in some measure artefacts of reporting and recording processes, and that crimes of violence actually decreased in volume (although increased in severity) at a time when reported and recorded figures rose.[2] The recorded crime rate itself now seems to be following that path, and the European Commission Delegation Monthly Pre-Accession Report for February 2002 reflects that 'the upward trend seems to have been halted. Recorded crime (...) was reversed for the first time in 2001'. More concretely, there was a decline between 2000 and 2001 in the recorded rate of burglary of 10.7%, car theft (-12.6%) and of pickpocketing (9.6%). Crime surveys tend to be a rather more helpful indicator of the distribution and incidence of crime as it is experienced by a population. A survey conducted in 2000 showed that the risks of becoming a victim in Poland were 2.8% from contact crime, 1.7% from theft of a car, 3.1% from burglary, and 23% overall,[3] and it is clear that property crime in Poland, as elsewhere, dwarfs crimes against the person.

We concentrated, first, on the extent to which the work of the criminal justice system of Poland has anticipated or complied with the provisions of the 2000 European Union Framework Decision on the Standing of Victims in Criminal Procedure; and we sought, second, to make recommendations about closing the gaps between those provisions, on the one hand, and present activities and activities planned by the Government of Poland, on the other.

Inter alia, discussions were held with police officers; prosecutors; judges; officials of the Ministry of Justice; the Minister of Justice; the Ombudsman; staff of the British Embassy; the Polish Bar Association; the Centre for Social Information Association; Monika P»atek of the Ombudsman's Office; the All-Poland Forum for Victims; the Assistance for Victims Foundation; teachers and students of the Law Faculty of Warsaw University; and members of NGOs. Those we met were invariably more than helpful and candid, and we came to some firm conclusions, although it must be appreciated that our stay in Poland

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1 G. Barclay *et al.*; *International comparisons of criminal justice statistics 1999*, Home Office Statistical Bulletin, London, 2001.

2 A. Siemaszko; 'Poland', in O. Hatalak *et al.* (eds.); *The International Crime Victim Survey: National Reports,* UNICRI, Rome, 1998.

3 *Criminal Victimisation in 17 Industrialised Countries: Key findings from the 2000 International Crime Victims Survey,* Wetenschappelijk Onderzoek-en Documentatiecentrum, the Netherlands.

was of short duration, we were able to peruse very few documents before the mission, and some of our impressions are necessarily superficial.

Poland is in rapid transition, and there has been an accelerating programme of Government activity focused in large part but not wholly on the preparation of an appropriate legislative framework for accession to the European Union. One consequence of such a pace of change has been a proliferation of new statutes and protocols, much still in draft or before Parliament, and it was our impression that officials themselves sometimes found it difficult to keep abreast of new developments.

There has been talk about legislating for victims' rights and criminal injuries compensation[4] in Poland for some 30 years, but activity markedly accelerated after the early 1990s. The most significant new document in the territory covered by Module 4 is the *Polish Charter of Victim Rights,* prepared by the Ministry of Justice and becoming effective in 1999. The Charter distils existing domestic Polish provisions for victims; builds on the 1985 UN Declaration on Basic Principles of Justice for Victims, the 1983 European Convention on Compensation for Victims of Violent Crimes, and recommendations of the Committee of Ministers to Member States; and it foreshadows the European Union Framework Decision on the Standing of Victims in Criminal Procedure.[5] It is a far-reaching and comprehensive charter whose implementation should secure almost all the services and rights to which victims are entitled. It has been very widely circulated, some 700,000 copies having been distributed, and we were heartened that the police, NGOs and prosecutors seem to have been most thorough in ensuring that the victims and potential victims of crime are aware of its existence and their attendant rights.

There has been extensive training and preparation of police officers and others in matters affecting victims under the police programme to assist victims of crime, a programme that included, *inter alia*, co-operation between the police and State and voluntary bodies in victim support, and educational projects in crime prevention. The police also co-operate fruitfully with the new All-Poland Forum for Victims of Crime, which we shall touch on below.

Poland is beginning to work to implement the standards included in the Charter. By way of example, one can point to the work aimed at the establishment of the State Compensation Fund to ensure that victims of crime receive compensation from the State in situations where the perpetrator, for different reasons, cannot compensate the damage done as a result of the offence he or she committed.

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4 A small, prototypical criminal injuries compensation scheme, the Foundation for Assistance to Victims, was founded in 1986 with money supplied by a State-owned legal publishing house. It gave awards to some 20-30 recipients a year.

5 Although the Government of Poland cannot yet be a signatory to the Framework Decision, it has publicised the Decision and educated judges and prosecutors in its provisions.

The first preliminary draft bill on the State Compensation Fund was prepared at the Ministry as early as in May 2000. The draft was then elaborated in detail by the Team appointed by the Minister of Justice. While working on the draft bill, they paid special attention to the need to ensure that the proposed regulations complied with the provisions of the European Convention of 24 November 1983 on compensation for victims of violent crimes, as well as with the practice adopted in Europe aimed at providing assistance, including financial assistance, to victims of crime. The Team's work resulted in the presentation on 30 November 2001 of a draft bill on the principles of granting compensation for victims of crime.

The draft bill stipulates granting compensation for damages incurred as a result of some types of offences to victims who are in a difficult financial situation. Such compensation would be paid from the State Compensation Fund, which would be composed, *inter alia*, of subsidies from the state budget, deductions at the rate of 30% from the post-penitentiary fund referred to in art. 43 § 1 of the Executive Penal Code, sanctions imposed by the court in the form of a payment to the injured party or to the public purse, amounts recovered by the Fund by virtue of the right of recourse, as well as voluntary payments and other receipts. Persons entitled to receive compensation would be those who have become victims of intentional offences resulting in severe detriment to their health, as well as dependants of those victims of crime who died as a result of an offence.

The compensation would cover lost earnings, medical and hospital expenses, funeral costs, lost means of maintenance as well as costs of legal representation in the case. The principal solution which has been adopted in the draft bill is the assumption that a victim of crime could receive compensation even before final sentence in a case is passed.

It should be noted here that the State Compensation Fund will be supplemented by funds from the Foundation for Assistance to Victims of Crime, which will no longer operate once the Fund is established.

Many of the officials whom we met in the Ministry of Justice and criminal justice agencies seemed to have given thought to victims' matters and they were knowledgeable about the relevant national and international legislation. However, the spread of awareness across Government and the criminal justice system was clearly uneven. Whilst we were struck by the care with which the police disseminated information on victims' rights, for example, we were unimpressed by our meeting with the Vice-President of the Bar Association whose organisation had given no consideration to victim and witness care and did not appear mindful of the need to give consideration in the future.

We were also unimpressed by the design of the courthouse which we visited: it contained no provision for separate waiting rooms for injured parties and prosecution witnesses; no screens or facilities for video-links; no seating for witnesses who might be in distress whilst testifying; and a poor courtroom layout with a potentially threatening, narrow distance separating defendant and witness in the courtroom. We understand that only two courtrooms were otherwise equipped in the whole of Poland, and that they were available only for the hearing of cases in the region in which their courts sat. The scarcity

of resources may explain some part of that inadequate provision, but we were told repeatedly about cultural lag and inertia in the judiciary and legal profession and no imagination seems to have been given to the better use of space and elementary, often inexpensive aids in the courthouse and courtroom.

There are the beginnings of a more effective response to the problem of domestic violence, centred on police co-operation with other agencies, and, in particular, the wider dissemination between agencies of information about people at risk. Direct police intervention has grown, albeit modestly,[6] and there is growing investment in schemes to isolate the perpetrator and inform victims about their rights.

Staff from the Centre For Women's Rights made three pertinent points:
1. that while they felt the Police Act had sufficient strength, it was being rendered ineffective through poor application by generalist police officers who did not have the necessary training in dealing with the complexities of domestic violence.
2. that the Police Act needed to be supported by other legal instruments such as restraining orders. Until this happens, women would remain vulnerable, and all the more so if they report such crime. Given this obstacle, most invariably suffer in silence.
3. that, due to their lack of confidence in the 'system', women were increasingly turning to the Centre for advice and support. However, where women then felt able to report the crime, Judges invariably denied staff from the Centre the right to accompany and provide expert testimony in court. For those unable to afford legal assistance, this effectively lead to a sense that justice had been denied.

The Caring for Nobody's Children organisation also made a number of pertinent points:
1. that until recently child abuse was not officially recognised as a problem in Poland and no relevant records were kept;
2. that in a recent survey, 27% of medical practitioners reported they had seen child patients displaying symptoms of child abuse but had not reported the cases to the authorities;
3. that legal institutions have not changed materially since 1932, with the result that Polish Law still remains focused on protecting parental authority rather than on the protection of the rights of the child;
4. and that there is widespread resistance to change throughout Polish society. This is compounded by inertia in legal thinking, resulting in large part from an absence of lawyers with appropriate interest and expertise in this area

Given the peculiar difficulties and sensitivities of these areas of work, we were pleased to note that special training is now being given, or is about to be given, to police officers. Apart from issues of a general nature (relating to all categories of victims of crime), there are also topics devoted to individual categories of victims of crime, such as those related

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[6] We were told, for instance, there were 399 more direct police interventions in domestic violence in 2001 than in 2000, but we were not told what the base figure was nor detail about what those interventions amounted to.

to the victims of domestic violence and the victims of sexual offences. We were told that such themes are present at all stages of the police training and have been included in the programmes of specialist training. Currently, work is underway on the "Algorithm for police officers to deal with juvenile victims and witnesses of offences". Based on discussions with representatives of the Nobody's Children Foundation, training sessions will be conducted (for selected teams of police officers) in local police units. The forms and methods of training will be further developed, *inter alia,* through the twinning programme Phare '99 component 5 – Assistance to Victims of Crime. The open formula of the Police Programme to Support Victims of Crime makes it possible for the activities which have already been undertaken to be supplemented by new content and new solutions aimed at meeting the needs of victims of crime. It would seem appropriate also to create a training programme in this field for the public prosecutor's office.

We would hold that such work should be complemented by the establishment of dedicated domestic or family violence units and rape units whose members could develop a more specialised competence, a body of professional experience and links with relevant agencies and NGOs. We understand that a multi-agency prototype of this kind has already been launched by prosecutors in a high crime area of Warsaw, and it is an example that could be followed elsewhere.

Many services are supplied to victims by the third sector. There has been a proliferation of victim-focused NGOs across Poland, all inevitably young, and developing in such numbers and at such a rate that no one seems properly to have taken stock of what is afoot. The All-Poland Victims Forum and Monika P»atek of the Office of the Ombudsman are currently trying to ascertain what is being by whom, for whom and where. One of their concerns is to identify and disseminate good practice, partly to prevent an unnecessary re-invention of existing good or bad organisational solutions to problems. It was apparent to us that Dr P»atek will be a most effective catalyst across a span of areas touching the rights of victims and victims' services, and that she will play a consequential role at an especially formative stage in the development of policies and programmes. It was also apparent that the All-Poland Victims Forum is a most useful clearing-house of information, not only having created and maintained links with the better-established NGOs, and itself an NGO,[7] but also working on the important boundary between the private sector and the Ministry of Justice. It is propitious that its president is a senior civil servant who works in the Minister's Office and that its sponsors include former prime ministers. Inventory-making is one of the necessary first steps in the development of policy in a new area, and we commend the way in which the Ombudsman's Office and the All-Poland Victims Forum are proceeding.

We noted that Lidia Mazowiecka, the president of the Forum and an official of the Ministry of Justice, worked well with prosecutors and the Ministry of Education but she did not appear to have obvious counterparts or contacts in the other Ministries. We were told that no one official or group of officials has responsibilities for the welfare of

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[7] With funding, for example, from the American Embassy, the Bartory Foundation and the municipality of Warsaw.

victims and witnesses at the Ministry of Internal Affairs and Administration, for instance, and that discussions on police matters chiefly took place with officers in Police Headquarters instead. Indeed, there was a marked absence of reference to links with the staff of the Ministry of Internal Affairs and Administration[8], despite what should be its central role in formulating policies in matters affecting police liaison with the public, witnesses and victims. The lack of proper collaboration between Ministries can only impede the development of what is still a fledgling area of policy. The police are the first, and usually the only, contact formed by the victim with the State in the aftermath of a crime, and it is imperative that some official or group of officials of Ministry of Internal Affairs and Administration be charged with formal responsibility for the development of policies in the area and for participation in the work of the All-Poland Victims Forum. It has been argued that the Ombudsman's Commissioner for Victims of Crime is located organisationally within the Ministry of Internal Affairs and Administration, but she has a quite circumscribed, albeit invaluable role, and does not have charge of routine policy-making within the Ministry. There is a need for some other official within the Ministry to acquire 'ownership' in the problems of victims and witnesses. For like reasons, we would recommend that officials from the Ministries of Social Welfare and Health be nominated to play a more active role.

Links are still being negotiated between the State and a private sector that is of comparatively recent origin, towards whom responsibilities are still emerging, and whose role and competences must still be somewhat unfamiliar. NGOs were certainly consulted about important documents, such as the Charter of Victim Rights, and relations between individuals could be cordial and fruitful. The All-Poland Victims Forum appears to be playing its intended part as a co-ordinator and facilitator, as is Dr P»atek, but much remains *ad hoc* and fragmented, more dependent on chance acquaintance and the good-will of individual officials than on properly-organised, formal arrangements. The larger and better-established NGOs have cultivated a local expertise and some knowledge of good practice internationally, and we were reassured to be told by Lidia Mazowiecka that the State valued their advice. None the less, in what is a relatively novel area of policy-making, where NGOs are undertaking almost all the pioneering work and developing much of the practical expertise, it is imperative that they become more securely and systematically entrenched in Government and criminal justice working groups considering victims' issues.

Again, there are some promising beginnings. In 2000, for example, the Ministry of Justice organised a number of sessions with the participation of judges, public prosecutors, attorneys, representatives of non-governmental organisations, and police officers, in which different initiatives promoting victims' rights were discussed. Such activities continued into 2001, especially with the organisation of the 11th International Conference for Victims' Rights, in which there was a session on the provision of legal advice for victims of crime, as well as a training programme on Respect for the dignity of

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[8] It may be material that the Ministry of Internal Affairs and Administration formed no part of our original programme of meetings and that, when a meeting was subsequently arranged, its officials failed to attend.

victims of crime. The Ministry of Justice has used the framework of these conferences to engage the relevant non-governmental organisations in the legislative work of the Ministry. The comments and opinions submitted by the representatives of those organisations are being taken in to account in law-making.

Many Polish victims' NGOs appear to address quite specific groups of victims or quite specific aspects of victimisation. Whilst there are professional bodies focused, say, on the needs of child victims of abuse,[9] of women victims of violence, or women who have been victims of trafficking,[10] we heard of no generalist victim support organisation. We suspect that some groups of victims, such as the adult male victims of theft or criminal violence, are structurally excluded from access to the services of the third sector. The Center for Social Information Association, modelled on Citizens Advice Bureaux and a member of the All-Poland Forum for Victims, did give general advice to all who visited its 22 offices, including the small proportion of its clients who were loosely defined as victims,[11] and it did refer victims to other NGOs where appropriate. Similarly, law students in 6 universities do staff law clinics and tender legal advice to indigents, including indigent victims. But neither organisation is a dedicated victims service organisation in any sense that would be accepted by the European Victims Forum. There are evident consequences for advocacy; service provision; the representation of many, indeed most, victims' interests in Government; in the training of practitioners and professionals, and for much else. Whilst we were told, for example, that the police were beginning to receive training in the problems of violence and sexual abuse of women and children, there seemed to be no comparable grounding in the problems faced by the victims of property crime or by adult male victims of violence. Property offences can be distressing, indeed sometimes just as distressing as offences of violence, and it would be wrong to dismiss them as less important or as undeserving of attention.[12] An allied problem is the geographical reach of victims' NGOs. Whilst the cities seem supplied with a range of services, particularly for women and children, rural areas can be poorly served.[13]

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9 The Nobody's Children Foundation, for instance, was founded in 1991 and worked on a very broad front, collaborating with refuges; staffing a helpline; offering counselling to abused children; lobbying; educating; and training practitioners.

10 There are NGOs like the Œwietokrzyskie Association for Assistance to Victims of Crime which organise courses, popularise security systems for buildings, and publish advice. The Consumers Federation concentrates to some extent on offences against consumers.

11 6% of enquiries in 2000 were described somewhat loosely as 'judicial'; and 3% as 'citizen vs authority'. Judicial enquiries, in turn, were broken down into 'court procedures in general', possibility of appeal against sentence, and, more pertinent to victims and witnesses, 'rules of calling witnesses: their rights and duties', and 'rights and duties of an auxiliary prosecutor in a criminal case'. Biuro Porad Obywatelskich; *Annual Report 2000,* Warsaw, 2000.

12 See, for instance, M. Maguire; *Burglary in a Dwelling,* London, 1982.

13 To be sure, some NGOs have established outreach programmes. In 2000, for example, The Women's Rights Center instituted a new project – 'Women on the Move' – designed to reach smaller communities.

Given the current lack of any such general organisation at the core of services for victims in Poland, it may, *faut de mieux*, be incumbent on the State or criminal justice agencies, working, perhaps, through the All-Poland Victims Forum, to act as its midwife. Certainly that is what was done in similar circumstances in the 1970s by District Attorneys in the United States in setting up victim-witness programmes and by the Royal Canadian Mounted Police in establishing victim service units in Canada. In time, no doubt, that new organisation could become independent or semi-independent of the State, but we saw no sign as yet of any interest in its sponsorship by the private sector, and no adequate system would be complete without it.

We understand that the possibility of financing the operations of NGOs by the Minister of Justice is significantly limited by the regulations now in force. However, pursuant to art. 43 of the Code of Execution of Penalties, a post-penitentiary fund has been established which receives its revenues from deductions at the rate of 10% from the remuneration for work of persons sentenced to the penalty of deprivation of liberty. The fund is intended for persons deprived of liberty who have been released from penal institutions and detention centres, as well as for their families, and in exceptional cases also for persons wronged as a result of an offence, or their families.

The detailed principles and the procedure of providing assistance from the resources of this fund have been regulated by the ordinance of the Minister of Justice of 18 September 1998 (Dz.U. No. 124, item 823), pursuant to which the tasks related to the provision of assistance are carried out by the directors of penal institutions, presidents of the district courts, as well as by associations, foundations, organisations, institutions, churches and other religious unions, and persons of public confidence.

The annual plan for distributing the resources from the fund, before being approved by the Minister of Justice, is submitted for decision to the Chief Council for Social Re-adaptation and Assistance to Sentenced Persons, which comprises, apart from representatives of the government administration and state institutions, also representatives of non-governmental organisations acting for the benefit of sentenced persons and their families.

In 2001 the resources of the post-penitentiary fund were used by 36 social organisations to whom the Minister of Justice allocated the overall amount of 1,309,000 PLN. The largest part of those resources, in compliance with the purpose for which the fund was created and operates, were received by entities which support sentenced persons and their families; however, about 30% of this amount was allocated to organisations which also deal with providing assistance to victims of crime. These were, *inter alia*, the "Educator" Association in £om¿a, the Alternative Education Study in £ódŸ, the Social Prevention Association in Czêstochowa, the AGAPE Association in Czêstochowa, the Lone Mother House in Œwieradów Zdrój, the Nobody's Children Foundation in Warsaw, the Social Information Centre and the Citizens' Advice Bureau in Warsaw.

We trust that such funding will, if necessary, be supplemented by additional monies provided by the Polish Government and intended specifically to ensure the viability of

victims' NGOs and, at their core and most importantly, a generalist victims organisation that can reach all types of victim across Poland.

Of course, it is incumbent on the NGOs, in return, to be accountable by applying adequate standards of service, including the proper training and supervision of staff. One important task of the All-Poland Victims Forum is to develop such standards in collaboration with its members, and to make adherence a condition of affiliation. The Polish third sector is new, rapidly developing and fluid, and steps need to be taken to assure minimum standards in the organisation and the delivery of services.

The drafting and enforcement of standards by the Forum would be one such step. Another would be the institution of twinning arrangements between Polish NGOs and their longer-established counterparts in the existing European Community. The Nobody's Children Foundation, for instance, impressed us favourably, and it was clearly working in a professional manner across a number of fronts, but it had had little formal contact with, say the United Kingdom's National Society for the Prevention of Cruelty to Children, an extremely experienced body dealing with very many of the same issues, and much could be gained by some form of partnership. More generally, we propose that a formal mentoring and advisory role be given to the European Victims Forum, the federation of established victims service associations in the European Union, in collaboration with the All-Poland Forum, to engender a generalist Polish victims service organisation and develop appropriate standards.

Conclusion

A most promising start has been made in a comparatively brief space of time. There is an array of often highly professional and well-connected NGOs, an impressive Charter of Victim Rights, a purposeful Victims' Ombudsman and a most useful All-Poland Victims Forum. Officials and practitioners are beginning to be engaged and knowledgeable. Almost all those we questioned commented upon a continuing improvement in the victim's lot, in the more sensitive treatment of victims and witnesses by police, judges and prosecutors, and in a growing collaboration between the public and private sectors.

What is still chiefly lacking is the assured resources and a properly-conceived implementation strategy to guarantee fulfilment of the provisions of the Charter of Victim Rights and the continuing vitality of the third sector; a nation-wide victims' organisation that delivers services to all victims and, especially in the case of Poland, to currently excluded victims, including the victims of property crime; and a fuller formal involvement in that work of nominated officials from Ministries of the Interior and Social Welfare.

Recommendations

We recommend that:

- Steps be taken to ensure the adequate funding, planning and monitoring of the implementation of the Polish Charter of Victim Rights.

- Court houses be adapted to provide separate and secure waiting accommodation for injured parties and prosecution witnesses; and screens and seating for witnesses where necessary.

- Dedicated family violence units and rape units be established by prosecutors and police.

- Some official or group of officials in the Ministries of the Interior and Welfare be charged with formal responsibility for the development of policies for victims and witnesses and for participation in the work of the All-Poland Victims Forum.

- Competent NGOs become more firmly and systematically entrenched in Government and criminal justice working groups considering victims' issues.

- A new organisation providing services for all victims be established with the assistance of the All-Poland Victims Forum and the European Victims Forum.

- Where appropriate, and where they would find it helpful, NGOs should be twinned with NGOs in similar areas of work in the European Union.

- Attention must be given by relevant Ministries, and the Ministries of Justice and the Interior above all, to assuring the financial viability of the key NGOs.

- Medical practitioners, social workers, teachers and others who have professional contact with children should report well-founded suspicions of child abuse to the police.

- Amendments be made to the criminal code to protect the rights of the child.

- There be awareness training programmes on child protection issues for criminal justice agencies.

- Formal inter-agency child protection procedures be defined, agreed, and set within a proper framework for monitoring effectiveness over time.

Romania

25 February - 1 March 2002

Attention was devoted primarily to Romania's compliance with the articles of the Framework Decision on the Standing of Victims in Crime Procedure and to recommendations flowing from apparent gaps between Romania's formal provisions and actual practice (present and future). Discussions were held with officials of the Ministry of Interior, the Ministry of Justice and the Ministry of Health and Family; with senior prosecutors and police officials; an Opposition member of Parliament; criminological researchers; the head of a journalists' association; and members of several NGOs.

As will become apparent, the problems facing victims of crime have been given little attention within government and wider society. It was explained to us in a meeting with senior police officers that there is an emphasis in Romania on finding offenders. This is, however, changing, particularly in relation to domestic violence and child victims. We did not discover whether Romania had ratified the European Framework Decision.

General Victim Support

There is no general victim support organisation in Romania. However, there are several legal centres that provide legal support for victims, such as the legal clinics set up on behalf of the Community and Safety Mediation Center.[1] And the Foundation for the Development of Civil Society is planning to establish a well-funded national network of citizens' advice bureaus on UK lines. Again, no specialist victim services as such will be provided in this way, although no doubt some victims will be able to benefit from them.

Specialist Victim Support

There are a few specialised organisations that cater for traumatised victims of crime as well as other persons in need. We visited a domestic violence crisis centre, one of only very few in Romania. It was created in 1996, and is government funded. It appears that the other major cities each have a similar organisation. Coverage appears to be patchy, however -it is dependent on funding and on the local provision of multi-disciplinary skills

The centre which we visited is multi-disciplinary, and includes several professional staff, mostly part-time -a lawyer, psychologist, psychiatrist and support staff. Although it is primarily for victims of domestic violence "we don't refuse anyone." Clients include victims of sexual violence, for example. It sees clients in person (around 1000 since the centre was established around 5 years ago). It also has a 24-hour help-line. It receives

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[1] Http://www.cmsc.ro.

around 15-20 telephone calls each week (approximately 2,500 since they were established). The centre offers treatment, therapy and so forth, and refers clients on to agencies providing other services (e.g. local authorities regarding housing, social support and so forth). A Shelter catering for around 8 adults and children used to be attached to the centre; that no longer operates, but there are plans to re-open it in a new location. There are other shelters to which clients are referred, however.

There is no formalised system for ensuring that needy cases are referred to this organisation, although it is in the telephone directory and some clients are referred to it by the police. There used to be leaflets but none are now available.

Although there is currently little co-ordination of victim services, the Ministry of Health and Family, Directorate of Family and Social Assistance, is planning to establish standards of services and cooperation between the various initiatives, particularly regarding victims of violence including sexual offences (women and children, including the whole family). Also a national campaign was launched in February 2002 to raise public consciousness about these issues.

Compensation

The Framework decision (Art 9) requires States to ensure that there are adequate arrangements for victims to secure compensation from offenders. Romanian procedures do seem to provide this as victims are parties to prosecutions (see below).

There is no State compensation scheme; although this is not required by Art 9, there are plans to introduce a scheme to compensate victims of serious violence. We did not find out whether Romania ratified the 1983 European Council directive on compensation for victims of violent crimes. It was said however that the implementation of a compensation scheme will be problematic as it will be difficult to secure adequate State funding.

It does not appear to be difficult for victims to secure an order that the offender compensate them if the offender is arrested and prosecuted (as we were told that prosecutors pursue compensation during criminal proceedings). The main problem for victims appears to be that most offenders, even if they are detected and prosecuted, are too poor to pay compensation. We could not discover whether there are problems in enforcing compensation orders. However, when fines and compensation are ordered compensation is paid first.

The role of victims in criminal proceedings

Romania currently operates a 'legality' system under which all cases are in theory accorded equal priority. Thus there should be full investigation in all cases, and prosecutions should always follow if there is sufficient evidence unless (in less serious cases) certain conditions allow the prosecutor or judge to warn or divert the offender (see below). In theory, then, initial prosecution decisions, in which victims may wish to be involved, are currently usually unproblematic. An important exception to this principle

is that of cases that are categorised as relatively minor cases (a misleading category that, significantly, includes most domestic violence cases). Here, the victim's views are determinative. Otherwise, victims appear not to be consulted. However, officials from the Ministry of Justice said that arrangements between parties might be taken into account; this appears to refer to victim/offender mediation, although we could find no reference to this in the Criminal procedure Code.

Since there is no 'scale' of charges (that is, different offences for different levels of seriousness of, for example, bodily harm), consultation with victims on the seriousness of the charge and plea bargaining does not arise. We were told that victims are always informed of the decisions of prosecutors.

Under Art 18 of the Criminal Code either the prosecutor or court can drop a case, or apply an "administrative sanction" instead of prosecuting fully. This can only be done if the case is objectively minor. It is recognised that what may appear minor could be significant for the victim. There has therefore long been provision to appeal to a senior prosecutor against these decisions. Recognising the lack of independence in this form of appeal, in 1999 the Constitutional Court decided that victims should also be able to appeal to a court. However, no procedure has been established for such appeals. Thus some judges have refused to hear these appeals, although we were told that others have done so, and that some such appeals are successful (although no figures have been provided).

A revised Code is in the early planning stages. It will provide for a formalised appeal system for victims as well as other matters, but no details are yet available.

As with all or most of the former 'Soviet bloc' countries, victims are parties to prosecutions. An important feature of the Codes in these jurisdictions, including that of Romania, is the right of victims to scrutinise prosecution files when they are passed from the police to the prosecutor, and to see some documents in advance of that stage. Further, victims may offer comments at trial, ask judges to ask witnesses questions, and question defendants directly. It appears that victims may question defendants about matters that are not strictly 'evidence' in adversarial systems -such as why the defendant victimised that victim. Similarly they may tell the court about matters that would not be regarded as 'evidential', but which are matters of 'impact' and opinion, which might affect the sentence. All witnesses and victims give evidence in court under normal circumstances.

The Framework Decision does not require that victims be allowed to communicate their views on cases to the authorities, still less does it require that victims be allowed to influence decisions. These are matters for each State. However, Art 2 requires that victims be accorded 'respect and recognition'. Recognition is currently well provided. 'Respect' is more problematic if victims are not consulted in most areas of decision making, although this is a problem that many justice systems grapple with inadequately. We were told by criminologists in the Ministry of Justice that, because under Romanian law all people (that is, all victims) are equal, sentencing and other legal decision making is

based on objective factors only- thus excluding consideration of the different subjective impact of crimes on different victims.

There is no doubt that there is legal provision for victims to make their interests, voices and views heard by police, prosecutors and courts. However, we were unclear as to how far victims in general are encouraged to do this, and what notice, if any, is taken of victims. Similarly, we were assured that victims are informed of important developments in 'their' cases, but it was not clear what mechanisms are in place for providing information if they are not in court to hear it for themselves. A safeguard could be the provision of legal assistance to victims at the state's expense for victims with insufficient funds. We are not aware that this is provided in Romania, except in one case specified by article 173-3 of the criminal procedure code: "When the instance considers that, for some reason, the victim, the civil party or the party bearing the civil responsibility cannot handle her own defense, it orders, ex officio or upon request, enforcement of the measures for appointing a "defendant". However, legal aid for victims is not required by the Framework decision and it is rarely provided in other jurisdictions.

Victims are not consulted about the release of 'their' prisoners, nor told of the release date. We do not know what is the situation regarding such matters as 'no contact' clauses.

Vulnerable victims

All victims are potentially vulnerable, and many feel vulnerable in the presence of the alleged offenders in their cases. This is why Art 8 and 15 of the Framework Decision requires appropriate arrangements to avoid victim/defendant contact in court buildings and, in general, seeks to minimise secondary victimisation. Resource constraints mean that compliance in Romania with these provisions is poor, although there are plans for the future.

Similarly, all victims can be vulnerable to aggressive questioning or questioning aimed to confuse or mislead. Unlike in adversarial systems, judges in inquisitorial systems such as in Romania can control this to some extent, thus reducing the danger of secondary victimisation by the defence lawyer. We could not discover how effective this safeguard is, however, or how often judges intervene for this purpose.

As far as 'officially' vulnerable victims are concerned, we understand that no court rooms are equipped with video conferencing/CCTV equipment. The only provision for this category of victims (seen, in Romania, as exclusively children) is 'administrative' – i.e. there are some specially trained police and prosecutors, outside expert help is brought in by the police where necessary, and interviews are handled accordingly. Further development, and the possible extension of this type of measure to other vulnerable victims, is currently under discussion. The new Code may include provisions on this. The draft includes provisions related to the protection and assistance to witnesses, including protection of identity, when integrity and freedom are in danger; and protection at trial, including hearings through video-conferencing, the use of screens, and voice distortion. Moreover, intimidation or threats against victims and witnesses are regarded as crimes

(see Penal Code -Article 260). Romania is clearly moving towards compliance with the relevant part of the Framework Decision (Art 2 (2)).

We were concerned to discover whether the Roma are a vulnerable group in the sense of being discriminated against or badly treated by State agencies or the population at large. Apador, a human rights NGO, was our only source of information on this. Apador was not able to speak about the Roma as victims in general, or about their treatment by the police and other agencies in general. However, we were told that many Roma are victims of police maltreatment and violence. Moreover, they are discouraged by their own official representatives at local level from complaining: this is said to undermine local 'protocols' between those representatives and the local police/gendarmes. If this type of discrimination and maltreatment is replicated in other ways, there could be cause for concern about the treatment of the Roma when they complain of crimes committed against them.

All victims appear to be allowed to have someone speak for them, whether lawyers or carers, there not being the same problems in inquisitorial systems as in adversarial systems with witnesses who have difficulty in giving oral evidence. All victims should be regarded as potentially vulnerable and thus in need of support in and before court, there being no such provision in Romania.

It seems that there are very few prosecutions for domestic violence. This is due to a combination of under-reporting by victims, lack of police action and inadequate legal powers for police and courts. However, senior police officers told us that every local police area now has a domestic violence officer, and there is police training in general and specialist victim issues.

Also some significant legal changes in relation to domestic violence were made a year or so ago. They allow the courts to give more protection to women alleging domestic violence prior to the conclusion of the trial. They also give the police arrest powers in cases where injuries are not life-threatening (this used to be a condition of arrest, we were told), and allow the courts to impose severe punishments. However, it remains the case that if the victim withdraws the complaint the police and prosecutor cannot continue the case, and they do not look into the reason for the withdrawal. In cases of burglary and robbery, by contrast, the police and prosecutor need take no notice of the victim.

We were told that the police are now more responsive to domestic violence than they used to be. However, more needs to be done. For example, an Opposition Member of Parliament, Mona Musca, is currently sponsoring a Parliamentary Bill aimed at strengthening the law. As well as providing strengthened powers to police and courts, the objective is to create a unified civil/criminal response that both protects victims and tackles the sources of violence. Thus mediation and diversion will be encouraged where appropriate. Help lines will be established. Publicity and education will be increased. The legislation, if passed, will create a Commission for the Prevention of Family Violence through which much of this work would be done. The Commission would also monitor domestic violence and the response of official agencies to it, with a view to formulating

the most effective ways of tackling the problem; and strengthen cooperation between local authorities, police officers and prosecution services, forensic doctors, psychologists and the community.

Mihai Horga, head of the Directorate of Family and Social Assistance, told us that a conference was held on behalf of the Ministry of Health and Family, to compare six projects introduced also by other MPs: Deputies Ovidiu Brinzan and Carmen Moldovan, and Senators Petre Roman and Simona Marinescu. As a result, the Government supports the principle of a "Restriction Order" for violent husbands and partners to leave the family domicile. Also the new draft Code includes special provisions for witnesses under 16 years old in cases of domestic violence. It seems to us that all these approaches are to be commended. How ewer, changing the law is not enough.

Cultural attitudes and practices also need to be changed. In this, training can be important. The increased specialist training of late (provided, for example, by the National Institute for the Magistracy) is acknowledged, but this appears to still be rather basic and restricted.

Trafficking of persons appears to be a particular problem in Romania. In an attempt to combat this, special protection measures for victims of trafficking were created in 2001. There are special trial protections (Law no.678/21.11.2001 on prevention and combating trafficking in persons, published in the Official Journal of Romania, Part I, no.783/11.12.2001), and physical, psychological, medical and social assistance is available.

Victim Support after criminal proceedings

As noted earlier, there is no organisation with general responsibility for victims. There is therefore no post-proceedings support. Thus there is, at present, no compliance with Art 13 (2) (d). This requires that States encourage organisations or specially trained personnel as regards "assisting victims, at their request, after criminal proceedings have ended".

Conclusion and Recommendations

There is, in Romania, no forum in which victims can express their views, whether positive or otherwise, except in respect of their own particular case. It is likely that only when such a forum, or general victim support organisation, exists, and when constitutional rights coincide with, or are extended to touch upon, the rights of victims that these will become the subject of legitimate action or complaint.

We conclude that Romania does not yet have any general victim support organisations; whilst it has some specialist organisations, and general organisations that can, inter alia, help victims, this is an ad hoc system and more funding is needed for them. While the Framework decision does not require a general victim support organisation, Art 13 does require such organisations in the context of proceedings, to be discussed below. Further, the preamble to the Decision states "Suitable and adequate training should be given to persons coming into contact with victims..." (para 10). In the absence of victim support organisations with a broad reach, compliance requires that police and/or prosecutors

have such training. In our discussions it became apparent that such training was only now beginning. Again, significant funding is needed for this training to reach the numbers of personnel in the depth required to satisfy Art 13.

Our judgement is that Romania is making progress towards compliance with standards affecting victims, but there are a number of areas in which improvements should be made. We therefore make the following recommendations:

- The establishment of an umbrella victim support organisation with trained personnel, broad offence coverage and full geographical coverage. This organisation should be available to support victims after the offence, and during and after criminal and civil proceedings. It should cater for victims whose crimes are not prosecuted, as well as those that are. This organisation should also incorporate a resource centre to commission, assemble, review and disseminate materials reporting examples of good and bad practice in the handling of State and private responses to the problems of victims, to develop NGO services and to commission research.

- There should be closer liaison between Government departments and NGOs in victim matters. In domestic violence and child abuse, in particular, where there are often multiple complex problems (such as housing and personal finance), criminal justice responses should be co-ordinated with those of other social services so that victims are properly protected.

- There should be a proper provision of those resources which will lead to an implementation of the European Framework decision: most notably to the police, prosecutors and other criminal justice agencies for forensic equipment and training; to measures in and around courtrooms to bring about the segregation of defendants and victims and their supporters, and to introduce measures – such as video-conferencing and screening – to protect vulnerable and intimidated witnesses; and, as a matter of some urgency, to NGOs to ensure their survival and future development, providing always that they meet with reasonable standards of efficiency and diligence.

- The circumstances under which arrest and prosecution discretion is used, and the extent to which the interests and views of the victim are taken into account, should be defined and monitored. Appropriate mechanisms need to be developed and/or maintained which give every victim the right to challenge prosecution decisions (both initial and later decisions) that are contrary to their interests.

- Consideration should be given to the provision of legal aid and representation, when resources permit, for victims in serious cases (such as domestic violence and sexual assault) and/or where victims are vulnerable. The need for independent advice is particularly acute while there is no independent victim support organisation that can advise.

- Proposed reforms of the law relating to domestic violence should be given priority. It is not enough that the letter of the law be changed; more training of police,

prosecutors, judges and administrators is needed, and appropriate resources allocated. Consideration should be given to the 'fast-tracking' of cases in which speed is of the essence either because of danger to the victim or because of the domestic circumstances of the case.

- There is a need for enhanced training of the police in the needs of victims both at large and in particular groupings (although such training would have undoubted resource implications).

The Slovak Republic

14 - 18 January 2002

The Slovak Republic has experienced a significant increase in the volume of reported crime since 1989, although changes in reporting criteria and the classification of offences make it difficult to talk sensibly of trends. In 1989, there were some 47,000 registered crimes. The figure rose to 146,000 in 1993 and then fell to 94,000 in 1999. Crimes of violence grew from some 8,000 in the early 1990s to 12,000 in 1999, a substantial proportion of which, 75%, were committed against women (although, most significantly, that figure excludes incidents of domestic violence).[1] Convictions rose and fell during the period: 22,968 people were sentenced in 1989 for a total of 31,704 offences; the comparable numbers grew to 25,567 and 34,669 in 1993; and dropped to 21,550 and 32,256 in 1999.

It is reported that domestic violence is not treated with proper seriousness by criminal justice agencies and the State,[2] and that women are exposed to substantial informal pressure by family and others not to report or testify. The 2000 *National Human Development Report Slovak Republic* states 'The growth of violent crime [against women] has been huge and a weak legal awareness prevails in the society. Rape and domestic violence are frequently underestimated, causing insufficient attention to these crimes.'[3]

We concentrated, first, on the extent to which the work of the criminal justice system of the Slovak Republic has anticipated or complied with the provisions of the 2000 European Union Framework Decision on the Standing of Victims in Criminal Procedure, followed the models of good practice laid down by the European Victims Forum, and implemented the articles of the 1985 United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuses of Power. We sought, second, to make recommendations about closing the gaps between those provisions and models, on the one hand, and present activities and activities planned by the Government of the Slovak Republic, on the other.

Inter alia, discussions were held with police officers; prosecutors; judges; officials of the Ministry of the Interior and the Ministry of Justice; the Minister of Justice; academics; staff of the British Embassy; and members of NGOs centred on issues of human rights, transparency, and the support of women and child victims and of victims at large. Those we met were invariably helpful and candid, and we came to some firm conclusions,

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1 *National Human Development Report: Slovak Republic 2000,* United Nations Development Programme, Center for Economic Development, Bratislava, 2000.

2 According to the Alliance of Women in Slovakia, 'there is not even a reference term for domestic violence in legislation in Slovakia'.

3 *National Human Development Report: Slovak Republic 2000,* p. 75.

although it must be appreciated that there were very few documents which might have been of use to our report and written in English or French, and our mission to The Slovak Republic was of short duration.

The Slovak Republic is in rapid transition not only from the old regime but also in anticipation of its accession to the European Union. It has embarked on a busy legislative programme to prepare the appropriate statutory framework for membership and it is there that effort in the area covered by Module 4 appears principally to have been directed by the Departments of State managing the criminal justice system.

According to the Criminal Procedure Act, 1961, Victims' Rights Investigators have an obligation to tell victims about their rights at the conclusion of their enquiries. They do so orally, and require victims to sign a statement confirming that their rights have been communicated. Those rights are contained in Sections 43 to 51 of the Criminal Procedure Act, 1961, which is currently under revision, and they cover rights:

1) to claim compensation for damage;[4]
2) to file a motion for the taking of evidence or for providing supplementary evidence;
3) to have access to the files;
4) to attend the main hearing and subsequent appeal in open court;
5) to give his or her opinion on the evidence submitted; and
6) to make a closing speech.

It is only in their report of the offence, prepared by the police at the end of the preparatory phase of an investigation and signed by the victim, that one sentence mentions that the victim acknowledges that she or he has been informed about his or her rights by the investigator. Victims could not always have fully understood or remembered rights communicated in that way and at that time.

Section 46 of the Code of Criminal Procedure lays down that competent authorities are obliged to inform victims of their rights and to enable them to exercise those rights, but the staff of all other criminal justice agencies whom we met told us they had no responsibility for providing information about any rights to victims. It is evident that there is a mismatch between law on the books and law in action, and we conclude that there is a need for accessibly written leaflets to be distributed by police officers at the time of the initial report by the victim, and for posters, prominently displayed in police stations and courthouses, to which victims could refer.

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[4] In issuing a judgement, the court rules on compensation or, where in the court's view there is insufficient evidence to make such a ruling, it may refer the victim to civil judicial proceedings. The injured party may also seek damages through civil judicial proceedings if the criminal proceedings are stayed or the defendant is acquitted. Garnishee proceedings are available to the injured party.

The rights embodied in the Criminal Procedure Act are generous in their application to trial and post-trial procedures, but the great majority of crimes do not actually result in arrest and prosecution and rights before trial are meagre in proportion.

Proposed amendments to the Code of Criminal Procedure envisage the institution of conciliation procedures, subject to the consent of both parties and the decision of the court or of the prosecution in pre-trial proceedings, in wilful criminal offences punishable by imprisonment of up to three years, and in cases of negligence, of up to five years, and where the offender admits the offence, pays compensation and deposits an appropriate sum of money into the court's account.

The practical implementation of rights contained in the 1961 Criminal Procedure Act

Execution of judgements:

Important provisions are included in the Act, such as the ability of the court and prosecutor to secure a claim during pre-trial proceedings by issuing an attachment order on the property of the accused or, if the accused is entitled to repayment of a debt, to order the debtor to place instalments on deposit at the court instead of paying them to the accused – even without an application by the injured – if the protection of the injured party warrants it. There is, however, a difficulty in that, when we questioned them on the matter, judges and prosecutors appeared to be unaware of such provisions.

Changes proposed in the new Code of Procedure:

- Victims of domestic violence and rape should no longer be obliged to give their consent before the offence is pursued
- mediation should become possible in criminal proceedings (there are currently pilot projects in 3 districts)
- private prosecution should become possible

In addition, there are draft amendments to the Penal Code which propose strengthening procedures for prosecuting offences against women and children.

State compensation

State compensation has been available for victims of violent crime since the beginning of 1999, the maximum amounts of money provided being 50 x the minimum monthly wage for victims of serious bodily injury and for the families of deceased victims ; and 30 x the minimum monthly wage for the victims of sexual offences. Victims may claim compensation if an offender has been convicted of causing bodily injury or where there is acquittal on the grounds on insanity. Compensation may also be claimed, *inter alia,* if there has been no arrest or where the offender cannot be traced.

The losses compensated are :

- cost of treatment
- loss of income
- pain and suffering
- incapacity

The right to compensation is confined to Slovak citizens and to permanent residents living in The Slovak Republic.

There were only 103 claims made since 1 January 1999 when the law of compensation came into effect, 57 were dismissed and 27 cases were approved, amounting to a sum of 206,643 Sk. The remaining cases are still pending. Given the problem presented by violent crime in The Slovak Republic, such a very small number of claims cannot but point to grave defects in the operation of the criminal injuries scheme.

Other matters arising from compliance with the Framework Decision :

- No information is provided to victims about when a person prosecuted or sentenced is released
- special waiting areas for victims and prosecution witnesses do exist, at least in the new courts.

Courtroom design

Even when they are regarded as parties to the trial, victims are also considered to be witnesses and as witnesses they have to be physically present during the proceedings. Only the president of the court can allow the victim not to be present in very special cases (and chiefly, it appears, when the case centres on child victims). Video conferencing should be possible under the law but it is clear that the appropriate technical resources are very rarely available.[5] Visiting a courtroom in a district court, we realised how difficult cross examination and the entire trial procedure could be for victims and witnesses. During the duration of the trial, offenders and victims or witnesses are in face-to-face confrontation and separated by only 2 or 3 meters.

We recommend the more extensive provision of video equipment and of screens in every courtroom where vulnerable and intimidated witnesses are likely to appear.

General matters

Criminal Justice Agencies

Police officers, judges and others complained about the mistrustfulness and lack of co-operation of victims and witnesses, their occasional unwillingness to return after making

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[5] We understand that the appropriate equipment is to be installed in eight regional courts and that the Supreme Court will enable video-conferencing to take place in serious criminal cases.

an initial report, and problems with inducing victims to testify, but they seem to have accepted virtually no formal responsibility for the care of victims and witnesses or for the introduction of new services that might ameliorate their situation. The efficiency and effectiveness of the criminal justice system pivot upon the collaboration of the victims and witnesses who report crimes and tender evidence. But it is not as yet apparent to those working in the Slovak system that there is a need for positive measures to support victims and witnesses, in part to secure that collaboration and enhance public confidence in the criminal justice system, and in part to allay problems suffered by members of the public. Practitioners invariably emphasised the superiority of their practical experience to anything they might have learned through formal training. It was revealing, for instance, that they had difficulty in identifying the problems which victims and witnesses might confront, the gaps that exist in the current provision of rights or services, or recommendations which could lead to their improvement.

Despite the apparent scale of crimes of violence, and crimes against women and children, in particular, there is a wholly inadequate provision of support and places of safety. We heard of no rape crisis centres in The Slovak Republic (although earlier reports did point to the existence of one such centre) and even experts in NGOs and Government seemed uncertain about the number and geographical spread of refuges for battered women.[6] The Alliance of Women in The Slovak Republic informed us that 'when domestic violence happens it is the victim who leaves the house (...) in haste, without funds, personal stuff and documents, keys, not rarely even with children, while the violent man remains in the house. In our country, there are still no specialized shelters for victims of domestic violence.' There are no specialist police officers or specialist units dealing with specific populations of victims such as the survivors of rape, domestic violence, racially-aggravated crime and child abuse;[7] and we recommend that the Ministry of Interior attends to the establishment of such units as a matter of urgency, and that the Ministry of Welfare examines the adequacy of the provision of refuges for child and women victims of violence.

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[6] In 1994, it was alleged that there was not a single shelter for abused women and only one rape crisis centre (IWRAW Publications; Country reports: Slovakia, 1994), although the 1997 national action plan for women in the Slovak Republic noted an increase in domestic violence and promised 'to create conditions to eliminate (...) violence against women', to support new refuges, an SOS line and consulting services, and to criminalise domestic violence without insisting on the victim's consent to proceedings. A 1999 report later declared that little seemed to have changed: 'the position of victims of domestic violence is somewhat precarious in The Slovak Republic because of a lack of protective legislation' and that domestic violence is a 'critically important issue (...)'. (*Evaluation of AIHA Activities in Slovak Republic,* Final Draft Report, 1999). We were told variously that there was one or two refuges at the time of our mission.

[7] The units that do exist attend to problems of drugs trafficking, organised crime and trafficking in people.

Roma are also reported to suffer disproportionate levels of victimisation from civilians and, occasionally, the police,[8] and the Government and municipalities of the Slovak Republic have instituted measures to deal with the problem.[9] However, in common with a number of neighbouring countries,[10] and in response to human rights groups, the Slovak Republic has ruled that ethnic data should not be reported in criminal justice statistics, and it is difficult not only to establish the proper extent of the problem but also the effectiveness of any policies devised to alleviate it.[11] We recommend that ethnic data on crime and victimisation be formally recorded and reported. We also understand that Roma victims, defendants and witnesses in criminal proceedings are denied the services of interpreters because no professional training for interpreters in the Roma language is currently available. Such an omission, if it does indeed exist, places witnesses at a serious disadvantage and we further recommend that those with the practical competence to act as interpreters should be employed by criminal justice agencies and the courts until such time as professionally-qualified staff become available.

Victims and the Third Sector

Victims' problems, rights and services are at present associated by officials entirely exclusively with two domains: the articles of the 1961 Criminal Procedure Act, on the one hand, and the work of the Third Sector, on the other. Nongovernmental organisations were in effect treated as members of a remote, parallel and lesser system of service provision that was quite marginal to the core work of the criminal justice system. Relations between the criminal justice agencies and NGOs varied but they were rarely close or properly constructive: in the case of domestic violence, for instance, the police of Bratislava did make use of the limited facilities offered by organisations catering for women and child victims of violence;[12] but no police officer we met knew of Help for Victims of Violence, the body that most closely approximates the victim support organisations making up the European Victims Forum. To be sure, *Pomoc obetiam,* Help

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8 See *Report of the Situation of Roma and Sinti in the OSCE Area,* High Commissioner for National Minorities, OSCE, The Hague, 2000, esp p. 37.

9 Government of the Slovak Republic; 'Resolution of the Government of the Slovak Republic concerning the Strategy for the Solution of Problems of the Roma Minority and Set of Measures for its Implementation – Stage 1', 24 September 1999.

10 See A. Krizsán (ed.); *Ethnic Monitoring and Data Protection,* Central European Press, Budapest, 2001.

11 We were informed by the League of Human Rights and International Club for Peace Research that they knew of 55 incidents of racially-motivated assaults by neo-Nazis, 4 racially-motivated murders and 20 incidents of 'discrimination and police brutality' in 2001. We are not sure how these figures were compiled or quite what significance should be attached to them.

12 A child's helpline, *Linka detskej istoty,* for instance, was founded in 1996, largely with funding from UNICEF. It claimed to receive 12,000 calls a month from children and others throughout The Slovak Republic. There are some 150/200 places of safety for child victims in Bratislava, and, at the time of the mission, there were no vacant spaces.

for Victims of Violence, is still embryonic,[13] as are all Slovakian NGOs, but the police had had no formal training in victims matters, no formal or informal contact with the victims organisations with which they might have had mutually beneficial relations, and little understanding of the place such organisations might occupy in their work.

There is an urgent need for the better initial and continuing training of police officers, prosecutors and others in victims issues, not least because such training might lead to a more educated appreciation of victimisation, how victims should be treated, and how victims and victims' organisations could, in turn, enhance the performance of criminal justice professionals and help to inform the work and deliberations of government. There is as yet no recognition of the kinds of competence which members of those organisations could offer the criminal justice system.[14]

Government's discharge of its responsibility for victims and witnesses

There is an interdepartmental committee on women's matters under the leadership of the Ministry of the Interior, and violence against women forms part of its terms of reference. With that exception, no criminal justice ministry accepted formal responsibility for the care of victims and witnesses; for innovating, developing and disseminating policies for victims and witnesses; or for ensuring that the agencies in their charge treated victims and witnesses in a professional and accountable manner. The discharge of that responsibility by the Government at large, and by the Ministry of Justice as the department charged with legislation, seemed to be confined only to the drafting of those laws that are required formally to be in place for purposes of accession.

The care of victims and witnesses was again regarded as a responsibility of the NGOs, and NGOs had, in effect, assumed some part of the policy-development role played by such bodies as the Justice and Victims Unit of the Home Office in England and Wales, the National Institute of Victim Assistance in France, the Office for Victims of Crime of the US Department of Justice and their counterparts elsewhere. Yet, despite its evident value, almost all NGO activity in the field of victims and witnesses was funded externally by international organisations or by foreign governments, and the government of the Slovak Republic has not in the past fully committed itself financially to its support. We have, however, been informed that this situation is about to change, we welcome that commitment, and strongly recommend that the appropriate NGOs should – subject to appropriate scrutiny and control – receive funds sufficient to guarantee not only their survival but their future expansion. Most are only in their infancy, their coverage of relevant populations and services is quite incomplete, and it is to be expected that they will grow continually and fast for at least two decades before the Slovak Republic begins to satisfy the standards laid down in the documents we have cited, and in the European

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[13] The NGO was founded in 1996. In 1997, before it was on a proper footing, it received 6 clients; in 1998, 69; in 1999, 206; and in 2000, 591. All clients were self rather than police referrals.

[14] See, for example, I. Waller; 'The Police: First in Aid?', in A. Lurigio *et al.* (eds.); *Victims of Crime: Problems, Policies, and Programs,* Sage Publications, Newbury Park, Cal., 1990.

Framework Decision in particular. That can be accomplished only by a combination of a new Government concentration upon victims matters, adequate funding for the private sector and much closer and mutually reinforcing co-operation between Government and NGOs.

To that end, we recommend that an interdepartmental committee be formed under the leadership of one Ministry, that Ministry perhaps most appropriately being the Ministry of the Interior because of its key responsibility for the police. The new committee would draw its members from the Ministries of Welfare, Justice and the Interior, from the Office of the Prosecutor General, and from Help for Victims of Violence and NGOs serving the victims of domestic violence, rape and child abuse, to direct and assume responsibility, *inter alia,* for the practical implementation of the articles of the European Framework Decision, and report publicly to Parliament. To aid their deliberations and thinking on matters affecting victims and witnesses, publicise policies and programmes, and enhance the training of practitioners and of members of NGOs, we recommend the establishment of a Victims Resource Centre, established in an NGO, and most suitably *Pomoc obetiam,* to collect, collate, analyse and disseminate examples of good practice available inside and outside The Slovak Republic. We recommend, by extension, that the European Victims Forum be appointed as a mentoring body to advise the staff of that Centre as it evolves, and that the Ministry of the Interior guarantees funds adequate to support the Centre's inception and sustain it in the long term.

Conclusion

The Slovak Republic does not currently meet standards for the treatment of the victims and witnesses of crime, and government and criminal justice agencies have little appreciation of the relevant issues. Never the less, there is an ambitious legislative programme in draft, including the incorporation of the 2000 European Framework Decision, and it is to be hoped that resources, training and practice will follow to ensure its proper implementation. There are, moreover, the germs of significant change, confined almost wholly to the Third Sector, and it is imperative that those NGOs be given financial security (subject to suitable discipline and regulation) and that they work closely with Government and the criminal justice agencies to educate them in matters affecting victims.

We recommend that:

- The Ministry of Interior embarks on the establishment of victim-specific specialist units as a matter of urgency, and that the Ministry of Welfare examines the adequacy of the provision of refuges for child and women victims of violence.

- There is an urgent need for the better initial and continuing training of police officers, prosecutors and others in victims issues.

- NGOs supporting victims of crime should – subject to appropriate scrutiny and control – receive funds sufficient to guarantee not only their survival but their future expansion.

- An interdepartmental committee on victims and witnesses be formed under the leadership of the Ministry of the Interior or the Ministry of Justice.

- A Victims Resource Centre, be established in an NGO, and most suitably *Pomoc obetiam,* to collect, collate, analyse and disseminate examples of good practice available inside and outside The Slovak Republic.

- The European Victims Forum be appointed as a mentoring body to advise the staff of that Centre as it evolves, and that the Ministry of the Interior guarantees funds adequate to support the Centre's inception and sustain it in the long term.

- Ethnic data on crime and victimisation be formally recorded and reported.

- Those with practical competence to act as interpreters in the Roma language be employed by criminal justice agencies and the courts until such time as professionally-qualified staff become available.

- There should be a more extensive provision of video equipment and of screens in every courtroom where vulnerable and intimidated witnesses are likely to appear.

Slovenia

27-28 May 2002

A mission of the Phare Horizontal Programme under the Justice and Home Affairs chapter of the *acquis* visited Slovenia in November 2001, but it did not prove possible on that occasion to field experts on victims and witnesses for Module Four. It was eventually decided to remedy that deficiency by sending Kate Mulley of Victim Support England, Wales and Northern Ireland and the key expert, Paul Rock, on a special two-day extempore mission in May 2002. That mission could not explore matters in any detail, neither was it forearmed with significant documentation, but it was thought preferable to prepare some report than none. We were treated with courtesy and candour, and are grateful for those who arranged or participated in meetings at very short notice. *Inter alia*, we met Justice and Home Affairs programme officers of the Delegation of the European Commission; officials of the British Embassy in Ljubljana; Aleš Butala, the Deputy Ombudsman and Ivan Šelih of the office of the Ombudsman; Marko Starman, State Secretary of the Ministry of Justice; Darko Stare, counsellor to the director general of the Ministry of the Interior police department; the Supreme State Prosecutor and his colleagues; judges of the District Court of Ljubljana; staff of the Center of Non-Governmental Organisations of Slovenia; and the staff of three NGOs, *Centri za Pomo… Žrtvam Kaznivih Dejanj* (Centres for Victims of Crimes of Violence), *Ključ – The Centre for Fight Against Trafficking in Human Beings* (the Key), and the Silver Organisation, which provide shelter to women and child victims of domestic violence.

Context

The population of Slovenia is ethnically homogeneous and small, amounting to rather fewer than 2,000,000 people, 330,000 of whom live in Ljubljana. Slovenes tend to know one another as members of a relatively intimate and cohesive community, defined by language and history, and there is what has been described as a concomitant 'personality politics' mediated by personal ties and common experience. Such a politics has, we were told, inevitable repercussions on the conduct of relations between, for instance, politicians, officials and the staff of NGOs. That being the apparent case, we were struck by how atomised and disjointed those relations could sometimes prove to be in practice.

It is a second concomitant that the absolute number of crimes committed is small. Trends in recorded crime have not been uniform, but there was a marked decline and a subsequent rise in volume since the relatively high figures that marked the period immediately after the transition. Overall, there was a 16% increase in all crime between 1995 and 1999,[1] there being 1355 crimes of violence and over 4000 burglaries recorded in that latter year. Those recorded figures must be treated with some care. Although the

[1] G. Barclay *et al.*; *International comparisons of criminal justice statistics,* Home Office, London, 2001.

trends do not appear to be strong or consistent, it does appear that there has been a slight decline in the reporting of property crimes and an increase in the reporting of crimes against the person over the better part of the 1990s.[2] It was suggested to us that this increase could, in part, be accounted for by the greater willingness of victims of domestic violence to report offences to the authorities. Convictions have fallen as a proportion of crimes recorded: in 1990, for instance, statistics published by the Government Statistical Office revealed that there was a total of 9842 convictions recorded against adults, 992 of which were for crimes 'against life and body' and 4896 against property. In 1999, the comparable figures were 5783, 655 and 2189.[3]

Slovenia has lower rates of crime than many other transitional countries. The International Crime Survey was conducted at different times in those countries in the 1990s, and Slovenia proved to have relatively low rates of burglary and attempted burglary (2.8% compared, say, with 7.2% in Estonia, 4.0% in the Czech Republic or 6.5% in the Slovak Republic); and of contact crime (1.1% compared with 4.9% in Estonia, 1.1% in the Czech Republic and 1.2% in the Slovak Republic.)[4] Officials and commentators informed us that crime is not currently regarded as a pressing social or political problem. That position might alter: there is an increasing problem of illicit drug trafficking and consumption in the country which may affect the volume and character of crime.[5]

Slovenia is less riven by problems than many of the other accession states: confidence in the police is reported to be high, corruption low, and human rights respected by the State.[6]

The State and Victims and Witnesses of Crime

The development of support and services to victims and witnesses of crime in Slovenia has been uneven. Officials and politicians have been working on the reconstruction of the State and civil society after the transition and in preparation for accession. Such a development of victim care has not been one of the priorities flagged by the Community in the Justice and Home Affairs programme that is readying the country for admission, attention having been given to border controls (Slovenia being one of the countries whose borders will also be the borders of the enlarged community), trafficking and organised crime.[7] We were informed with great honesty by a senior official of the Ministry of Justice that 'we haven't discussed these [victims] issues and we haven't any plans' (reflecting, in part, the limited mandate of the Ministry as the department

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2 Z. Pavlovic; 'Ljubljana (Slovenia)', in O. Hatalak *et al.* (eds.); *The International Crime Survey in Countries in Transition: National Reports,* UNICRI, Rome, 1998, p. 497.

3 Statistical Office of the Republic of Slovenia, Ljubljana (www.sigov.si/zrs)

4 U. Zvekic; *Criminal Victimization in Countries in Transition,* UNICRI, Rome, 1998, Ch. 3.

5 See *2001 Regular Report on Slovenia's Progress towards Accession,* Commission of the European Communities, Brussels, 2001, p. 81.

6 *Ibid*

7 See, for example, *CER: Central Europe Review,* 13 November 2000, Vol. 2, No. 39. The EC's own *Europa* website imparts just such a stress in its text on Justice and Home Affairs: Slovenia.

primarily occupied with initiating legislation). We were told later that the Ministry would, in fact, welcome greater interdepartmental collaboration around victims' issues but the separation of responsibilities prevented it taking a lead role. A result has been that the needs of victims and witnesses have been relatively ignored in some areas of the criminal justice system.

Practically, there are no video-conferencing facilities for vulnerable witnesses. There are no separate waiting areas for defence and prosecution witnesses in courthouses. Certain vulnerable groups such as adults with learning difficulties or the elderly have been neglected.

But victims and witnesses have not been wholly overlooked. Prosecutors accepted a small number of formal responsibilities laid out in legislative instruments, and relating chiefly to informing the victim about his or her rights to initiate a private prosecution and to see the case file, intervene in the investigative process, be legally represented, claim compensation from the offender[8] and protection from the State where there is a threat to life. Victim enjoy a right to written notification about the outcome of criminal proceedings

The amended Criminal Procedure Act (Article 161a) makes provision for an independent mediation (settlement) procedure to be invoked for offences that would warrant up to three years imprisonment, subject to the agreement of both the offender and the victim. In 2001, 1,026 cases were dismissed following a successful agreement reached through the mediation process.

There is a range of measures that can be deployed to protect witnesses before, during and after trial. The investigating judge can order the defendant to be removed if a witness is unwilling to testify in the presence of the accused (a measure mainly applied in cases of sexual violence). The accused may not be present during the questioning of child victims of violent or sexual crime (ref: Article 27 of the Act Amending the Criminal Procedure Act (Ur.l. RS no. 63/94 – correction, 25/96 – CC ruling and 5/98 – CC ruling)). Judges can clear the courtroom if children or women victims of sexual violence testify, and they can also order the defendant to be removed. There are technical procedures that can be used in formal protection schemes for witnesses who are at the gravest risk. Child victims of physical and sexual abuse seem to be especially well supported, receiving legal assistance and psychological help from public funds.

Those formal rights are comparatively limited in scope and number, they are rather somewhat confined to the legal rather than the social, and we could not ascertain how often they are exercised because pertinent data were not collected, collated or distributed between the various agencies. Although, for example, there is a right to undertake a private prosecution should the state prosecutor decide not to proceed, no figures were available on whether it was a right that was actually put to use, whether victims could

[8] The victim or witness would again be reminded of those rights by the investigating judge.

obtain competent legal advice[9] or what the outcomes of such prosecutions must be. (We were however informed that the number of successful private prosecutions was likely to be very low).

Any effective system of policy development must rest on a foundation of evidence that permits officials, practitioners, members of victims' organisations and others to establish the present position and to ascertain what changes, if any, flow from policy and legislative interventions. We recommend that the Government of Slovenia establishes an effective programme of data gathering about the experiences of victims and witnesses.

If there was modest progress in some quarters, we were also to learn about how officials could move beyond the adherence to strict legalism that marked much of the behaviour of their counterparts in other transitional states. Where those counterparts refused to act because they were not instructed to do so in law, officials in Slovenia could be personally enterprising and innovative with marked benefits to victim and witness. Judges have independently exercised initiative in organising training seminars on the impact of, and appropriate response to, post-traumatic stress disorder in witnesses; intervened to prevent the disclosure of a victim's personal details in open court; and staggered the time of arrival at the courthouse of defendant and victim to avoid confrontation. The Deputy Ombudsman has reacted constructively and thoughtfully not only to the few complaints brought directly by victims[10] but also to the implications for victims of complaints brought by others.[11]

Most impressive was the work of the police department of the Ministry of the Interior. Although there are few formal regulations to cover the care of victims of witnesses, the police mandate to be responsible for 'the protection of people's lives, personal safety and property'[12] has been interpreted to extend to the welfare of victims and witnesses at large – to 'act humanely' – and there has been a laudable programme of initiatives, including a website and copious leaflets, informing victims about rights, services and practical crime

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9 Judges, we understand, are provided with lists of lawyers working *pro bono publico* for NGOs.

10 See *Annual Report*, Human Rights Ombudsman, Republic of Slovenia, Ljubljana, 1998, which cites two cases in which victims made complaints, one, on p. 42, recommending the establishment of a compensation fund for victims, and the other, on pp. 44-5, criticising the adverse effects of the Law on the Protection of Personal Data which prevent a victim from obtaining very basic information about his or her offender. Again, in a special report on the treatment of persons in custody, published in 1999, the Ombudsman observed that the granting of privileges to a prisoner should be conditional on the performance of appropriate actions by way of compensation or apology to the victim. Recommendations made by the Ombudsman introduced legislation, the Penal Sanctions Enforcement Act, Art. 77 of which reads that 'The response of the environment in which the crime was committed, especially of the injured parties, must also be taken into account.'

11 The Office was established with broad powers by the Law on the Human Rights Ombudsman of December 1993. Unlike the office in some other transition countries, the Ombudsman is empowered to receive complaints touching on delays or abuses of authority in criminal justice, but not on judicial decisions.

12 Police Act of the Republic of Slovenia, 1998, Art. 3.

prevention techniques; and of referrals, where appropriate, to NGOs,[13] safe houses and social workers. There is a network of dedicated police officers whose task it is to aid and refer victims. We were informed that women officers were allocated to female victims of sexual offences (although there was little access to female forensic medical examiners); that officers would escort victims of assault to medical centres; that there were specialist units dealing with adolescents, robberies, serious assaults and sexual crimes. What we were told by the police was confirmed by members of NGOs, and it was apparent to us that the police of Slovenia had made exemplary progress in responding appropriately to the needs of victims and witnesses. That they had done so in a small country where the low volume of crime could discourage such specialisation is the more remarkable.

Such unevenness in the treatment of victims and witnesses lends support to the need for a greater formalisation and standardisation of procedure. The police have made a useful start in a written code of conduct[14] which touches, *inter alia*, on the treatment of victims, and we would recommend that, after appropriate consultation and deliberation, like guidance be produced for other criminal justice agencies, not only to reinforce the need for improvement – particularly in the light of the European Framework Decision on the standing of victims – but also to introduce a greater coherence, consistency and harmonisation of practice.

Within and without the Slovenian criminal justice system, attention to the issue of victims and witnesses has tended to concentrate on the needs of children and, to a lesser extent, to those of women victims of sexual and domestic violence, and those groups are reasonably well supported. Child victims of sexual or violent crimes under Article 6 of the Act Amending the Criminal Procedure Act, for instance, have a right to legal assistance and to a professional supporter during investigation and at trial. There is a relatively generous provision of shelter for women and children fleeing violence in the home. By contrast, other groups of victims, are overshadowed and are certainly not covered in the same fashion or so generously in specific pieces of legislation.

Resources did not seem especially problematic. For example, the police were technically well-equipped, particularly in the area of information technology, where they had been enterprising in introducing country-wide electronic dissemination of all documents bearing on cases in progress. NGOs, to whom we shall return, also received relatively significant financial support from the State, unusual in a country in transition, although there were complaints that charitable donations to NGOs were taxed.

There were repeated complaints about the protracted and iterative nature of investigative and trial procedures, entailing, as they did, the requirement that victims and witnesses had to testify on three to four separate occasions. Testimony from one phase did not have evidential value at the next, and there was risk not only that victims and

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[13] There is a difficulty that the newness and unfamiliarity of NGOs frequently make it hard for police to ascertain whether and to whom they should refer victims.

[14] *Kodeks Policijske Etike,* Ministrstvo za Notranje Zadere, Republika Slovenija, Ljubljana, 1992.

witnesses were exposed to unnecessary distress but that they might choose to withdraw their complaints. However, there is now an expert group working on remedying this problem and, in particular, the evidential value of testimony gathered by the police in the pre-trial phase of procedure. Concern was also expressed about administrative delays endangering victims, for example in the securing of injunctions or court orders.

Departments of State did not assign to named officials formal responsibility for the promotion and improvement of services to victims and witnesses. Neither was there interdepartmental or interagency collaboration. In one department at least, the Ministry of the Interior, there was what can only be called an enthusiasm to develop such co-operative mechanisms. We propose that designated officials be charged with the formal duty of overseeing work on victims and witnesses, that they confer together regularly in a dedicated interdepartmental committee, and that the lead in bringing about such change should be taken by the Ministry of the Interior.

The Third Sector

The Third Sector is unusually large in proportion to the population of Slovenia. There are supposed to be between 15,000 and 16,000 NGOs in existence, but only some 2000 are thought currently to be active. Unusually, funding is provided by central and local government as well as by foreign donors, and whilst a number do have financial difficulties, their problems are not as acute as those in most of the other accession states. The NGOs are inevitably new (many being but a few months old) and generally small, with limited capacity, inexperienced and untested, and many appear to have had little contact with one another, even in the same sphere of activity. There were complaints about difficulties of collaboration and of looking to one another for models of good practice. There was a degree of mistrust and competition for attention and resources which appears to inhibit the joint resolution of common problems, joint working and, for example, joint efforts to influence policy. We were informed by an outside observer that no 'NGO culture' had yet established itself in Slovenia

Relations between the NGOs and criminal justice agencies were patchy. With the police they appeared to be close and fruitful and promised to improve yet further, but with the prosecutors and judiciary they were less developed and somewhat guarded,[15] those officials tending to work with social workers rather than the voluntary sector.

Relations between the NGOs and the State are also patchy. On the one hand, we were impressed by the Government's evident good will in contributing to the foundation of the NGO Centre. On the other hand, where so much is new, unfamiliar and untried, there appears to be a widespread mutual tentativeness of attitude and response. Some officials complained that NGOs tended to be critical of their work. We were told – perfectly defensibly perhaps – that the business of a State in transition is to built itself up first and only then attend to the Third Sector: an official said 'the major common

[15] We were told by a prosecutor that 'NGO interference is very useful so long as they stick to their legal role.'

problem shared by transitional countries is the weakness of state institutions. (...) Only a strong, free and democratic state can genuinely support the civil society (...).'

NGOs did seem to be consulted and, in the area of violence against women especially, their members could be taken for experts in their field of practice. But we heard of no instance of such members being incorporated formally in the deliberations of the State or of being invited to join committees or working parties in the victims area.

We learned about one organisation, *Centri za Pomo... Žrtvam Kaznivih Dejanj*, that claimed to be generalist in its provision of services to all victims, both geographically and by type of crime. It appears to be handling a relatively substantial volume of cases[16] and to have adopted what might be called a 'service model' of working. But awareness of its existence and the services it offers is again very patchy, and, it has to be said, we managed to gather very little information about it ourselves.

The Silver Organisation provides shelter to women and child victims of violence. It is a well-funded, experienced and well-connected body which is keen to develop a closer liaison not only with other organisations offering shelter but also with *Centri za Pomo... Žrtvam Kaznivih Dejanj.*

The sole organisation which those we met all cited, *SOSvsebina*, provides, we understand, services to women and child victims of violence. Other organisations about which we gathered data also tended to be focused on those two areas of women and children, mirroring the larger policy and political priorities of the Government of Slovenia.

The NGO Centre is attempting to forge coalitions or 'project groups' of NGOs providing services in allied areas. Given the under-developed and isolated character of many NGOs in Slovenia – and in the victims field especially – we recommend that the NGO Centre provides guidance and practical assistance to the Silver Organisation, *Centri za Pomo... Žrtvam Kaznivih Dejanj, SOSvsebina* and cognate organisations, such as Papilot, to promote co-operation, the sharing of resources and expertise, and to formulate common policy positions and joint initiatives. One possible outcome could be an umbrella organisation or federation of victims' organisations following, perhaps, the model of NOVA, the American National Organization for Victim Assistance.

One urgent task for the new federation would be the setting of standards of service delivery, training and organisational ethos in such matters as equal opportunities policies, the protection of confidentiality and the provision of free services, in order to enhance the viability, accountability and effective collaboration of its members. Such a federation would undoubtedly prove to be a considerable asset to the State and people of Slovenia and would warrant secure funding from the Government.

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[16] A report issued by the Centre claimed that it dealt with 971 new victims in 2001 and we were told in a meeting that the Centre had 2214 live cases.

A third support for the new federation should be provided both collectively and to individual member organisations by the European Forum for Services to Victims, with European Community funding, to guide, advise and discuss examples of good and poor practice. NGOs (and the NGO Centre itself, which is only one year old) need urgently to capitalise on the experience of older, established institutions elsewhere. As part of the Forum's increasing importance in Europe, and its potential contributions to the accession states both before and after admission, the European Community should further fund the completion, expansion and servicing of the European Forum's website.

Conclusion

There is good practice in Slovenia, largely concentrated in the police; the beginnings of a promising Third Sector; and the beginnings of a productive working relation between NGOs catering for victims and witnesses, on the one hand, and the State, on the other. But there is also evidence that the State has not yet started to concentrate at all methodically on the needs of witnesses and victims or upon the administrative, legal and financial implications, upon accession, of compliance with the European Framework Decision on the Standing of Victims. Our judgement is that Slovenia is making progress towards satisfying the Community standards on the care of victims and witnesses. To give impetus, coherence and direction to that progress, we recommend that:

- The NGO Centre should guide and assist a cluster of NGOs working in the general area of services to victims to develop a federal structure that will promote co-operation, the exchange of information and advice, and the setting of standards in training, service delivery and internal practice.

- Promotion of a federation of victims organisations should be aided by the European Forum for Victim Services, the additional tasks laid upon the Forum being funded by the Community.

- As part of that process of promoting good practice, the Community should support the completion, expansion and servicing of work on the European Victims Forum's website.

- Named officials in the Ministries of Justice, Social Affairs and the Interior be charged with formal responsibility for developing and sustaining policies and programmes for victims and witnesses, and raising awareness of victims issues.

- Those officials, together with representatives of the new victims federation, should form an interdepartmental working group that meets regularly, reports on progress, resolves common problems and develops joint strategies to promote the interests of victims and witnesses.

- Relevant data on the experiences and progress through the criminal justice system of victims and witnesses be centrally collected, collated and publicly disseminated.

- Prosecutors and judges formalise and record their broader responsibilities towards victims and witnesses.

- Special attention should be paid to the area of protection, for example through the provision of separate waiting areas at court and the non-disclosure of victims' personal details in open court.

BIBLIOGRAPHY

Bulgaria

- Act of establishment of foundation for increasing the professional qualification of magistrates, under the name of Magistrate Training Center; approved and signed by the Founding Member's Assembly, 6 April 1999
- Administrative procedure act, promulgated State Gazette no. 90/13.11.1979, last amendment no. 70/1996
- Administrative violations and sanctions act, State Gazette No. 92/28.11.1969, last amendment 12/1996
- Amnesty International - Annual country report 2000 - Bulgaria
- Analysis of the draft law on the people's defender for the Republic of Bulgaria, 13 October 1999
- Articles of association of the Bulgarian Union of Magistrates, draft 1997
- Attorney act, SG 80/27.9.1991, amended 26/31.03.1992
- Bulgaria: Legal and judicial reform – judicial assessment, March 1999 ; Legec Bulgaria (Legal Department Europe and Central Asia region)
- Bulgaria's evolving legal framework for private sector development, Policy Research Working Papers Socialist Countries Reform, Country Economics Department and Legal Department, The World Bank, May 1992
- Bulgaria's progress towards EU membership in 2000 - the NGO's perspective: an independent judicial system in the context of EU accession – Conference organised by the European Institute, Sofia, 31 January 2001
- Bulgarian code of judicial ethics
- Civic defender and local civic mediators: concept paper and draft law, Center for the study of democracy, Sofia 2002
- Civil servants' code of conduct – draft
- Civil service act, SG 67/1999
- Code of civil procedure, State Gazette No. 12/08.02.1952, last emendment SG No. 25/2001
- 23e Conférence des Ministres Européens de la justice, Rendre la justice au 21e siècle – Bulgarie; Conseil de l'Europe, Londres 8-9 juin 2000
- Constitution of the Republic of Bulgaria, 12 July 1991, State Gazette No. 56/13.07.1991
- Constitutional court act, 67/16 August 1991
- Cooperation programme to strengthen the rule of law 2001, Bulgaria, Council of Europe, 9 February 2001
- Country report Bulgaria, Joint programme between the European Commission and the Council of Europe on the fight against corruption and organised crime in States in Transition; Octopus(2000)40, Strasbourg, 7 December 2000
- Country report: Bulgaria, Parker School Journal of East European Law Vol. 5 1998 Nos. 1-2
- Enlargement – Bulgaria 2000 Regular report from the Commission on Bulgaria's

progress towards accession, 8 November 2000
- Existing model of access to the judicial career and judicial training, 19 February 2002
- Human Rights Watch - World report 2000 Bulgaria Human Rights Developments (Internet)
- Independence of the judicial system, Open Society Foundation, Sofia, (Colpi Program Bulgaria)
- Judicial development project for Bulgaria, East West Management Institute, brochure
- Judicial independence in Bulgaria, Executive Summary, OSI EU Accession Monitoring Project, draft 23 February 2001
- Judicial independence in Bulgaria, Open Society Institute 2001, Monitoring the EU Accession process 2001, Budapest September 2001, pages 70 - 108
- Judicial system act, State Gazette No. 59/22.07.1994; last amendment SG No. 25/2001
- Justice and home affairs mission to Sofia, March 2001, report on the compatibility of legislation of economic crime and money laundering
- Justice and home affairs mission, First report on border control, migration, asylum for justice and home affairs mission in Bulgaria, 12-16 March 2001 (J. Lainé & M. de Ruiter)
- Justice and home affairs mission to Bulgaria, March 2001, on police co-operation (T. Galloway)
- Justice and home affairs mission to Bulgaria, March 2001, on protection of personal data (G. Galy)
- Law for the administration, including motives - draft
- Legal and judicial reform – judicial assessment, March 1999 ; Legec Bulgaria (Legal Department Europe and Central Asia region)
- Magistrate Training Center Bulgaria, 'Building a fair, impartial and efficient judicial system', incl. goals and strategies for 2002, brochure
- Meeting report of the seminar between Bulgaria and the Council of Europe on the Reinforcement of the system of enforcement of court decisions', Sofia, 22 and 23 November 2001 (presentation of the working group's view)
- National strategy for accession of the Republic of Bulgaria, Ministry of Foreign Affairs, March 1998
- Nations in transit 2001 Freedom House, Bulgaria (Internet)
- Non-paper on donor's coordination and cooperation in relation to the implementation of judicial reform in Bulgaria, draft, 4 January 2000
- Obyektiv magazine of the Bulgarian Helsinki Committee, March-May 2001 issue 77
- Opinion on the reform of the judiciary in Bulgaria, European Commission for Democracy through Law (Venice Commission), Strasbourg 27 March 1999, cdl-inf (99)5
- Overview of phare projects in the field of justice and home affairs, 1998 - 2000
- Penal code, State Gazette No. 26/02.04.1968, last amendment No. 41/2001
- Penal procedure code, State Gazette No. 89/1974; last amendment 42/2001
- Phare horizontal programme on judicial cooperation in criminal matters, National Action Plan 2002/3, Bulgaria
- 'Political criteria', chapters on 'justice and home affairs' and 'customs union' in the new consolidated version of the Bulgarian National Programme for the Adoption of the Acquis (NPAA), April 2000
- Program for judicial reform in Bulgaria, Judicial Reform Initiative, Sofia November

1999
- Program for judicial reform in Bulgaria, Judicial Reform Initiative, Sofia 2000
- Program for the implementation of the strategy for reform of the Bulgarian judiciary 2002 – 2007, Minister of Justice
- Programme for the development of the judicial system in the Republic of Bulgaria 2001-2004, Supreme Judicial Council, 17 January 2000
- Prosecution's problems are systemic, not only personnel-related, Roumen Georgiev, Capital newspaper, page 8, April 6-12, 2002
- Reform of the judicial system of the Republic of Bulgaria – Bulgarian Ministry of Justice and European Legal Integration (jul-g/ac/bulgaria)
- Report on corruption and fraud in Bulgaria (S. Bonfigli)
- Second assessment mission in the fields of justice and home affairs in Bulgaria (12 – 16 March 2001), 2nd Phare horizontal programme for JHA, Draft report 27 June 2001
- Strategy for the establishment of a modern administrative system in the Republic of Bulgaria, February 1998
- Strengthening the Bulgarian judicial system, report to the European Commission for the programming of Phare 2001, Support for Improvement in Government and Management in Central and Eastern European Countries (SIGMA)
- Strengthening the independence of the Judiciary and the institutional capacity of the Ministry of Justice and European Legal Integration to adopt and implement the Acquis of the EU in the field of Justice and Home Affairs, Project Fiche, Support for Improvement in Government and Management in Central and Eastern European Countries (SIGMA)
- Strengthening the Public Prosecutor's Office, Summary Project Fiche, Support for Improvement in Government and Management in Central and Eastern European Countries (SIGMA)
- Technical assistance to facilitate the needs assessment and project identification in the field of reform of the judiciary and judicial cooperation, Mission Report, Rosa. H.M. Jansen, March 1999 – contr.nr.98-5431.00
- Twinning BG 99/IB/JH-03, Acquis oriented management of criminal information systems, Quarterly report no 1, 26 January 2001 (submitted on 6 April 2001)
- Twinning project nr BG99/IB/JH-04, Strengthening the Independence of the Judiciary and the Institutional Capacity of MJELI to adopt and implement the Acquis in the field of JHA, Quarterly report No. 1, 19 February 2001
- Twinning project nr BG99/IB/JH-04, Strengthening the Independence of the Judiciary and the Institutional Capacity of MJELI to adopt and implement the Acquis in the field of JHA, Draft Report Activity 1d, April 2001
- Twinning project nr BG99/IB/JH-04, Strengthening the Independence of the Judiciary and the Institutional Capacity of MJELI to adopt and implement the Acquis in the field of JHA, Quarterly report No. 2, April 2001
- Twinning Project (Partnerschaftsprojekt) BG/2000/IB/JH/01 Staerkung der Staatsanwalt (Strengthening the Public Prosecutor's Office), Vierteljahresbericht (Quarterly report) nr 2, Berichtzeitraum 15 August – 14 November 2001
- The constitutional court of the Republic of Bulgaria, brochure
- Transitional and final provisions (draft law to amend and supplement the judicial system act, 12 April 2002)
- Vorbereitung einer Strategie zur Entwicklung des Bulgarischen Gerichtssystems,

Bericht von der Bayerische Staatsministerium der Justiz zum Minister der Justiz der Republik Bulgarien, Muenchen 17 Juli 2001
- Workshop on the presentation of the action plan and the donors' projects for development of the judiciary in Bulgaria, Ministry of Justice in cooperation with the EC Delegation in Bulgaria, 17 December 2001

Czech Republic

- Act on advocacy, No. 85/1996 Coll., 13 March 1996 as amended by act no. 210/1999 coll.
- Act on the Constitutional Court, 16 June 1993
- Act on courts and judges, No. 335/1991 coll (Czech and Slovak Federative Republic); 19 July 1991; last amendment: 30/2000 coll.
- Act on judicial executors and executorial activity (Execution Code) and on amendments to other acts, No. 120/2001 Coll., 28 February 2001
- Act on the special protection of a witness and other persons in connection with criminal proceedings and on the amendment of Act no. 99/1963 coll., Civil legal code as amended; Act no. 137/2001 coll., entered into force on 1 July 2001
- Amnesty International - Annual country report 2000, Czech Republic
- Average duration of court proceedings at the district and regional courts in the Czech Republic in the period 1995-2001, Ministry of Justice of the Czech Republic, European Integration Department
- Background information of the Ministry of Justice for the Regular Report of the EC 2001
- Ceská advokátní komora; Informative brochure on Czech Advocacy, Czech Bar Association, Prague 2001
- Civil Code, No. 40/1964 Coll., last amendment 165/1998
- Commercial Code, No. 513/1991 Coll.; last amendment No. 165/1998
- Conference on accession to the European Union – Czech Republic, Position paper of the Czech Republic on Chapter 24; cooperation in the fields of justice and home affairs, Schengen, Brussels 30 November 1999, conf-cz 67/99
- Constitution of the Czech Republic, 16 December 1992
- Country report Czech Republic, Joint Programme between the European Commission and the Council of Europe on the fight against corruption and organised crime in States of Transition, Octopus(2000)55, Strasbourg 20 December 2000
- Cooperation programme to strengthen the rule of law 2001, Czech Republic, Council of Europe, Directorate General I Legal Affairs, 20 December 2000
- Czech act on courts and judges, Act 335/1991 coll.; July 19,1991; last amendment: 30/2000 coll.
- Czech Helsinki Committee; report on the state of human rights in the Czech Republic 2000, Prague 2001
- De strafrechtpleging in Tsjechie, mr. P.H. Cremers, Nieuwbrief SSR 2, Mei 2001, pages 2-3
- Enlargement – Czech Republic 2000 Regular report from the Commission on the

Czech Republic's progress towards accession, 8 November 2000
- "Execution of judgements of the Constitutional Court of the Czech Republic" seminar report by Mr. Vojen Guttler, seminar on 'The efficiency of constitutional justice in a society in transition', European Commission for Democracy through Law (Venice Commission), Yerevan 6-7 October 2000
- First theses for the administrative justice concept and alternatives of its organisational structure (Chamber of Deputies, Parliament of the Czech Republic, third term of office, 2000)
- Judicial independence in the Czech Republic, OSI EU Accession Monitoring Project – draft – 23 February 2001
- Judicial independence in the Czech Republic, Open Society Institute 2001, Monitoring the EU Accession process 2001, Budapest September 2001, pages 109 - 146
- Judicial organisation in Europe - Czech Republic, Council of Europe Publishing May 2001, pages 83 - 88
- Judiciary Reform Concept; Czech Minister of Justice; written because of Government Decision No. 325 (14 April 1999), and based on Government's Legislative Plan 1999 and its outline for the years 2000-2002
- Justice and home affairs country summary fiche Czech Republic, confidential, 12 December 2000
- Justice and home affairs mission to the Czech Republic, 17-21 November 1997; mission report on the identification of projects in the field of justice and home affairs to be implemented under the Phare programme for the Czech Republic
- Landenoverzicht Tsjechië, Ministerie van Buitenlandse Zaken, November 2000
- Law on court executors / act on judicial executors and exectorial activity (execution code) and on amendments to other acts, no 120/2001 coll., 28 February 2001
- Legal culture of Czech Republic, written in 2000 for WRR, The Hague, Hank Geerts (ed. E. Blankenburg)
- Memorandum Commentaar van HMA Praag – inzake: uitspraak constitutioneel hof; PRA/JB-052/2002, 20 juni 2002
- Nations in transit 2001 Freedom House, report on the Czech Republic
- Nejvyssi soud ceske republiky v brne – The Supreme Court of the Czech Republic in Brno, brochure summer 1999
- Ownership and corporate governance: evidence from the Czech Republic, Policy Research Working Papers, The World Bank, March 1997 (wps 1737)
- Resolution of the presidium of the Czech National Council of December 16 1992 on promulgation of the Charter of Fundamental Rights and Freedoms part of the constitutional order of the Czech Republic
- Rules of professional ethics and rules of competition for advocates of the Czech Republic, Board of Directors of the Czech Chamber of Advocates, passed on 31 October 1996
- Situation et statut des juges en Republique Tchèque
- Strengthening the independence and functioning of the Czech judiciary - support to the associations of state attorneys and judges; Phare program, Inception Report, CZ98/IB/JH03, Prague July 2000
- Support to develop the commercial and civil courts system, Phare project contractnumber CZ9801-03-01-02-01, Study A, 19 April 2001

- Support to develop the commercial and civil courts system, Phare project contractnumber CZ9801-03-01-02-01, Study B, 11 May 2001
- The constitutional court of the Czech Republic, The weekly magazine Ekonom (Internet)
- The Czech judiciary before the accession to the European Union, brochure, Ministry of Justice of the Czech Republic, 2001
- The right to a fair trial in the Czech Republic, in Collection Science and technique of democracy; nr. 28 Council of Europe Publishing, July 2000, author P. Höllander

Estonia

- Anti-corruption act, 27 January 1999 (RT I 1999, 16, 276; last amendment March 2000)
- Bar association act, 21 March 2001 (RT I 2001, 36,201)
- Code of administrative court procedure, 25 February 1999 (RT I 1999, 31, 425)
- Code of civil procedure, 22 April 1998 (RT I 1998, 43/45, 666), last amendment February 1999
- Code of criminal court of appeal and cassation procedure, 21 June 1993 (RT I 1993, 50, 695; last amendment December 2000)
- Code of criminal procedure, 1 April 1961 (ENSV UT 1961, 1, 4; consolidated text RT I 2000, 56, 369; last amendment April 2001)
- Compatibility of Estonian law with the requirements of the European Convention on Human Rights, Council of Europe, Directorate of Human Rights, April 1997
- Cooperation programme to strengthen the rule of law 2001, Estonia, Council of Europe Directorate General I Legal Affairs, 20 december 2000
- Country report Estonia, Joint Programme between the European Commission and the Council of Europe on the fight against corruption and organised crime in States of Transition, Octopus(2000)44, Strasbourg 20 December 2000
- Courts Act, 16 December 1992 (RT 1991, 38, 472; last amendment July 2000)
- Courts Act, draft 607 SE II, 2 May 2001
- Criminal Code, Chapters 4, 7, 8 and 11, 7 May 1992 (RT 1992, 20, 288; last amendment November 2000)
- Criminal policy choices and the reform of the Estonian criminal law, Jaan Ginter, in: Juridica International Law review University of Tartu, V/2000, pages 79 - 84
- Development co-operation and technical assistance in the area of justice and home affairs between the Baltic States and Sweden, Swedish International Development Cooperation Agency (SIDA), 19 October 1999
- Draft national action plan for the adoption of the EU acquis on asylum, Estonia, 9-20 May 1999
- Enlargement – Estonia 2000 Regular report from the Commission on Estonia's progress towards accession, 8 November 2000
- Estonian code of criminal procedure as legal political decision, Eerik Kergandberg, in: Juridica International Law review University of Tartu, V/2000, pages 85 - 93
- General principles of the civil code act, 28 June 1994 (RT I 1994, 53, 889; last amendment October 1996)

- Judicial independence in Estonia, Executive summary, OSI EU Accession Monitoring Project – draft 23 February 2001
- Judicial independence in Estonia 2001, Open Society Institute Report 2001, Monitoring the EU Accession progress, Council of Europe Publishing May 2001, pages 148 - 184
- Judicial organisation in Europe – Estonia, Council of Europe Publishing May 2001, pages 107 - 109
- Justice and home affairs country summary fiche Estonia, draft 3 October 2000
- Justice and home affairs mission to Estonia, final and agreed mission of 5 July 2001
- Landenoverzicht Estland, Ministerie van Buitenlandse Zaken, September 2000
- Law on constitutional review court procedure, 5 May 1993
- Law on the application of the constitution, 28 June 1992
- Legal culture in Estonia, written in 2000 for the WRR, The Hague, E. Blankenburg in cooperation with Airi Kana
- Ministry of justice of Estonia, brochure, Tallinn 2001
- Nations in transit 2001 Freedom House, Estonia
- Phare-project developing judicial cooperation in criminal matters in Estonia, Latvia and Lithuania - a report from the expert mission in Latvia, Ministry for Foreign Affairs, Stockholm 12 May 1999
- Prosecutor's Office Act, 22 April 1998 (RT I 1998, 41/42, 625), last amendment July 2000
- Questionnaire on the situation in justice and home affairs in Estonia (restreint), January 2001
- Second assessment mission in the field of justice and home affairs in Estonia, 29 Jan-2 Feb 2001; 2 nd Phare Horizontal Programme for Justice and Home Affairs; final and agreed version of 5 July 2001 (and draft 24 April 2001)
- State compensation of victims of crime act, 15 December 1998 (RT I 1999, 4, 51; consolidated text RT I 2001,12,50; last amendment January 2001)
- Strategy for training judges and prosecutors for the years 2001-2004, approved by the government on 20 February 2001
- Supreme court judgement as source of Estonian criminal procedural law, Meris Sillaots, in: Juridica International Law Review University of Tartu, V/2000, pages: 94-103
- The bailiffs reach, the liberal status, Nikola Hesslen, in: UIHJ Magazine No. 12, 2001, pages 45 - 48
- The constitution of the Republic of Estonia, 28 June 1992
- The judicial system of Estonia, brochure, Tallinn 2001, Ministry of Justice European Integration and Development Division, Department of Courts, 5th edition, 1 May 2001
- The Legal Chancellor of Estonia as the Guardian of Law and Ombudsman, brochure on the status and duties of the Legal Chancellor in the Estonian legal system, Tallinn 2001
- The prison system of Estonia, brochure, Tallinn 2001, Ministry of Justice, Development Division Department of Courts
- The probation supervision system of Estonia, brochure, Ministry of Justice, Tallinn 2001
- The Supreme Court of Estonia, brochure, Tartu 2000

- Twinning project ES/98/IB/JH-01, on Strengthening Estonia's judicial system, Quarterly report 3, 9 January 2001
- Twinning project ES/98/IB/JH-01, on Strengthening Estonia's judicial system, Quarterly report 4, 29 March 2001
- Twinning project ES/90/IB/JH-01, on Development of police criminalistics and forensic science in Estonia, Quarterly report 1, 20 November 2000
- Zivilgesetzbuch - Allgemeiner Teil, Entwurf (Vositzender des Riigikogu (Parliament), Toomas Savi)

Hungary

- Act V of 1972 on the prosecution service of the Republic of Hungary, last amendment Act LXX of 1997
- Act LXXVI of 1993 on the entry, stay in Hungary and immigration of foreigners, not including amendments by Act LXXV of 1999 on the provisions of combatting organised crime and certain phenomena connected thereto and on the amendments of relevant legislation
- Act XXIV of 1994 on the prevention and impeding of money laundering
- Act LXVI of 1997 on the organisation and administration of courts, 1 July 1997 (section 108 sub 3: 1 February 1998)
- Act XCIII of 1998 on certain duties of the tax and financial control administration
- Act LIV of 1999 on cooperation and information exchange with the law enforcement network of the EU and the international criminal police organisation, passed on 1 June 1999
- Act LXXV of 1999 on the provisions of combatting organised crime and certain phenomena connected there to and on the amendments of relevant legislation, amended text with explanatory notes and quotations
- Act LXXXV of 1999 on criminal records and certificates on criminal record extracts, passed on 7 September 1999; came into force on 1 March 2000
- Amnesty International - Annual country report 2000 Hungary
- Commission opinion on Hungary's application for membership for the EU; criteria for membership; Agenda 2000; relates to the situation in 1997 (Internet)
- Conference on accession to the EU, Hungary, EU common position chapter 24; cooperation in the fields of justice and home affairs, Brussels 25 July 2001, conf-h 44/01
- Conference on accession to the EU, Hungary; supplementary negotiating position of the government of the Republic of Hungary on chapter 24, Brussels 15 October 2001, conf-h 50/01
- Constitution of the Republic of Hungary, 20 August 1949; Act XX of 1949
- Country report Hungary, Joint Programme between the European Commission and the Council of Europe on the fight against corruption and organised crime in States in Transition, Octopus(2000)51, Strasbourg, 20 December 2000
- Court performance around the world; a comparative perspective, World Bank Technical Paper no. 430, July 1999 (wtp430)
- Customs border modernisation 2001; standard summary project fiche, project

number hu2001-xx
- Dossier Hongarije, Europaportaal, Europa interactief (Internet)
- Draft cooperation between the investigation units of the police, the border guards, the customs office and the tax authority and the prosecution in the fight against organised crime, September 2000
- Draft on the competence of investigation authorities in the field of international legal assistance and international criminal cooperation, September 2000
- Draft setting up a joint ivestigation unit from the border guards and the police in order to more effectively combat organised human trafficking, September 2000
- Draft text on Governmental decree on legislative tasks and other measures aimed to improve the efficiency of fighting corruption, 2000
- Enlargement – Hungary 2000 Regular report from the commission on Hungary's progress towards accession, 8 November 2000
- Enlargement – Hungary 2001 Regular report from the commission on Hungary's progress towards accession, November 2001
- Enlargement md 789/01, 01.10.01, Chapter: 24 Justice and Home Affairs, 22 August 2001 (table)
- Extracts from Act I of 1973 on the Criminal Procedure
- Extracts from Act IV of 1978 on the Penal Code
- Extracts from Act XXXIV of 1994 on the police
- Extracts from Act C of 1995 on customs law, customs proceeding and customs administration, amended by Act LXXV of 1999
- Extracts from Act CXXV of 1995 on the national security services
- Extracts from Act XXXII of 1997 on protecting the borders and the border guard concerning combating organised crime, amended draft
- Fragebogen der Ratsgruppe gemeinsame Bewertung (answers to questionnaire), Warschau 24 Februar 1999
- Government decree 34/1999(II.26) on the conditions of the order for, and the application rules of the personal protection of the participants in, and for themembers of the authority conducting criminal proceedings; came into force in March 1999 (Par. I art 26 came into force on 1 January 2000)
- Government resolution no.1074/1999(VII.7) on protection of victims of crimes and their relatives, and on legislative tasks to be carried out for compensation and mitigation for damages and on further measures
- Human Rights Watch - World report 2000 Hungary Human Rights Developments (Internet)
- Hungarian daily reports on code of ethics for civil servants, in: Public Management Forum Vol. IV, No. 3, 1998 (SIGMA – Support for Improvement in Governance and Management in Central and Eastern European Countries)
- Hungary's bankruptcy experience, 1992-93, The World Bank Policy research Department Transition Economics Division, September 1995 (wps1510)
- Information sur l'organisation du parquet Hongrois, le recrutement et la formation initiale des procureurs
- Interpretative notes on the Hungarian legislation concerning certain legal measures against corruption, money laundering and confiscation
- Judicial independence in Hungary, Open Society Institute Report 2001, Monitoring the EU accession progress 2001, pages 186 - 223

- Judicial organisation in Europe, Hungary; Council of Europe Publishing, May 2001, pages 173 - 176
- Justice and home affairs programme for Hungary based on the mission report on the identification of projects in the field of justice and home affairs for Hungary (23-27 June 1997) and the commission's opinion on Hungary (16 July 1997)
- Justice and home affairs country summary fiche Hungary, 29 September 2000
- Landenoverzicht Hongarije – Ministerie van Buitenlandse Zaken, Augustus 2001
- Legal culture in Hungary, written in 2000 for the WRR, The Hague, Laszlo Maracz (ed. E. Blankenburg)
- Legal reform for Hungary's private sector, The World Bank Country Economics Department, Policy Research Working Papers Transition and Macro-Adjustment, October 1992 (wps983)
- Main characteristics of Hungarian civil procedural law, with particular regard to the issues of the international procedural law
- Monitoring the EU Accession Process: Judicial Independence in Hungary, Executive summary, OSI EU Accession Monitoring Project Draft 23 February 2001
- National programme for the adoption of the acquis Hungary, Volume I, revised version 2000, Ministry of Foreign Affairs, State Secretariat for Integration (16276/2000), June 2000
- Observations on the report on legality and observance of the law, drafted within the framework of Dutch-Hungarian judicial project
- 'Organised crime in Hungary in 1999', - Answers to the questions of the expert panel of Europe Council on criminal law and criminological issues of organised crime (PC-S-CO) for 1999, Budapest 22 June 2000
- Report on the elaboration of administrative norms, Twinning project hu98/ib/jh-01, module cross border crime (Reiner Sonnet), Stuttgart 6 September 2000
- Report for the elaboration of the document titled "Cooperation between the investigation units of the police, the border guards, the customs and finance guards and the tax authority in order to combat organised crime", Twinning project HU98/IB/JH-01, module: Annex E Point 2 (Reiner Sonnet), Stuttgart 6 September 2000
- Report on the elaboration of the document titled "International legal assistance and cooperation between criminal authorities", Twinning project HU98/IB/JH-01, module: Annex E Point 3 (Reiner Sonnet), Stuttgart 6 September 2000
- Report for the elaboration of the document titled "Setting up a joint investigation unit to combat organised human trafficking", Twinning project HU98/IB/JH-01, module: Annex E Point 3 (Reiner Sonnet), Stuttgart 6 September 2000
- Réunion multilatérale sur les politiques judiciaires, organisée par le Conseil de l'Europe en coopération avec l'Inspection Générale des Services Judiciaires Francais, rapport préparé par Zsuzsanna Jambor, Strasbourg 28 avril 2000, Cj-ej (2000) ppj rap 3
- Standard summary project fiche, project number hu01xx; training of judges and prosecutors in EU law, justice and home affairs
- Standard summary project fiche, project no. HU01XX, on Training of Judges and Prosecutors in EU Law
- Standard summary project fiche, project number HU2001-XX, on Customs Border Modernisation 2001

- Summary of some key documents of the Justice and Home Affairs acquis policing organised crime, J. Rumble, Twinning project PL/98/IB/JH/02, 9 August 2000
- The appointment and role of judges as well as chief judges in Hungary, Office of the National Council of Justice in Hungary, Budapest 20 July 1999
- The functioning of the Hungarian judicial system, Office of the National Council of Justice in Hungary, Budapest 8 February 2000
- The role of the High Council of Justice or similar bodies in consolidating the independence of judges, presentation by the Head of the Office of the National Council of Justice in Hungary at 'Independent Justice – A guarantee for stability in South Eastern Europe'; Regional Judicial Conference by the Council of Europe, Budapest 1-2 March 2000
- Twinning quarterly report project HU98/IB/JH/01: "Fight against organised crime", Quarterly report No. 3, 12 February 2001
- Twinning final report project HU97/IB/JH-02: "Training of law enforcement officials", Quarterly report No. 5, 5 March 2001

Latvia

- Amnesty International - Annual country report 2000 Latvia
- Constitution of the Republic of Latvia, 15 February 1922, significantly amended in 1998 (and lastly in 2002)
- Contribution on police, justice and customs in Latvia, European Commission28 September 1999
- Country report Latvia, Joint Programme between the European Commission and the Council of Europe on the fight against corruption and organised crime in States in transition, Octopus(2000)45, 20 December 2000
- Enlargement – Latvia 2000 Regular report from the Commission on Latvia's progress towards accession, 8 November 2000
- Enlargement – Latvia 2001 Regular report on Latvia's progress towards accession, 13 November 2001
- Human rights in Latvia in 1999, Annual Report 1999, Latvian Center for Human Rights and Ethnic Studies (LCHRES)
- Human rights in Latvia, Report January 1 - June 30, 2000, Latvian Center for Human Rights and Ethnic Studies (LCHRES)
- Human rights in Latvia in 2000, Annual Report 2000, Latvian Center for Human Rights and Ethnic Studies (LCHRES), March 2001
- Human rights in Latvia, Report January 1 – June 30, 2001, Latvian Center for Human Rights and Ethnic Studies (LCHRES)
- Judicial independence in Latvia, Open Society Institute Report 2001, Monitoring the EU accession progress, Council of Europe Publishing, Budapest September 2001, pages 226 - 266
- Justice and home affairs country summary fiche Latvia, confidential draft 23 August 2000
- Justice and home affairs Phare assistance in Latvia 9476/1/00 rev 1, annex 2 and 3
- Justice and home affairs mission to Latvia, 19-23 March 2001, report 2001, on air and

sea borders (L.P. Gonveia)
- Justice and home affairs mission to Latvia, 19-23 March 2001, report 2001, on corruption and fraud issues, (G. Michelini), 11 April 2001
- Justice and home affairs mission to Latvia, 19-23 March 2001, draft preliminary report 20 April 2001 (Johan von Sydow)
- Justice and home affairs mission to Latvia, 19-23 March 2001, report 2001, on Latvia land borders (A. Dupureur)
- Justice and home affairs mission to Latvia, 19-23 March 2001, report 2001, on money laundering (F. Travaillot)
- Law on the office of the prosecutor; as amended by act of Parliament, 8 June 2000
- List of Council of Europe Treaties Latvia has signed and ratified, state of play 13 Februry 2001
- Monitoring the EU Accession Process: Judicial Independence in Latvia, Executive Summary, OSI: EU Accession monitoring project, draft 23 February 2001
- Needs assessment of the judicial system of Latvia, Claes Sandgren in cooperationwith Daiga Iljanova, Stockholm and Riga, September 2000
- Newsletter of the Latvian Judicial Training Centre, Summer Activities
- Non paper justice and home affairs – Latvia and Lithuania in perspective of EU membership, Sweden 1999
- Phare-project developing judicial cooperation in criminal matters in Estonia, Latvia and Lithuania - a report from the expert mission in Latvia, Ministry for Foreign Affairs, Stockholm 12 May 1999
- Programming by priority: working document Latvia 1999/2000
- Project appraisal document on a proposed loan to the Republic of Latvia for a state revenue service modernization project, The World Bank Baltics and Poland, Europe and Central Asia Region, 30 October 1998
- Recommendation rec(2000)19 of the Committee of Ministers to member states on the role of public prosecution in the criminal justice system, Council of Europe, 6 October 2000
- Strategy for the integration into the European Union, by the Republic of Latvia 2000
- Technical covenant concerning the project 'court system reform', project lv98/ib-jh-1
- The Criminal Law of Latvia, Riga, July 1998
- The legal system of Latvia – Court system; Latvian ministry of justice homepage
- Twinning project LV98/IB/JH-01, on Court System Reform, Riga 23 February 2001
- Twinning project LV/98/IB/JH-01, on Court System Reform, Report Number 6, Riga 30 April 2001
- Twinning project LV/98/IB/JH-01, on Court System Reform, Report Number 5, Riga 31 January 2001
- Twinning project LV/98/IB/JH-01, on Court System Reform, 6th Quarterly Report, Riga 23 May 2001

Lithuania

- Action plan on development cooperation and technical assistance in the area of justice and home affairs between Lithuania and Sweden, based on discussion in October 1998
- Amnesty International - Annual country report 2000 - Lithuania
- Analysis of the ethical rules for judges in the Republic of Lithuania, American Bar Association Central and East European Law Initiative, 28 June 1999
- Answers to questionnaire; collective evalution of implementation of the acquis of the EU in the field of justice and home affairs in Lithuania: focus on judicial cooperation, 2 December 1999
- Code of criminal procedure, draft 23 May 2001
- 23rd Conference of European Ministers of Justice, Delivering justice in the 21st century, Lithuania; Council of Europe, London 8-9 June 2000, mju-23 (2000) 21
- Constitution of the Republic of Lithuania, 25 October 1992
- Constitutional law on the Lithuanian state, Supreme Council of the Republic of Lithuania, 11 February 1991, No. I-1051
- Country report Lithuania, Joint Programme between the European Commission and the Council of Europe on the fight against corruption and organised crime in States in Transition, Octopus(2000)46, 20 December 2000
- Enlargement – Lithuania 2000 Regular report from the Commission on Lithuania's progress towards accession, 8 November 2000
- General justice and home affairs follow-up mission to Lithuania, Follow-up to the mission for the identification of projects in the field of JHA to be implemented under the Phare Programme for Lithuania, which took place on 4-8 May 1998, 22-25 March 1999
- Judicial independence in Lithuania, Executive summary, OSI EU Accession Monitoring Project – draft 23 February 2001
- Judicial independence in Lithuania, Open Society Institute 2001 Report (Monitoring the EU accession progress), Budapest September 2001, pages 268 - 306
- Judicial organisation in Europe – Lithuania, Council of Europe Publishing, May 2000, pages 209- 212
- Justice and home affairs country summary fiche Lithuania, confidential draft 5 October 2000
- Justice and home affairs Lithuania, standard summary project fiche, draft Ministry of Interior, 14 August 2002, on strengthening the fight against organised crime through the establishnment of the National Europol Bureau and upgrading of the Forensic Science Service Central Laboratory
- Landenoverzicht Litouwen, Ministerie van Buitenlandse Zaken, November 2000
- Law concerning the approval of the Statute of the Seimas Ombudsmen's Office of the Republic of Lithuania, Vilnius 22 February 1995, No. I-804
- Law on supplementing article 47 of the constitution of the Republic of Lithuania, Vilnius 20 June 1996, No. I-1390
- Law on the amendment and supplement to the civil code of the Republic of Lithuania, Vilnius 17 May 1994, No. I-459

- Law on the constitutional court, Vilnius 3 February 1993, No. I-67
- Law on the procedure for the enforcement of the constitution, 6 November 1992
- Law on the prosecutor's officeVilnius 13 October 1994, No. I-599
- Law on the Seimas ombudsmen, Vilnius 11 January 1994, No. I-363
- Lithuania Public expenditure review, The World Bank Europe and Central Asia Region, (report nr. 12792 LT), 12 June 1994
- Non-paper justice and home affairs – Latvia and Lithuania in perspective of EU membership, Sweden 1999
- Phare project: Developing judicial cooperation in criminal matters in Estonia, Latvia and Lithuania; a report on the expert mission to Lithuania 28 March – 2 April 1999, Helsinki 30 August 1999
- Rules of ethics of the judges of the Republic of Lithuania (18 December 1998), about departments of courts, the judicial system of the Republic of Lithuania (undated brochure texts) – Department of Courts at the Ministry of Justice, Vilnius (Internet)
- SEIL Phare project; Gaps analysis on situation in Lithuania in the framework of the title VI of the TEU (Justice and home affairs), Vilnius, May 1999
- SEIL Phare project; Strategy for justice and home affairs: "the third pillar"; Republic of Lithuania, Vilnius September 2000
- Standard summary project fiche, on Strengthening the fight against organised crime through the establishment of the National Europol Bureau and upgrading of the forensic science service central laboratory; draft nr. 2, Ministry of the Interior, 2 January 2001
- Statute of the Seimas Ombudsmen's Office of the Republic of Lithuania, Vilnius 6 February 1992, No. I-2273
- Twinning convenant reference no li99/ib-jh-03, revised 15 February 2000

Poland

- Act on the prosecuting authority (excerpt), June 20th 1985 with later amendments
- Amnesty International - Annual country report 2000 Poland
- 23rd Conférence des Ministres Européens de la Justice, Rendre la justice au 21e siècle, Pologne; Conseil de l'Europe, Londres 8-9 juin 2000, mju-23(2000)16
- Conference on accession to the EU - Poland - Chapter 24; Poland's reply to the EU common position in the area of justice and home affairs, Brussels 1 September 2000, conf-pl 56/00
- Conferentie over de toetreding tot de EU – Polen - Gemeenschappelijk standpunt van de Europese Unie, Brussel 24 mei 2000, conf-pl28/00
- Constitution ('Sejm') of the Republic of Poland, 2 April 1997
- Constitutional tribunal act of 1 August 1997 (DzU No 102/643; changed 2000 No. 48/552, 53/638)
- Contribution to the study on the functioning of the justice system in Poland, French Embassy in Poland (Guy Pose, Thomas Chalmeau), 18 March 1999, sn2261/99
- Country report Poland, Joint Programme between the European Commission and the Council of Europe on the fight against corruption and organised crime in States in Transition, Octopus(2000)47, Strasbourg 20 December 2000

- Country Report: Poland (W. Hermelinski), in: Parker School Journal of East European Law Vol. 5 1998 nos. 1-2
- Crise de la justice en Pologne? Reformes envisagees; analyse et commentaire de la situation de la justice en Pologne en l'an 2000 et des projets de reformes, Varsovie 30 juin 2000 (J. Baconin)
- Draft Statute on the National Council of the Judiciary, 20 December 1989 – Standardized text for internal use only
- Enlargement - Poland 2000 Regular report from the Commission on Poland's progress towards accession, 8 November 2000
- Judicial independence in Poland, Open Society Institute Report 2001 (Monitoring the EU accession progress), Budapest September 2001, pages 308 - 348
- Judicial organisation in Europe – Poland -, Council of Europe Publishing, May 2000, pages 265 - 276
- Justice: une reforme necessaire, J. Baconin, 21 février 2001
- Landenoverzicht Polen, Ministerie van Buitenlandse Zaken, December 2000
- Legal culture in Poland, written in 2000 for the WRR, The Hague, author Michiel Notten (ed. E. Blankenburg)
- Monitoring the EU Accession Process: Judicial Independence in Poland; Executive summary; OSI-EU Accession Monitoring Project, draft, 23 February
- Nations in transit 2001 Freedom House, Poland
- Ordinance of the Ministry of Justice of 12 August 1998 on the technical conditions for hearing a witness whose personal data are to be kept confidential
- Reforming tax expenditure programs in Poland, Policy Research Working Paper, The World Bank, Europe and Central Asia Region, Poverty reduction and economic management sector unit, October 2000 (Carlos B. Cavalcanti, Zhicheng Li)
- Resolution n. 2/XVIII/98 of the Polish Bar Association dated the 10 October 1998
- Second assessment mission in the field of justice and home affairs in Poland, 26 February-2 March 2001, 1st version of preliminary draft of 11 April 2001; Phare Horizontal Programme for Justice and Home Affairs
- Stefan Batory Foundation, 1999 Annual Report, Warsaw March 2000
- Summary of some key documents of the Justice and Home Affairs acquis policing organised crime – pl/98/IB/JH/02, PAA, 9 August 2000
- The law on the advocate's profession, 26 May 1982 as amended on 22 May 1997 (DU No. 75/471); incl. Amendment of this Law of 16 March 2000
- The legal framework for private sector development during transition; the case of Poland, Country Economics department, World Bank (WPS 800), November 1991
- The Polish System of Criminal Procedure (Phare project no. PL 9904.05; EC Olaf Representation, Warsaw 29 June 2001)
- The Presidents of the Supreme Court of the Republic of Poland, brochure, Warszawa 2001 (The press bureau of the Supreme Court)
- Twinning project (PL98/JH/IB/01, Improving the Efficiency of the Court System and the Prosecutor's Office) – Cinquième rapport trimestriel (1er juillet – 15 octobre 2000), Paris/Varsovie octobre 2000
- Twinning project (PL98/JH/IB/02, Poland Eastern Border Management and Infrastructure) – Third Quarterly Report (1 May – 31 July 2000), 20 November 2000
- Twinning project (PL98/JH/IB/01, Improving the Efficiency of the Court System and the Prosecutor's Office) – Septième rapport trimestriel (1er janvier – 31 mars 2001),

Paris/Varsovie mai/juin 2001
- Twinning project (PL98/JH/IB/01, Improving the Efficiency of the Court System and the Prosecutor's Office) - Huitième rapport trimestriel couvrant la période du 1 avril 2001 au 30 juin 2001, juillet 2001

Romania

- Amnesty International - Annual country report 2000 Romania
- Consolidation of the state of law, intermediate report - commentary by the Romanian Public Ministry - the status and role of the public prosecutor
- Constitution of Romania, 8 December 1991 (Monitorul Official/Official Gazette of Romania, Part I, no. 233/November 21, 1991)
- Cooperation programme to strengthen the Rule of Law 2001, Romania, Council of Europe, 1 March 2001
- Country report Romania, Monica Macovei, in: Parker School Journal of East European Law, vol. 5 1998 nos. 1-2
- Enlargement – Romania 2000 Regular report from the Commission on Romania's progress towards accession, 8 November 2000
- EU integration process; relations between Romania and the EU, Ministry of Foreign Affairs of Romania, 1999
- Expert mission to Romania in the field of justice and home affairs on behalf of the EC, 4-8 May 1998; mission report
- Factual document presented by the commission services on judicial cooperation (civil and criminal matters) to the Council (JHA), Brussels 3 December 1997, 13036/97
- Human Rights Developments, Romania, Human Rights Watch
- Judicial independence in Romania, Open Society Institute 2001, Monitoring the EU Accession Process, draft 23 February 2000
- Judicial independence in Romania, Open Society Institute Report 2001, Monitoring the EU accession progress, Council of Europe Publishing, Budapest September 2001, pages 349 - 394
- Judicial organisation in Europe, Romania, Council of Europe Publishing, May 2001, pages 279 - 287
- Judiciary in Romania, events first half year of 2001 in relation to independence
- Justice and home affairs country summary fiche Romania, confidential draft 2 October 2000
- Landenoverzicht Roemenië, Ministerie van Buitenlandse Zaken, mei 2000
- Law on the constitutional court, adopted on 18 May 1992
- Law no 92 of 4 August 1992 on judicial organisation
- Mission report Enlargement Romania team, Bucharest 15-20 Jan 2000, Brussels enlar/hr d(2000)
- Mission report Enlargement Romania team, Bucharest 3-7 Dec 1999, Brussels 10 dec 1999enlar/hr/d (99)
- Nations in transit 2001 Freedom House, Romania
- Public Ministry, Prosecutor's Office attached to the Supreme Court of Justice, brochure

- Rapport Pays Roumanie, Proramme commun de la Commission Européenne et du Conseil de l'Europe sur la lutte contre la corruption et le crime organisé dans les Etats en Transition, Octopus(2000)58, Strassbourg 20 Décembre 2000
- Romania's evolving legal framework for private sector development, World Bank, wps872, Country Economics Department and Legal Department, Policy research working papers socialist economic reform, March 1992
- The National Institute for Magistrates, Romania, brochure (European Union)
- The White Paper, four years of reform 1997-2000, Ministry of Justice of Romainia, Bucharest

Slovak Republic

- Act 256 of 8 July 1998 on the protection of the witness and on the modification and amendment of certain laws, to come into effect on 1 January 1999
- Act on judges and lay judges and on amending some acts, 5 October 2000 (National Council of the Slovak Republic)
- Act on prosecutors and trainee prosecutors of the public prosecution service, 154/28 March 2001
- Act on the organization of the Constitutional Court of the Slovak Republic, on the proceedings before the Constitutional Court and the status of its Judges, 20 January 1993
- Act on the public prosecution service, 153/28 March 2001
- Activity of ASJ offices, Association of Slovak Judges
- Activities of the ASJ international committee, Association of Slovak Judges
- Amnesty International, Annual report 2000, Slovakia
- Analysis of the judiciary and the concept of judicial reform, Association of Slovak Judges, December 1999 (gepubliceerd in Justin (ASJ), nr.3/2000)
- Analysis of two drafts 'Of the act on organization and state administration of courts' for the Slovak Republic, American Bar Association Central and East European Law Initiative, 29 December 1997
- Association on Slovak Judges, brochure incl. General information about ASJ, Statute of ASJ (Jan 2000), Current situation of the Judiciary of the Slovak Republic (May 2001), Documents of the IX. Annual general meeting of the ASJ (3-5 Dec 1999, Stara Lubovna), Documents of the X. Annual general meeting of the ASJ (10-12 Dec 2000, Piestany) and ASJ Representatives
- Chapter 24 cooperation in the area of justice and home affairs, additional information, Bratislava September 2001
- Charter of fundamental rights and freedoms, Federal Assembly, including joint provisions with the Czech Republic
- Chronik der Rechtsentwicklung, in: Jahrbuch fuer Ostrecht, Band XLI, 2000, Slowakische Republik, page 481 - 482
- Civil and political rights, including questions of independence of the judiciary, administration of justice, impunity – Report of the Special Rapporteur on the independence of judges and lawyers, Economic and Social Council, 15 January 2001
- Code of ethics, draft October 1999, incl. report of reasons

- Comments concerning the Open Society Institute Report, Minister of Justice, 17 December 2001
- Comments to a draft of a bill worked up by a group of parliamentary deputies of the National Council of the Slovak Republic concerning adoption of a constitutional act amending and supplementing the Constitution of the Slovak Republic No. 460/1992 of the Coll. – as amended by Act No. 244/1998 of the Coll. and by the Constitutional Act No. 9/1999 of the Coll., President of the Supreme Court, Bratislava, 29 September 2000
- 23e Conférence des Ministres Européens de la Justice; Rendre la justice au 21e siècle, Slovaquie; Conseil de l'Europe, Londres 8-9 juin 2000, mju-23(2000) 13
- Constitution of the Slovak Republic, 1 September 1992; No. 460/1992 Coll; last amendment 90/2001 coll.
- Country report Slovak Republic, Joint Programme between the European Commission and the Council of Europe on the fight against corruption and organised crime in States in Transition, Octopus(2000)52, Strasbourg 20 December 2000
- Courts to get case management system, in: Slovak Spectator, 29 October – 4 November 2001
- Draft Act 2001, Amending act of the Slovak National Council no. 132/1990 coll. on the Bar as amended by act no. 302/1999 coll and on amendment of certain acts, to come into effect 1 August 2001
- Education and Training System for Judges and other Court Personnel of the Ministry of Justice of the Slocak Republic, Bratislava July 1995
- Enlargement – Slovakia 2000 Regular report from the commission on Slovakia's progress towards accession, 8 November 2000
- Enlargement – Slovakia 2001 Regular report on Slovakia's progress towards accession 2001, Brussels 3 November 2001 sec(2001)1754
- Excerpts from the Code of Criminal Procedure, Act No. 141/1961 coll.
- Excerpts from Transparancy International Report on corruption in Slovakia
- History and introduction of ASJ, Association of Slovak Judges
- Judicial independence in Slovakia, Executive Summary, OSI EU Accession Monitoring Project, draft 23 February 2001
- Judicial independence in Slovakia, Open Society Institute 2001. Monitoring the EU Accession Process, Budapest September 2001, pages 395 - 430
- Judicial organisation in Europe, Slovak Republic, pages 291 - 295
- Justice and home affairs country summary fiche Slovakia, 9 October 2000
- Mission to the Slovak Republic (E/CN.4/2001/65/Add.3) in: International service for human rights, 57th Commission 2001, page 72
- Negotiating position of the Slovak Republic, chapter 24; co-operation in the area of justice and home affairs, Bratislava April 2001
- Predpisy slovenskej advokacie/Statutes of the Slovak advocacy/Vorschriften der Slowakischen Advokatur, Slovak Bar Association, Bratislava 2000
- Principles of judicial ethics; Council of Judges of the Slovak Republic and the Minister of Justice of the Slovak Republic, Bratislava 4 October 2001
- Questionnaire on justice and home affairs matters: Slovakia, French Embassy in Slovakia, Bratislava 24 October 2000, sn 4812/00
- Questionnaire Slovak Judiciary, Ministério dos Negocios Estrangeiros de Portugal,

Bruxellas August 2000
- Responses by the EC delegation to the justice and home affairs questionnaire, part II; Justice, EC Delegation Bratislava 2000
- Schlussbericht Projekt Court Management in der Slowakei 1998-2000, Dezember 2000/14 Juni 2001
- Second assessment mission in the field of justice and home affairs in Slovakia (12-16 February 2001), 2nd revised version of the preliminary draft, 5 June 2001
- Slovakia identification mission; World Bank, Aide Memoire, 21 October –3 November, 2001
- The national programme for the adoption of the acquis communautaire, Government Office of the Slovak Republic, 26 October 1999
- Twinning project SR98/IB/JH/06, on Training of judges, final report, Bratislava 15 June 2001

Slovenia

- Additional clarifications to the negotiation position on chapter 24 – Justice and home affairs, Ljublana 1 March 2000
- Basic Information on Slovenian Judiciary, Supreme Court Republic of Slovenia
- Chronik der Rechtsentwicklung, in: Jahrbuch fuer Ostrecht, Band XLI, 2000, Slowenien, page 482
- Code of criminal procedure, No. 012-01/94-123, October 1994
- Code of civil procedure, No. 001-22-46/99, April 1999
- 23e Conférence des Ministres Européens de la Justice; Rendre la justice au 21e siècle, Slovenie; Conseil de l'Europe, Londres 8-9 juin 2000 / mju-23 (2000) 8
- Conference on accession to the EU, Slovenia, EU common position, chapter 24 'Cooperation in the fields of justice and home affairs', Brussels 15 October 2001, conf-si 51/01
- Conference on modernisation of justice 27.06-29.06.2001, (brdo pri kranju), recommendations 26 June 2001
- Conference on the constitutional impact of enlargement at EU and national level; Lecture Constitutional problems in the period of pre-accession in the Republic of Slovenia, P. Vehar, The Hague 20-23 September 2000
- Country report Slovenia, Joint Programme between the European Commission and the Council of Europe on the fight against corruption and organised crime in States in Transition, Octopus(2000)42, Strasbourg 20 December 2000
- Courts act, No. 19-779/1994, last amendment No. 28-1254/2000
- Court rules, No. 17-81/1995, last amendment 22-993/2000
- Desk study of existing documents and reports concerning aspects of the Rule of Law in the Republic of Slovenia, Horizontal Phare Project 'Reinforcement of the Rule of Law', Module 3 'Court procedures and execution of judgements', (N. Doukoff) Ljubljana, 14 March 2001
- Enlargement - Slovenia 2000 Regular report 2000 from the Commission on Slovenia's progress towards accession, 8 November 2000
- Evro in slovenska podjetja / The euro and Slovene companies, (EU Monitor) Open

Society Institute, Slovenia 2000
- Human development report Slovenia 2000-2001, Institute of Macroeconomic Analysis and Development, Ljubljana March 2001 (ed. Matjaz Hanzek & Marta Gregorcic)
- Human Rights Ombudsman Act, December 1993 (and Rules of Procedure)
- Human Rights Ombudsman, Fourth annual report 1998, abbreviated version, Ljubljana May 1999
- Human Rights Ombudsman, Fifth annual report 1999, abbreviated version, Ljubljana May 2000
- Human Rights Ombudsman, Sixth annual report 2000, abbreviated version, Ljubljana June 2001
- Intergovernmental conference of the accession of the Republic of Slovenia to the EU; additional clarifications to the negotiating position on chapter 24 justice and home affairs, Brussels 2 August 2000 /conf-si66/00
- Intolerance monitoring group report, Mirovni Institut 2001 (ed: Brankica Petkovic)
- Judicial independence in Slovenia 2001, Open Society Institute, Monitoring the EU accession progress, Budapest September 2001, pages 431 - 472
- Judicial Independence in Slovenia, Executive Summary, OSI EU Accession Monitoring Project, Draft 23 February 2001
- Judicial organisation in Europe; Republic of Slovenia, Council of Europe Publishing, May 2001, pages 299 - 309
- Justice and home affairs mission to Slovenia, 23-27.02.98; mission report on the identification of projects in the field of justice and home affairs to be implemented under the Phare programme for the Republic of Slovenia
- Justice and home affairs country summary fiche Slovenia, 23 August 2000
- Law on amendment of the law on amendments and additions to the law on the criminal procedure (lcp-b); No. 713-01/93-10/52, January 1999
- Legal culture in Slovenia, written in 2000 for the WWR, The Hague, Nena Tromp (ed. E. Blankenburg)
- Liability of legal persons for criminal offences act, 001-22-114/99 (Ur.l.RS no.59/99) Media policy in Slovenia in the 1990s; Regulation, privatization, concentration and commercialization of the media, Peace Institute – Mirovni Institut 2001 (Sandra Hrvatin, Marko Milosavljevic)
- Nations in transit 2001 Freedom House, Slovenia
- Organisation of the national prison administration, Ljublana 2000, Ministry of Justice
- Peace Institute; Institute for contemporary social and political studies, brochure, 2001
- Politieke en economische criteria aan de hand waarvan de toetredingsaanvragen van de geassocieerde landen in Midden- en Oost Europa zullen worden onderzocht, Europese Unie
- Questionnaire of the commission and presidency for screening the EU and Schengen acquis, chapter 24 - justice and home affairs, 01.03.99
- Questionnaire Slovenia Justice Ministério dos Negocios Estrangeiros, Lisbon 24 March 2000
- Reply of the Republic of Slovenia on the questionnaire of the collective evaluation group (4th February 2000)
- Second assessment mission in the fields of justice & home affairs in Slovenia, 15-19

Jan 2001, 2 nd Phare Horizontal Programme for Justice and Home Affairs; final and agreed version of 18 July 2001
- Supreme Court, Basic information Supreme Court of the Republic of Slovenia, Basic information on Slovenian judiciary – Ljublana 8 July 1999
- The amendments and supplements to Republic of Slovenia's national programme for the adoption of the acquis by the end of 2002, April 2000
- The competence, powers and functioning of the human rights ombudsman in relation to the judiciary, A. Butala, Deputy Human Rights Ombudsman, Ljubljana, 30 October 2001
- The rules of procedure of the constitutional court of the Republic of Slovenia, May 1998 (Official Gazette RS, no. 49/98)
- The victory of the imaginary left; the relationship of the media and politics in the 2000 parliamentary elections in Slovenia, Peace Institute – Mirovni Institut 2001
- Twinning project SL99/IB/JH-03 'Organisation and functioning of justice administration and training of judges', first quarterly report, Ljubljana 19 December 2000
- Twinning project SL/99/IB/JH-03,Organisation and functioning of justice administration and training of judges, second quarterly report, Ljubljana 1 March 2001- on criminal courts, on administrative courts, on labor courts, on social courts and on civil courts; and the comments on the report Ljubljana 17491 18 May 2001
- Twinning project SL/99/IB/JH-03, Organisation and functioning of justice administration and training of judges, general comments on Third Quarterly Report, Ljubljana 18064 5 July 2001
- Twinning Projekt Slowenien – Justizmodernisiering und Richterfortbildung; Analyse des Grundbuchwesen, April 2001
- Twinning Projekt Slowenien – Justizmodernisiering und Richterfortbildung; Analyse der Arbeitsgerichtsbarkeit, mission January 2001
- Twinning Projekt Slowenien – Justizmodernisiering und Richterfortbildung; Untersuchung der Staatsanwaltschaft, March 2001
- Twinning Projekt Slowenien – Justizmodernisierung und Richterfortbildung; Analyse der Strafgerichtsbarkeit, February 2001
- Twinning Projekt Slowenien – Justizmodernisierung und Richterfortbildung; Untersuchung der Verwaltungsgerichtbarkeit, December 2000
- Twinning Projekt Slowenien – Justizmodernisiering und Richterfortbildung; Analyse der Fortbildung in der Justiz, February 2001
- Twinning Projekt Slowenien – Justizmodernisierung und Richterformbildung; Analyse der Zivilgerichtsbarkeit, mission October 2000
- Twinning Projekt Slowenien – Justizmodernisierung und Richterfortbildung; Analyse der Mobiliarvollstreckung (also in English)
- Women - politics – equal opportunities; prospects for gender equality politics in Central and Eastern Europe, Peace Institute – Mirovni Institut, 2001 (V. Jalusic, M.G. Antic)

General Information

- Charter of fundamental rights and freedoms, joint charter between the Czech National Council and the Slovak National Council
- Committee of experts on efficiency of justice, 2nd Plenary Meeting, Strasbourg 19 – 21 January 2000, Meeting Report, Strasbourg 3 February 2000
- Committee of Ministers Monitoring Procedure (Theme: independence and impartiality of judges) Summary, Council of Europe, October 1999
- Compliance with member states' commitments: decisions taken within the context of the committee of ministers' monitoring procedure, Secretariat Memorandum prepared by the SG Monitoring Unit, Council of Europe, Strasbourg 15 June 2000
- Compliance with member states' commitments, Committee of Ministers, Declaration of 10 November 1994, List of principal Committee of Ministers documents, Secretariat Memorandum prepared by SG Monitoring Unit, Council of Europe (CM Documents), 30 June 2000
- Compliance with member states' commitments, committee of ministers, Declaration of 10 November 1994, Sub-items, Secretariat Memorandum prepared by SG Monitoring Unit, Council of Europe (CM Documents), revised 4 Februari 2000
- Compliance with commitments entered into by member states: undertakings entered into upon accession to the Council of Europe, Secretary General's Monitoring Unit, Strasbourg 18 February 1999
- Compliance with commitments entered into by member states: vade-mecum on the committee of ministers' thematic monitoring procedure, Council of Europe SG Monitoring Unit, Strasbourg 4 May 2000
- Concept paper on judicial independence, American Bar Association Central and East European Law Initiative (CEELI), 26 April 1999
- Conclusions of the meetings of Presidents and Members of Associations of Judges; Neuchatel 8 – 10 September 1997, Budapest, 13 – 15 May 1998 and Vilnius 13 – 14 December 1999
- 22nd Conference of European Ministers of Justice – Independence and Impartiality of Judges; Contribution of the Secretary General's Monitoring Unit, Council of Europe, Chisinau 17-18 June 1999
- 22nd Conference of European Ministers of Justice – Report by the Secretary General on the Legal Activities of the Council of Europe (European Court of Human Rights) May 1996 – May 1999, Chisinau 17-18 June 1999
- 22nd Conference of European Ministers of Justice - Conclusions and Resolutions of the Conference, Report by the SG of the Council of Europe, Chisinau 17-18 June 1999
- 23rd Conference of European Ministers of Justice, London 8-9 June 2000, Cost effective measures taken by the States to increase the efficiency of justice
- Conference on "Modernisation of justice"; conclusions and recommendations, Brdo pri Kranju 27 – 29 June 2001
- Council framework decision of 15 March 2001 on the standing of victims in criminal proceedings (2001/220/JHA); Official Journal of the European Communities, 22 March 2001
- Corporate Governance and Equity Prices – Evidence from the Czech and Slovak

Republics, Stijn Claessens, Policy Research Working Paper 1427, The World Bank, February 1995
- Enlargement and Civil Society, Proceedings of the European Commission sponsored Caritas Conference Brussels, 18 – 22 October 1999
- Enlargement - Overview of the Phare Programme and the new pre-accession funds, Proceedings of a seminar held in September 1999 at the EU Information Centre in Budapest
- Europa Expres, Nieuwsbrief Uitbreiding Europese Unie, No. 6, April 2001
- European Charter on the Statute for Judges, and Explanatory Memorandum, Strasbourg 8 – 10 July 1998
- European Committee on crime problems (CDPC); Committee of experts on criminal law and criminological aspects of organised crime; Report on Witness Protection (Best Practice Survey); To prevent witnesses from becoming vistims…Council of Europe, Strasbourg 24 March 1999
- European Committee on crime problems (CDPC); Committee of experts on criminal law and criminological aspects of organised crime, Report on the organised crime situation in Council of Europe member states in 1998, Strasbourg 17 December 1999
- European Committee on crime problems (CDPC); Committee of Experts on the Role of the Public Prosecution in the Criminal Justice System, Final activity report, Strasbourg 12 January 2000
- European Commitee on legal cooperation; Recent or proposed legislative and other measures in states to increase the efficiency of justice, Council of Europe, Strasbourg 26 July 1999
- European Commitee on legal cooperation; recent or proposed legislative and other measures in states to increase the efficiency of justice, Council of Europe, Strasbourg 10 December 1999
- European committee on legal cooperation (CDCJ), 73rd meeting Strasbourg 4 – 7 April 2001; Meeting Report, Strasbourg 10 April 2000
- Execution of judgments of the European Court of Human Rights, Parliamentary Assembly, Council of Europe, 12 July 2000
- Final activity report (activity 1.17F of the intergovernmental programme of activities 1999), Strasbourg 30 June 2000
- Final conslusions of the Noordwijk Conference on Rule of Law; 23 – 24 June 1997, Noordwijk, The Netherlands
- Het beloofde land in zicht; tien kandidaat-lidstaten bereiden zich voor op toetreding tot de EU in 2004, in: Justitiekrant, nummer 22, 30 November 2001
- Independence and accountability of the judiciary – two sides of a coin; some reflections on the rule of law in Central Europe, Erhard Blankenburg, Amsterdam
- Independence, impartiality and competence of judges; Achievements of the Council of Europe, 1999 (MJU-22(99)5)
- Independent justice - a guarantee for stability in South Eastern Europe; conclusions, 2 March 2000
- Information on control of execution of judgments of European Court of Human Rights concerning candidate states for membership in the EU, Strasbourg 18 June 2000
- International Association of Prosecutors – Standards of professional responsibility

and statement of the essential duties and rights of prosecutors, brochure, 23 April 1999
- Inventory on bilateral and multilateral assistance to associated countries in Central and Eastern Europe in the field of justice and home affairs, based on mission undertaken between July – October 1995
- Judicial organisation in Europe, Council of Europe Publishing, May 2000
- Law drafting and regulatory management in Central and Eastern Europe, Support for Improvement in Governance and Management in Central and Eastern European countries (SIGMA); SIGMA Papers No. 18: Description
- Legal and Judicial Reform in Central Europe and the Former Societ Union – Voices from Five Countries, Mark K. Dietrich, The International Bank for Reconstruction and Development/The World Bank, 2000
- Legal Culture in Five Central European Countries, A comparative report by prof. Erhard Blankenburg, written for the Scientific Council for Government Policy (Wetenschappelijke Raad voor het Regeringsbeleid, WRR), The Hague 2000
- List of 1999 decisions on the acquis of the EU under title IV and title V of the treaty, listed per theme, European Commission, DG JHA, Directorate B Unit External Relations, 18 May 2000
- Monitoring of compliance with commitments entered into by Council of Europe member states: an overview, Council of Europe, SG Monitoring Unit, Strasbourg 6 March 2000
- Monitoring the EU Accession Process: Judicial Independence 2001, Open Society Institute, EU Accession Monitoring Program, Budapest September 2001
- Note to the members of the Phare Management Committee, on Cooperation with the associated countries of central and eastern europe in the fields of justice and home affairs, incl. Third pillar cooperation with the associated CEECS Workprogramme/Calender, Brussels 24 July 1996
- Pan-European conference "What public prosecution in the XXI century", held in Strasbourg 22 – 24 May 2000, Programme 19 May 2000 and List of Participants, (revised) 24 May 2000
- Pan-European conference "What public prosecution in the XXI century", held in Strasbourg 22 – 24 May 2000, The role and status of Public Prosecution Services in Europe: Major problems and the Council of Europe draft recommendation, report presented by Marc Robert, Strasbourg 14 June 2000
- Pan-European conference "What public prosecution in the XXI century", held in Strasbourg 22 – 24 May 2000, Public Prosecution: The Council of Europe's Achievements, report presented by Mrs. Mariavaleria del Tufo, Strasbourg 19 May 2000
- Pan-European conference "What public prosecution in the XXI century", held in Strasbourg 22 – 24 May 2000, Conclusions of the Conference summarised by the Secreatriat, 14 June 2000
- Phare adress book, April 2000
- Policy Framework for Preventing and Eliminating Corruption and Ensuring the Impartiality of the Judicial System, in: Attacks in Justice – The harassment and Persecution of Judges and Lawyers, 10th edition, (ed. Mana Rishmawi), January 1999 – February 2000, pages 491 - 497
- Principles concerning the legal protection of incapable adults; recommendation no.

R(99)4 and explanatory memorandum, Council of Europe July 1999
- Private Sector Development during Transition – The Visegrad Countries, Michael S. Borich & Michel Noël, World Bank Discussion Papers 318, February 1996
- Privatization and Restructuring in Central and Eastern Europe – Evidence and Policy Opinions, World Bank Technical Paper No. 368, August 1997
- Programme for the implementation of the rule of law 1999-2001, Fair Trials Abroad
- Protection of vulnerable targets, Joint programme between the European Commission and the Council of Europe on the Fight against Corruption and Organised Crime in States in Transition, Octopus II Programme, Report on seminar on Cooperation with criminal justice agencies and prtection of vulnerable targets including witnesses (Bratislava/Slovak Republic, 29 september – 1 October 1999), Strasbourg 31 January 2000,
- Provisional inventory of the needs and priorities of the associated countries in the field of justice and home affairs, preliminary version, 23 July 1996
- Qestionnaire of the Commission and Presidency for screening the EU and Schengen Acquis, Chapter 24 - justice and home affairs
- Ready for Europe – Public Administration Reform and European Union Accession in Central and Eastern Europe, Barabara Nunberg, World Bank Technical Paper no. 466, May 2000
- Recommendation no. R(97)13 of the Committee of Ministers to Member States concerning intimidation of witnesses and the rights of the defence, Council of Europe Committee of Ministers, 10 September 1997
- Regional conference on guiding principles in the field of justice, organised by the Council of Europe in the framework of the Stability Pact for South Eastern Europe 27 and 28 January 2000 in Athens at the European Public Law Center, Conclusions adopted by the participants, Athens 28 January 2000
- Regional conference on the theme 'Independent justice – a guarantee for stability in South Eastern Europe', Council of Europe in cooperation with the National Council of Justice of Hungary, Budapest 1 – 2 March 2000, Conclusions
- Terms of reference for the 2000/2001 round of EU expert's mission in the fields of justice and home affairs in the Candidate Countries of Central Europe (and model structure for the mission reports), Phare Horizontal Programme for Justice and Home Affairs, September 2000
- The constitutional impact of enlargement at EU and national level; Reader Provisional reports and documents; Conference orgnised by T.M.C. Asser Institute and the Constitutional and Legal Policy Institute (COLPI), The Hague, 20 – 23 September 2000
- The Rule of Law and Justice, achievements of the Council of Europe, Council of Europe 1997 (DIR/DOC(97)8)
- The Supreme Court: publicity, visibility and transparency; Fifth meeting of the Presidents of European Supreme Courts, organised by the Council of Europe in cooperation with the Supreme Court of Slovenia, Ljubljana 6 – 8 October 1999; Conclusions, Strasbourg 15 Nov 1999
- The 1985 UN Basic Principles on the Independence of the Judiciary, in: Attacks in Justice – The harassment and Persecution of Judges and Lawyers, 10th edition, (ed. Mana Rishmawi), January 1999 – February 2000, pages 481 - 484
- The 1990 UN Basic Principles on the Role of Lawyers, in: Attacks in Justice – The

harassment and Persecution of Judges and Lawyers, 10th edition, (ed. Mana Rishmawi), January 1999 – February 2000, pages 485 - 490
- Training of judges and prosecutors - an essential element for the stability of South Eastern Europe, Stability Pact for South Eastern Europe - Regional meeting organised by Council of Europe in Ankara 23 – 24 March 2000, Strasbourg 23 March 2000

INSTITUTIONS AND ORGANISATIONS VISITED

Bulgaria

- Ministry of Justice
  - Minister of Justice and Deputy Ministers of Justice
  - Directorates:
    - International Legal Cooperation and International Legal Assistance
    - Council of Legislation; and
    - European Legal Integration
  - Inspectorate.
- Parliamentary Commission on Legal Matters
- Magistrates Training Center
- Union of Judges
- Supreme Court of Cassation
- Supreme Administrative Court
- Constitutional Court
- Regional Court, Sofia
- Regional Court, District Court, Appellate Court, Plovdiv
- Public Prosecutor General
- Public Prosecutor's Office (Appellate, District, Regional), Plovdiv
- Specialised Investigation Service, Sofia
- Investigation Service, Plovdiv
- Bar Association – Supreme Bar Council
- NGO's:
  - Open Society Foundation
  - Bulgarian Lawyers for Human Rights
  - Bulgarian Helsinki Committee
  - Center for the Study of Democracy
  - 'Animus' Foundation
  - 'Puls' Foundation
  - Centre for Support of Torture Survivors
  - Foundation 'Bulgarian Democratic research'
  - Centre 'Nadya'
  - Human Rights Association
- Journalists
- Legal academics
- EC Delegation

Czech Republic

- Ministry of Justice
  - Deputy Minister of Justice
  - Departments:
    - European Integration
    - Legislative Affairs
    - Probation and Mediation Service
    - Compensation
    - Economic Affairs
  - Chamber of Executors and Court's Executors
  - Prosecution Service
- Ministry of Interior/Police
- Supreme Court of the Czech Republic, Brno
- High Court, Prague
- City Court, Prague
- District Court, Kladno
- Regional Court, Brno
- Judicial Academy
- Supreme State Prosecutor's Office
- District Public Prosecution Office, Prague
- Prosecution Office, Kladno
- Supreme Prosecution Office, Brno
- Public Prosecution, Brno
- Czech Bar Association
  - Departments:
    - Legislative Affairs,
    - Criminal Legislation,
    - Civil Legislation
- Ombudsman of the Czech Republic, Brno
- NGO:
  - Czech Helsinki Committee, Prague
- Journalists
- EC Delegation

Estonia

- Ministry of Justice
  - (Vice) Chancellor
  - Departments:
    - Penal Law,
    - Public Law,
    - Probation Services,
    - Prisons,

    - Courts,
    - Public Relations
  - Prosecution Service
  - Civil Enforcement Division
- Legal Chancellor
- Constitutional Legal Committee of the Estonian Parliament
- Supreme Court
- Tartu Court of Appeal
- City Court, Tallinn
- County Court, Järva
- Judges' Association
  Prosecution General's Office
  - Departments:
    - Administration,
    - Conviction,
    - International Cooperation,
    - Public Relations
- Prosecutor's Office, Harju
- Estonian Bar Association
- NGO's:
  - Estonian Legal Centre
  - Open Estonian Foundation
  - Children's Security Centre
- Journalists
- EC Delegation

Hungary

- Ministry of Justice
- Constitutional Committee of Parliament
- Supreme Court
- Constitutional Court
- County Court, Tatabanya
- Office of the National Council of the Judiciary/Justice
  - Departments:
    - Court Administration,
    - International Relations
  - Secretariat
- Office of the General Prosecutor
  - Departments:
    - Personnel,
    - Training,
    - Media Affairs
- Hungarian Judges Association
- Hungarian Bar Association

- Hungarian Deputy Ombudsman
- Chambre of Bailiffs
- NGO:
  - NEKI (legal aid for victims of discrimination)
- Hungarian Association of Journalists
- EC Delegation

Latvia

- Ministry of Justice
  - Minister of Justice
  - Deputy State Secretaries
  - Departments:
    - Private Law,
    - Courts,
    - Court House Agency
- Saeima Latvian Parliament
  - Legal Affairs Commission
  - Legal Affairs Bureau
- Supreme Court
- Constitutional Court
- Riga Regional Court
- Preili District Court
- Prosecutor General's Office
- Prosecution Office, Preili
- Association of Judges
- Bar Association
- NGO:
  - Delna Transparency International Latvia
- Law Faculty, University of Latvia, Riga
- EC Delegation

Lithuania

- Ministry of Justice
- Vice Minister of Justice
- Departments:
  - Prisons
  - Courts
- Parliamentary Commission for the Judiciary
- Legal Advisors of the President
- Supreme Court
- Constitutional Court

- Court of Appeal
- 2nd District Court, Vilnius
- District Court, Moletai
- General Prosecutor's Office
- Lithuanian Association of Judges
- Bar Association
- Young Bar Association
- NGO:
  - Lithuanian Judicial Training Centre
  - Lithuanian Center for Human Rights
  - Lithuanian Open Society Foundation
- EC Delegation

Poland

- Ministry of Justice
  - Departments:
    - Judicial Assistance and European Law
    - Legislation
    - Organization
    - Courts and Notary
    - Human Resources and Training
    - Pre-Accession Projects
  - Centre for All Over Poland Court Registers and Informatization of Justice
- Ministry of Home Affairs
- Supreme Court
- Supreme Administrative Court
- Court of Appeal, Warsaw
- Regional Court, Warsaw
- Regional Court, Piotrkow Trybunalski
- Office of the General Prosecutor
- Circuit Prosecutor's Office, Warsaw
- Police Headquarters, Warsaw
- National Council of the Judiciary
- Prosecutor's Association, Poznan
- Supreme Bar Council of the Polish Bar Association
- Ombudsman's Office
- NGO:
  - Law Clinic of Warsaw University
  - All over Poland Forum for Victims
  - Biuro Porad Obywatelskich (Office for Social Advise)
  - Foundation Nobody's Children
  - Center for Women's Rights
  - La Strada Foundation
- EC Delegation

Romania

- Ministry of Justice
  - Department for Elaboration of Normative Acts
  - Financial and Administrative Directorate
  - Inspectorate General for the Judiciary
- Superior Council of the Magistracy
- National Institute for Magistracy
- Supreme Court of Justice
- Constitutional Court
- Military Courts
- Tribunal, Bucharest
- Court of First Instance, Bucharest
- Court of Appeal, Ploiesti
- Prosecutor General's Office
- Romanian Association of Magistrates
- Romanian Bar Association
- Media Monitoring Agency
- EC Delegation

The Slovak Republic

- Ministry of Justice
  - Minister of Justice
  - State Secretaries
  - Directorate of International Law
  - Woking group for justice
  - Departments:
    - European Integration
    - Official Journal Edition
    - Criminal Legislation
    - Civil Law Legislation
    - Penal Law
    - Foreign Relations and Human Rights
    - Investigation and Criminal Expertise
  - Sections:
    - Legal Informatics
    - Crime Prevention
    - Civil Matters
- Ministry of Interior
  - Departments:
    - European Integration and Foreign relations
- Supreme Court
- Regional Court, Bratislava

- District Court, Pezinok
- General Prosecutors Office
- Regional Prosecutors, Bratislava
- District Prosecutor's Office, Pezinok
- Association of Slovak Judges
- Slovak Bar Association
- Slovak Chamber of Notaries
- NGO's:
  - Slovak Helsinki Committee
  - Open Society Foundation
  - Transparency International Slovakia
- EC Delegation

Slovenia

- Ministry of Justice
  - Minister of Justice
  - State Secretaries
- Ministry of Interior
- Parliamentary Committee on Home Affairs [Internal Affairs and the Judiciary]
- Supreme Court
- Slovenia Constitutional Court
- District Court, Kranj
- Judicial Council
- Association of Judges
- Judicial Training Centre
- State Prosecutor's Office
- Association of Prosecutors
- Slovenian Bar Association
- Slovenian bailiff
- Slovenian Ombudsman Office
- NGO's:
  - Helsinki Monitor Slovenia
  - Peace Institute (Institute for Contemporary Social and Political Studies)
  - Legal Information Centre
- Journalists
- Academic legal expert
- EC Delegation

LISTS OF EXPERTS

A. List of experts desk research

Module 1

- Prof.dr. E. Blankenburg, Professor Free University, Amsterdam, The Netherlands
- Mr. P.W.M. Broekhoven, former President Utrecht District Court, The Netherlands
- Ms. mr. R.H.M. Jansen, Vice President Criminal section, Utrecht District Court, The Netherlands
- Dr. Johann-Friedrich Staats, Federal Ministry of Justice, former head of section, Bonn, Germany
- Mr. Martin Kuijer, lecturer Leiden University, The Netherlands

Module 2

- Mr. Piet Hein Cremers, Advocate-General, Court of Appeal, Arnhem, the Netherlands
- Mr. Tom van Daalen, former member of the Board of Prosecutors-general, The Netherlands
- Mr. Marc van Erve, project manager EULEC, Brussels, Belgium
- Mr. Barry Hancock; International Association of Prosecutors, United Kingdom
- Mr. Leo Ph. den Hollander, Chief Public Prosecutor, Leeuwarden, The Netherlands
- Mr. Hans van der Neut, Advocate-General, Court of Appeal, Leeuwarden, The Netherlands
- Mr. Jan Janus, Senior Legal Adviser, Legislation Directorate, Ministry of Justice, The Netherlands
- Mr. Willem Overbosch, former Chief Public Prosecutor, Maastricht, The Netherlands
- Mr. Henk Marquart Scholtz, Advocate-General at the Court of Appeal, Leeuwarden; Secretary General of the International Association of Prosecutors, The Netherlands

Module 3

- Mr. Frans Bauduin, President Criminal Chamber, District Court, Amsterdam
- Mr. H.H.O.V. Breitbarth, Vice-President District Court Almelo, The Netherlands
- Prof.dr A.M. van Kalmthout, Catholic University Brabant, Tilburg, The Netherlands
- Mrs. dr.mr. I.M. Koopmans, Catholic University Brabant, Tilburg, The Netherlands
- A.C.C.M. Uitdehaag, Bailiff, Etten-Leur, The Netherlands
- Ms. mr.dr. J. Uit Beijerse, Erasmus University, Rotterdam, The Netherlands
- Mr. Wolf Klimpe-Auerbach, judge Industrial Tribunal, Stuttgart, Germany

- Mr. Niels von Redecker, Institut fuer Ostrecht Muenchen, Germany
- Mr. Norman Doukoff, judge Court of Appeal, Muenchen, Germany
- Mr. Detlef BoettgerPresident Administrative Court, Gera, Germany

Module 4

- Dr. Franco Roberti, Prosecutor's Office, Naples, Italy
- Dr. Francesco De Leo, National Anti Mafia Prosecutor's Office, Rome, Italy
- Dr. Giovanni Diotallevi, Judge Supreme Court, Rome, Italy
- Dr. Francesco Patrone, Magistrate, Court of Rome, Italy
- Dr. Maria Grazia Benedetti, Magistrate, Office of the Prime Minister, Rome, Italy
- Dr. Gualtiero Michelini, Magistrate, Court of Rome, Italy
- Dr. Giamcarlo Bianchini, Ministry of Interior, Rome, Italy
- Col. Renato Scuzzarello, Ministry of Interior, Rome, Italy
- Dr. Luigia Culla, Ministry of Justice, Rome, Italy
- Mr. Paul Rock, Professor London School of Economics and Political Science, United Kingdom
- Mr. Andrew Sanders, Professor University of Manchester, United Kingdom;
- Mr. Simon Shaw, Research Officer London School of Economics, United Kingdom

B. Composition of the missions

Bulgaria

- Mr. Paul W.M. Broekhoven, former President of the Court of Utrecht, The Netherlands; head of the mission;
- Mr. Henk A. Marquart Scholtz, Advocate-General at the Court of Appeal of Leeuwarden, The Netherlands; Secretary-General of the International Association of Prosecutors;
- Dr. Ernst Markel, Justice of the Supreme Court of Austria; President of the European Association of Judges and First Vice-President of the International Association of Judges, Vienna, Austria;
- Mr. Alexander Arabadjiev, Member of the National Assembly of the Republic of Bulgaria, Sofia, Bulgaria;
- Mr. Paul Rock, Professor of Social Institutions at the London School of Economics and Political Science, London, United Kingdom;
- Mr. Marc Groenhuijsen, Professor of Criminal Law and Criminal Procedure at the Catholic University of Brabant, Tilburg, The Netherlands;
- Ms. Marieke Breimer, Center for International Legal Cooperation, Leiden The Netherlands;
- Ms. Marieke Leegwater, Center for International Legal Cooperation, Leiden, The Netherlands.

Czech Republic

- Mr. Paul Broekhoven, former President of the Court of Utrecht, The Netherlands; head of the mission;
- Mr. Henk Marquart Scholtz, Advocate-General at the Court of Appeal of Leeuwarden, The Netherlands; Secretary-General of the International Association of Prosecutors;
- Dr. Ernst Markel, Justice of the Supreme Court of Austria; President of the European Association of Judges and First Vice-President of the International Association of Judges, Vienna, Austria;
- Mr. František Duchoò, Justice of the Supreme Court of the Czech Republic, Brno, Czech Republic;
- Mr. Paul Rock, Professor of Social Institutions at the London School of Economics and Political Science, United Kingdom;
- Ms. Maria Grazia Benedetti, Department of Legislative and Juridical Affairs, Office of the Prime Minister, Rome, Italy;
- Ms. Hester Minnema, Center for International Legal Cooperation, Leiden, The Netherlands;
- Mr. Jacco Bomhof, Center for International Legal Cooperation, Leiden, The Netherlands.

Estonia

- Mr. Tom van Daalen, former member of the Board of Prosecutors-General, Heemstede, The Netherlands, head of the mission;
- Mr. Rainer Voss, presiding judge in the Landgericht Duesseldorf, Germany; former President of the International Association of Judges and former President of the Deutscher Richterbund;
- Mr. Johann-Friedrich Staats, former Head of Section of the Federal Ministry of Justice, Bonn, Germany;
- Mr. Andrew Sanders, professor of Criminal Law and Criminology at the University of Manchester, United Kingdom;
- Mr. Oliver Wilkinson, Chief Executive, Victim Support, Belfast, Northern Ireland.
- Ms. Ineke van de Meene, Netherlands Helsinki Committee, The Hague, The Netherlands;
- Mr. Peter Kugel, Center for International Legal Cooperation, Leiden, The Netherlands.

Hungary

- Mr. Paul Broekhoven, former President of the Court of Utrecht, The Netherlands; head of the mission;
- Mr. Tom van Daalen, former member of the Board of Prosecutors-General, Heemstede, The Netherlands;
- Mr. Rainer Voss, presiding judge in the Landgericht of Duesseldorf, Germany; former President of the International Association of Judges and former President of the Deutscher Richterbund;
- Mr. Karoly Bard, Professor at the Central European University and Chairman of the Human Rights Program, Budapest, Hungary;
- Mr. Paul Rock, Professor of Social Institutions at the London School of Economics and Political Science, United Kingdom;
- Mr. Andrew Sanders, Professor at Manchester University, United Kingdom;
- Ms. Maria Grazia Benedetti, Department of Legislative and Juridical Affairs, Office of the Prime Minister, Rome, Italy;
- Ms. Ineke van de Meene, Netherlands Helsinki Committee, The Hague, The Netherlands;
- Mr. Peter Kugel, Center for International Legal Cooperation, Leiden, The Netherlands.

Latvia

- Mr. Tom van Daalen, former member of the Board of Prosecutors-General, Heemstede, The Netherlands, head of the mission;
- Mr. Rainer Voss, presiding judge in the Landgericht of Duesseldorf, Germany; former President of the International Association of Judges and former President of the Deutscher Richterbund;

- Mrs. Ingeborg Koopmans, lecturer criminal law at the Catholic University of Brabant, Tilburg, The Netherlands;
- Ms. Anita Ušacka, Judge of the Constitutional Court of the Republic of Latvia; Associate Professor University of Latvia, Riga, Latvia;
- Mr. Andrew Sanders, professor of Criminal Law at Manchester University, United Kingdom;
- Mr. Mark Robertson, Head of Training, Victim Support, London, United Kingdom;
- Mr. Francesco Patrone, Magistrate, Court of Rome, Italy;
- Ms. Renate Hartman, Center for International Legal Cooperation, Leiden, The Netherlands;
- Mr. Peter Kugel, Center for International Legal Cooperation, Leiden, The Netherlands.

Lithuania

- Mr. Tom van Daalen, former member of the Board of Prosecutors-General, Heemstede, The Netherlands, head of the mission;
- Mr. Rainer Voss, presiding judge in the Landgericht of Duesseldorf, Germany; former President of the International Association of Judges and former President of the Deutscher Richterbund;
- Mr. Virgilijus Valancius, Local Expert, Judge of Court of Appeal of Lithuania, Head of the civil cases division, Vilnius, Lithuania;
- Mr. Vytautas Piesliakas, Local Expert, Judge of the Supreme Court of Lithuania, Criminal law division, Vilnius, Lithuania;
- Ms. Lillian McGovern, Chief Executive of Victim Support Ireland, Dublin, Ireland;
- Dame Helen Reeves, Chief Executive of the Victim Support National Office, London, United Kingdom;
- Mrs. Valeria Del Tufo, Professor of Criminal Law at Naples University, Italy;
- Ms. Ineke van de Meene, Netherlands Helsinki Committee, The Hague, The Netherlands;
- Ms. Marieke Leegwater, Center for International Legal Cooperation, Leiden, The Netherlands.

Poland

- Mr. Paul W.M. Broekhoven, former President of the Court of Utrecht, The Netherlands; head of the mission;
- Mr. Henk A. Marquart Scholtz, Advocate-General at the Court of Appeal of Leeuwarden, The Netherlands; Secretary-General of the International Association of Prosecutors;
- Mr. Heinz Weil, Avocat and Rechtsanwalt, Former President of the Council of the Bars and Law Societies of the European Community (CCBE), Paris, France;
- Mrs. Teresa Romer, Justice of the Supreme Court of the Republic of Poland, Warsaw, Poland;
- Mr. Paul Rock, Professor of Social Institutions at the London School of Economics and Political Science, United Kingdom;

- Mr. Oliver Wilkinson, Chief Executive of Victim Support, Belfast, Northern Ireland;
- Col. Renato Scuzzarello, Servizio Centrale di Protezione, Rome, Italy;
- Ms. Marieke Breimer, Center for International Legal Cooperation, Leiden, The Netherlands;
- Mr. Susanna Jacobi, Center for International Legal Cooperation, Leiden, The Netherlands.

Romania

- Mr. Tom van Daalen, former member of the Board of Prosecutors-General, Heemstede, The Netherlands, head of the mission;
- Mr. Rainer Voss, presiding judge in the Landgericht of Dusseldorf, Germany; former President of the International Associations of Judges and former President of the Deutscher Richterbund;
- Mr. Martin Kuijer, lecturer in International Law and Human Rights at Leiden University, The Netherlands;
- Ms. Octavia Spineanu-Matei, judge at the Court of Appeals of Bucuresti, Bucarest, Romania;
- Mr. Andrew Sanders, professor of Criminal Law at Manchester University, United Kingdom;
- Mr. Jean-Luc Domenech, director of the French National Association for Victim Support, Paris, France;
- Mr. Francesco De Leo, magistrate, National Antimafia Prosecutor's Office, Rome, Italy;
- Ms. Susanna Jacobi, Center for International Legal Cooperation, Leiden, The Netherlands;
- Mr. Jacco Bomhoff, Center for International Legal Cooperation, Leiden, The Netherlands.

Slovak Republic

- Mr. Paul Broekhoven, former President of the Court of Utrecht, The Netherlands; head of the mission;
- Mr. Henk Marquart Scholtz, Advocate-General at the Court of Appeal of Leeuwarden, The Netherlands; Secretary-General of the International Association of Prosecutors;
- Dr. Ernst Markel, Justice at the Supreme Court of Austria; President of the European Association of Judges and First Vice-President of the International Association of Judges, Vienna, Austria;
- Mr. Peter Kresak, Member of the Slovak National Assembly and Associate Professor of constitutional law at Komenius University, Bratislava, Slovakia;
- Mr. Paul Rock, Professor of Social Institutions at the London School of Economics and Political Science, United Kingdom;
- Ms. Nadège Bezard, victim support lawyer in Reims, France; Vice-President of the French national organization for victim support.
- Ms. Renate Hartman, Center for International Legal Cooperation, Leiden, The

Netherlands;
- Mr. Jacco Bomhoff, Center for International Legal Cooperation, Leiden, The Netherlands.

Slovenia

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- Dr. Ernst Markel, Justice at the Supreme Court of Austria; President of the European Association of Judges and First Vice-President of the International Association of Judges, Vienna, Austria;
- Mrs. Maja Tratnik, judge at the Appellate Court of Ljubljana, Slovenia; Vice-President of the International Association of Judges;
- Mr. Paul Rock, Professor of Social Institutions at the London School of Economics and Political Science, United Kingdom (separate visit May 2002);
- Ms. Kate Mulley, Policy Manager Victim Support, Justice and Victims Unit, Home Office, London, United Kingdom (separate visit May 2002);
- Ms. Maria Grazia Benedetti, Department of Legislative and Juridical Affairs, Office of the Prime Minister, Rome, Italy;
- Ms. Marieke Breimer, Center for International Legal Cooperation, Leiden, The Netherlands;
- Ms. Renate Hartman, Center for International Legal Cooperation, Leiden, The Netherlands.