



EUROPEAN ASSOCIATION OF JUDGES (EAJ)

Regional Group of the INTERNATIONAL ASSOCIATION OF JUDGES (IAJ)

WHAT IS THE SITUATION FOR JUSTICE IN EUROPE IN 2014?

REVIEW OF THE ANSWERS TO THE QUESTIONNAIRE FOR MEMBER ASSOCIATIONS

Of the 44 associations of the EAJ 19 have replied to the questionnaire sent out in 2013 : Austria, Belgium, Croatia, France, Germany, Georgia, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Netherlands, Portugal, Slovenia, Spain, Switzerland, Turkey and the United Kingdom.

In this document we use the word judge to include magistrates and courts to include tribunals.

Part 1 - Concerning independence of judges

1.1. Recruitment

1.1.1 Briefly describe the modes of recruitment of judges in your country

1.1.1.1 There are mainly two types of recruitment for judges: one for students and one for people with professional experience. In Switzerland judges are elected. In Greece, Italy and Croatia, the only way of being recruited is to pass a competitive exam. By contrast, in the UK and Ireland, students cannot be candidates and the recruitment is limited to those with a minimum number of years professional experience as a lawyer.

1.1.1.2 The necessary conditions are generally the same:

- citizenship (or in Portugal : being a Portuguese-speaker and a citizen of a limited number of Portuguese-speaking countries)
- a minimum of age (30 years in Georgia),
- a law degree or equivalent to sit for the competitive examination (Turkey : a degree in political science is considered equivalent)
- a professional experience of some years (in specific professions or not) to sit for the exam or to be selected (Belgium : 10 years for a lawyer to sit for a written exam, 12 years if the candidate comes for the private sector. Spain : 10 years)

1.1.1.3 The recruitment of students is generally based on an exam or a competitive exam. The means of recruitment of professionals is varied. They include: exams, selection based on former experience and written opinions, interview.

1.1.1.4 The authority in charge of recruitment also varies and can be judicial: the Supreme Court (Slovenia) or an independent organ such as Judicial Academy (Croatia), Conseil Supérieur de la Justice (Belgium), High Council of Justice (Georgia) Judicial Appointments Commission (England and Wales) or a special committee of another branch of government Evaluation Committee (Iceland), Minister of Justice and Parliamentary committee (Germany).

1.1.2 Do you consider the recruitment procedure problematic or does it ensure a satisfactory recruitment in number and quality?

1.1.2.1 Recruitment is considered satisfactory in less than a half of the countries which answered the questionnaire. Some of those who don't have the ability to recruit professionals with experience would like to be able to do so (Croatia). By contrast, the quality of the recruitment based on professional experience is sometimes questioned (Portugal). Some countries consider that the selection criteria should be reconsidered.

1.1.2.2 Some consider that too much power is given to the competent authority (Austria : the Minister of Justice is not bound by the proposed appointment, Iceland : the evaluation committee has considerable power and is not accountable, Ireland has engaged in a review of its recruitment process, which is considered not to be conform to international standards, and a Working Group already made 16 recommendations to improve the recruitment procedure.)

1.2 Initial and continuing training

1.2.1 Briefly describe the training of judges at the beginning of the career and during this one.

1.2.1.2 Initial training is provided either by the dedicated school (France, Italy), other body (Judicial College England and Wales or Judicial Institute Scotland), or directly by the judges in court (learning by doing: Germany, Ireland).

1.2.1.3. Continuing training is not always provided (Iceland). It is sometimes limited to one-day seminars or conferences (Ireland, Greece). It is sometimes compulsory (France: 5 days per year) but not always (UK, Greece). (Slovenia: would like it to be mandatory).

1.2.2 Is there a school responsible for training judges?

1.2.2.1 There is a school for judges in less than a half of the countries who answered the questionnaire (Georgia, France, Hungary, Portugal).

1.2.2.2 Even without a separate school, the training is sometimes organized by a dedicated and independent structure. The three jurisdictions in the United Kingdom have different bodies: Judicial College England and Wales, Judicial Studies Board in Northern Ireland, Judicial Institute in Scotland. There is the Judges Training Center in Latvia)

1.2.3 Do you consider the training satisfactory? If not, how could it be improved?

1.2.3.1 In most countries, the training is considered satisfactory (Italy, France, Croatia, Austria, Georgia, Hungary, United Kingdom). There is no apparent connection to make between satisfaction with the quality of the training and the existence of a judicial school.

1.2.3.2 In other countries, the diversity and quality of the continuous training is criticized (Switzerland, Turkey). Limited financial resources can also affect the quality of the training (Ireland, Portugal, Slovenia).

1.3 Appointment and career

1.3.1 Briefly describe the procedures for appointment of judges.

1.3.1.1 The procedures are very diverse. In some countries, there is a special committee. It gives an opinion on which candidate is the best qualified and submits a shortlist to the authority in charge of the appointment (Ireland: Judicial Appointment Advisory Board, composed of at least 7 members; Latvia: Judicial Qualification Board ; Iceland : evaluation committee of 5 members). In the UK there is an independent Judicial Appointments Commission (England and Wales) and Judicial Appointments Board (Scotland) that are responsible for advertising vacancies, preparing a short list of candidates, interviewing candidates and making recommendations for appointment.

1.3.1.2 Where there is a High Council of Justice, this organ is usually in charge of recruiting the judges (Georgia, Portugal, Spain, Turkey, Belgium) but there are exceptions in countries in which the High Council has no power in appointment or confirmation of judges (Latvia ; Iceland : the Judicial Council only appoints one member in the evaluation committee).

1.3.1.3 Elections are an exceptional way to choose the judges (Slovenia: elections by the Parliament, Switzerland: political elections).

1.3.1.4 The final authority in charge of approval of the appointments of judges is either the Minister of Justice (Austria), the High Council of Justice (Georgia), the President of the Republic (Ireland, France, Hungary), the Sovereign in UK who acts on the advice of Ministers.

1.3.2 Is there a High Council of Justice in charge of these issues? If yes, how is it composed? What are its powers?

1.3.2.1 There is a council in charge of the judiciary in half the countries which answered to the questionnaire. It is composed of 11 (Slovenia) to 22 members (Turkey). In general, almost half the members are from the judiciary and a large proportion of members are elected by judges (Georgia: 15 members, 9 judges and 8 of the judges are elected by judges).

1.3.2.2 The norm is parity or majority of judicial members. The exceptions are Portugal (8 judges in 17 members) and France (majority of external members in the two sections of the Conseil Supérieur de la Magistrature: 8 out of 15 members are neither judges nor prosecutors, they are nominated by political authorities).

1.3.2.3 In other countries, there is no High Council for the whole country but there is sometimes an equivalent organ in some cantons (Switzerland) or at different levels (Austria: in each Landesgericht, each Upper Court of Appeal and in the Supreme Court).

1.3.3 What are the rules for promotion of judges?

1.3.3.1 The rules for promotion of judges may be the same as for appointment of judges (Croatia, Ireland: by the President, on the advice of the Government but without the intervention of the JAAB).

1.3.3.2 The High Council may be the only organ in charge of promoting judges (Belgium, Italy, Georgia, Turkey, Spain) or it can be the High Council and another authority (France : the CSM and the ministry).

1.3.3.3 The promotion occurs generally after a minimum number of years in first instance or second instance courts (Portugal, France, Greece).It can be automatic for the level of income (Every 3 years in Slovenia, every 4 years in Austria).

1.3.3.4 Some countries don't have any rule for promotion (Germany: promotion is based only on performance) In the UK: serving judges have to apply for any post advertised in a higher court or tribunal or to become a president in the court or tribunal of service.

1.3.4 Is security of tenure guaranteed to judges?

1.3.4.1 Security tenure is guaranteed to judges in all the countries where judges are not elected. The exceptions are for some Courts, regarding the different system of appointment of judges in these courts (Georgia, Ireland for the Special Criminal Court). Nevertheless, a time-limit is sometimes drawn for certain posts as Heads of Courts (Belgium, France). In many countries there is a maximum age for holding judicial office.

1.3.4.2 There are exceptions to security of tenure: disciplinary findings or related misconduct can lead to a dismissal or a removal in every countries, and the procedures are well-organized to protect the judges from arbitrary decisions.

1.3.4.3 In some countries, there is a probation period during which judges are removable (Germany: 5 years, Latvia: at least 3 years). Provisional appointments are also exceptions to the guaranty of tenure and it raises the question of the independence and the competence of the so-designated judges (District Court judges in Iceland).

1.3.4.4 The question of independence is also raised as an issue for French prosecutors (they are removable at will according to the State Constitution, but they can't be dismissed except as a result of a disciplinary procedure). In Turkey there is concern that the lack of objective criteria during the evaluation process for judges and the factors that carry weight in the evaluation of the career of judges may lead to arbitrary removals.

1.3.4.5 In Switzerland, elected judges are not really at risk of losing their post. The judges currently serving are generally re-elected. Nevertheless, it raises the question of political pressures, as the judges have to be presented by a political party in order to compete in the elections.

1.3.5 Do you consider these procedures satisfactory?

1.3.5.1 The criticisms concern the risks of influences on course of the judge's career, even if such influences are hardly ever transparent.

1.3.5.2 In Germany: some think that the promotion procedure is too much influenced by the court administration and by the Department of Justice; in France: there is a view that the composition of the High Council doesn't sufficiently protect judges and prosecutors from political influences; In Switzerland: the election process opens the possibility of political influences on judges).

1.3.6 Evaluation of judges?

1.3.6.1 The rules are very heterogeneous. The frequency of the monitoring reports or assessment process varies from every year (Greece) to every 8 years (Hungary past the third year) or even less often (3 reports in the whole career in Georgia). If there is a probation period, the evaluations of performance are numerous (Germany: every 6 to 9 months during a maximum of 5 years). In the United Kingdom judicial appraisal is applied in the lower courts and tribunals/

1.3.6.2 The authority in charge of the evaluation process may be a body inside the courts (Croatia) or the Chair of the Court (Hungary, France) or inspectors (Turkey : inspectors depending of the minister, Greece : inspectors elected by their peers among judges of the Supreme Court). An appeal is generally possible.

1.3.6.3 In many countries, judges are not subject to performance evaluation (Iceland, Ireland, Scotland, Northern Ireland). In England and Wales there is currently no system of appraisals for the senior judiciary: (judges of the High Court and above)

1.3.6.4 The criticisms of the evaluation procedure are related to:

- i) the principle itself, of assessment of judges (Georgia : evaluation is considered to violate the principle of judiciary independence)
- ii) the frequency of the assessment process (Slovenia : every 3 years is considered too often)
- iii) the lack of objective criteria in the evaluation process (Portugal, Turkey).

1.4 Discipline and Ethics

1.4.1 Describe briefly the ethical rules and disciplinary proceedings

1.4.1.1 In none of the respondent countries is there a strict definition of the disciplinary fault. It may be generally defined by the law (as a breach of trust of the magistrate) or a breach of the judicial oath and specified by the jurisprudence of the disciplinary organ.

1.4.1.2 In Georgia, Latvia and Spain, the law defines more exactly the behaviour which may constitute a disciplinary fault, planning in a wider way "any other kind of violation of the standards of the judicial ethics", allowing an appreciation *in concreto* of the fault by the disciplinary organ.

1.4.1.3 Many countries have a corpus of principles including ethics rules,. These are conceived not as a code defining the disciplinary faults, but as a guide of good behaviour, without binding effect, to guide the judge in daily practice, in reference to the international standards (objective and subjective impartiality, independence, respect for the citizen and for the actors of the procedure, dignity).

1.4.1.4 This corpus is established either by the disciplinary organ itself (France, Croatia, Belgium, Scotland, Northern Ireland) or under its control (Georgia) or by the senior judiciary (England and Wales) or association of the judges (Austria, Italy, Germany, Portugal, Slovenia), or by an ad hoc organ (Spain, Latvia). The jurisdictional activity and the interpretation of law by the judge cannot give rise to disciplinary measures.

1.4.2 Who is in charge of disciplinary procedures? What are the guarantees for judges involved?

1.4.2.1 Engagement of the disciplinary procedure

(i) Generally it is the judge's supervising judicial officer or the chief judge of the particular court that can institute a complaint. It can also be instituted by a complaint made on behalf of the Minister of Justice.

(ii) Some countries maintain this strict filter (Germany) but more and more countries accept the complaint of a or member of the public (France, Austria, Croatia, Belgium, Georgia, Iceland, Portugal). In the United Kingdom a member of the public may complain to a Judicial Complaints Authority established on behalf of the Ministry of Justice, who may refer the complaint to a judge's supervising judge for investigation and recommendation.

(iii) In some countries, another judge (Georgia) or the judge who evaluates colleagues (Belgium) can submit evidence of professional standards by a judge to the competent authority.

1.4.2.2 The disciplinary organ

(i) In some countries minor breaches can be directly punished by the chief of court or jurisdiction in particular by a warning (France, Belgium, Germany).

(ii) For important/major faults, several systems coexist:

- Competence of the Council of Justice (France, Italy, Croatia, Portugal, Turkey);
- Competence of an ad hoc organ or of the highest judge of the country (Committee on Judicial Functions appointed by the Minister in Iceland, Richterdienstgericht in Germany, Judicial Disciplinary Board in Latvia, Disciplinary court in Slovenia, the Chief of Supreme Court and in the United Kingdom the Secretary of State for Justice acting in conjunction with the senior judges of the three national jurisdictions;
- Competence of specialized chambers of courts : Austria (superior Court of Appeal with possible appeal in front of The Supreme Court), Belgium (since the reform come into effect in September 2014: competence of two judges - appointed by the general assembly of the jurisdiction-, an assessor, and the president of the bar having consultative voice), Greece (plenary sessions of the Superior Courts for the superior judges and councils composed of five members of Courts of Appeal for the other judges), Spain.

(iii) Georgia has a mixed system: the inquiry is led by the High Council of justice, and then, cases are judged by a disciplinary jury ; an appeal is possible, submitted to the disciplinary chamber of the supreme court.

(iv) In Ireland, a bill is being drafted to have the disciplinary matters fall within the jurisdiction of Judicial Council. Until now the power of dismissal belongs only to the Parliament.

(v) In Switzerland, the system depends on the legislation of each canton. Some are endowed with a Council of Justice, competent in disciplinary subjects. But it's different in others cantons, as long as judges are elected and the terms are short (4 years in most of the cantons, sometimes less ; 6 years for the federal judges).

(v) In the countries where the members of the prosecution are judges, the executive power is the authority in charge of sentencing the disciplinary failings (Minister of Justice in France; the King in Belgium).

1.4.2.3 The procedural guarantees granted to the judge in disciplinary proceedings

(i) In all countries the judge under investigation benefits from procedural guarantees recognized at European level (assistance of a lawyer or a person of his choice; hearing before decision of the disciplinary organ; written and reasoned decision; appeal). These rights are provided either in dedicated rules or by practices of the disciplinary organ.

(ii) In countries where the courts themselves are competent to rule on disciplinary faults, competence for disciplinary matters may be assigned to the appellate body for the judge's court. When a court is competent, the appeal is brought before the highest court of another order of jurisdiction (Council of State, higher jurisdiction of the administrative order, in France; Spain) or to the constitutional court (Croatia).

(iii) Iceland nevertheless is an exception because the Committee on Judicial Functions only collects the written observations of the concerned magistrate. It pronounces a written and motivated decision. There is no appeal for the minor sanctions. Nevertheless, in case of dismissal pronounced by the Federal Court of Reykjavik, an appeal is possible in front of the Supreme Court.

(iv) In the United Kingdom, a decision on judicial sanction is referred to a panel appointed by the Ministry of Justice and chaired by a judge but with lay member representation. There is no right of appeal from the recommendation of the panel but a claim for judicial review may be brought if the decision is alleged to be procedurally flawed or irrational

(v) In Turkey neither, there is no legal remedy against disciplinary sanctions pronounced by the council of justice. The judge can ask for a re-examination of his case by the same chamber of the Council, or then, by the plenary meeting but there is no possible appeal in front of another authority (except for the disciplinary transfer).

1.4.3 Are there rules restricting judges from undertaking other professions and occupations?

1.4.3.1 Exercise of another profession

- (i) In all respondent countries the law sets rules of incompatibility between the exercise of the judicial functions and the exercise of another profession.
- (ii) Exceptions are sometimes envisaged. The most accepted exception concerns the activities of teaching or research (France, Belgium, Georgia, Greece, Spain, Portugal, Slovenia, United Kingdom). Some judges may undertake other activities with special permission.
- (iii) In United Kingdom a temporary judge can practise as a lawyer but is reminded of the obligation of impartiality, and may not sit in a case where there may be an appearance of conflict of interest.
- (iv) These incompatibilities may also concern the activity of the spouse or the members of the family: a judge should not sit in the same jurisdiction where a family member practises law (France, Belgium).

1.4.3.2 Political activity

- (i) Rules are different in each country. In some countries, a judge is not allowed to be a member of a political party (Croatia, Georgia). In others, he can't exercise a political office according to the separation of powers which forbids the judge to belong at the same time to the executive or legislative power (Croatia, France, Ireland, Latvia).
- (ii) Certain countries distinguish between the kinds of political mandates:
 - France bans judges from being candidates for a parliamentary, national or European mandate (except leaving in abeyance their jurisdictional functions).
 - There be authorization to candidates for a local office on conditions (in particular not in the jurisdiction of the court - France).
- (iii) In several countries it is strictly forbidden for judges to be Minister of Justice or councillor of the Minister of Justice. But it's possible in other countries (France, Croatia, Slovenia); the Croatian association has submitted a motion in front of the Constitutional court to denounce this situation with regard to the principle of the separation of powers.
- (iv) By contrast, in Switzerland, judges are elected according to the representativeness of the political party to which they belong. Thus, it's quite impossible to be elected for a candidate who is not a sympathiser or member of a party. However, the judge cannot to campaign for his election. But some pressures may occur at the time of the re-election.

1.4.4 Are there declarations of assets?

1.4.4.1 In some countries, declaration of assets has been introduced in law as to fight against corruption and conflicts of interests into the exercise of public services (Croatia, Italy, Georgia, Greece, Latvia, Slovenia, Turkey).

1.4.4.2 These declarations take place either before the appointment, or immediately after appointment. It must be repeated at regular intervals (generally every year) and in case of an important modification of the situation, until to the end of functions. The declaration also concerns the assets of the partner and the children (at least minors). It's transmitted to the High Council of Justice but may, as in Croatia, be consulted by the public.

1.4.4.3 In respondent countries where a declaration is required, it is only assets that must be declared as opposed to other interests.

1.4.4.3 Where no formal declarations are required a judge must be alert not to sit in a case where there is a potential conflict of interests through some other interest such as membership of a voluntary association.

1.4.5 Do you consider these procedures satisfactory? If not, how could they be improved?

1.4.5.1 As a whole, associations who answered the questionnaire consider that existing rules are satisfactory, with regard to European standards.

1.4.5.2 Some associations, as the Georgian association of judges, seek to emphasise the fact that only violations of ethical rules can be considered as disciplinary matters, but not complaints against any judicial decision that is part of the jurisdictional activity.

1.4.5.3 The French association wishes a reform on the procedure allowing the citizen to complain against a judge, so that the rules would be more clearly set, and to improve the rights of defence during the preliminary investigations.

1.4.5.4 For the Greek association, if the other rules of the fair trial are applied during disciplinary organs, written disciplinary sanctions are not reasoned.

1.4.5.5 The Irish association considers that the current disciplinary procedure is not satisfactory and supports the draft which creates a real Judicial Council with jurisdiction over disciplinary issues.

1.4.5.5 The Croatian and Slovenian associations complain of the possibility for judges to resume court activities immediately after the end of a period where political office or functions in the executive or legislative have been undertaken.

1.4.5.5 The Turkish association points out that the independence of judiciary cannot be respected if there is no legal appeal against the decisions of the Council of Justice, which it considers can make arbitrary decisions, with no transparency.

1.5 Distribution of cases

1.5.1 Describe briefly the distribution of cases between judges and the conditions for their eventual divestiture

1.5.1.1 In all the countries, there are objective criteria of distribution of cases, according to the theory of the natural or appropriate judge, taking into account criteria of geographical jurisdiction and the distribution between chambers according to the subject / type of case.

1.5.1.2 The rules of distribution of cases are varied:

- Distribution by the head of the court (Ireland), mostly according to rules or assignments fixed at the beginning of the year (Belgium, Hungary, Latvia, Switzerland, Greece) or every four years (Italy), possibly after an opinion of the general assembly or committee of the judiciary, elected within the court (France, Germany)
- In alphabetical order, predefined order or by recording date of the case (Austria, Georgia, Slovenia)
- Distribution by an IT program (Croatia, some Swiss cantons, Turkey) according to criteria established on the national or local level
- Distribution to maintain a balance between the workloads of each magistrate, at least as a subsidiary criterion (Belgium, Georgia, Iceland).

In certain countries which know several linguistic communities, as Switzerland, the distribution of cases also takes into account this criterion.

1.5.1.3 In almost all countries, a judge can be withdrawn only on his request or when his objective or subjective impartiality is questioned, and according to specific procedural ways (France, Belgium, Croatia).

1.5.1.4 There are also rules in case of overload, insufficiency of reasons or delays. In this case, most of the time, it's the head of the court who decides the new distribution of cases (Belgium, Latvia) with more or less transparency or guarantees. In Portugal, it is a member of the High Council of Justice who proceeds. In Belgium or Greece, when the judgment is not pronounced past a certain deadline (6 months and 8 months) the case can be attributed to another judge.

1.5.2 Do the existing rules seem satisfactory? If not, how they could be improved?

1.5.2.1 The Belgian association regrets a lack of transparency in the distribution of cases. Beyond rules planned by the legal code, it is the head of the court who distributes cases, to balance the workload between judges or when a chamber is overloaded, redistribute cases. The availability of statistics of judicial activity allows certain supervision over the distribution of work but publication is not automatic.

1.5.2.2 The same criticisms (distribution according to chance and a lack of transparency over assignment) are expressed by the Icelandic, Hungarian and Turkish associations. In Turkey, although the distribution of cases on the national level between the jurisdictions is made by a computer system, it is the president who distributes cases within the court's jurisdiction. In Hungary, these criticisms led to the implementation of a workgroup on these questions.

1.5.2.3 In Greece, besides the necessity of more objective criteria, the association raises the unconstitutionality of the automatic withdrawing of a judge who didn't pronounced his judgement after 8 months, while the Constitution provides that nobody can be deprived of his judge.

1.5.2.4 Except as indicated above, the rules of distribution of cases seem satisfactory to the other national associations.

1.6. Recognition of the right of association

1.6.1 The right to join or form associations or unions, is it recognized for judges?

1.6.1.2 The right of association is recognized for judges in all the countries having answered the questionnaire. In some countries, there is only one association (Italy).

1.6.1.3 For the Turkish judges, however, the application of this right is currently difficult, because not only the government but also the High Council of Justice do not recognise these associations and both try to discourage judges from joining them.

1.6.1.4 The right to form a union is officially recognized in some countries (Belgium, France, Germany, Ireland) even if in fact only Germany and France exercise it.

1.6.2 If so, what resources are allocated to the association?

1.6.2.1 In the main, judicial associations receive only the contributions paid by their members. Some of them benefit from material means: provision of offices in jurisdictions (Italy), authorisation to use the professional telephone or computer (Austria, France) or financing some activities (Iceland: financing of the international activities of the association).

1.6.2.2 Only the Spanish associations and French unions get subsidies. In Spain, this grant is calculated according to the number of members of the association and to its activities. It was reduced these last years and it's even planned to cut it, that may limit the freedom of action of magistrates' associations. In France, magistrates' associations, mainly functional (for example : associations of judges in charge of inquiries, or of judges responsible for the execution of sentences) don't get any grant, but unions perceive every year a subsidy, calculated according to their results in the professional elections which take place every 3 years. Above all, unions get reductions in working hours for labour-union need, allowing their elected members to dedicate full-time to the union.

1.6.3 Do you consider these procedures satisfactory? If not, how could they be improved?

1.6.3.1 For the main part, the associations that answered the questionnaire consider these rules satisfactory, and that the absence of financial participation of the State in their activity is a guarantee of their independence. Those who benefit from subsidies consider that it doesn't harm their independence since their allocation depends on objective criteria (number of members, election results).

1.6.3.2 Several associations, as Spain, Portugal, Belgium or Croatia, consider that the elected members of associations should be able to dedicate more time to lead even more effective action. Judges' associations have, as the Croatian association observe it, a very important role to promote the independence of Justice. In France, improvements are needed to validate these rights in the law. Indeed, this right to join unions results from international texts and from the State Constitution.

1.6.3.3 Beyond texts validating the freedom of association or union, it is a question of respect for their spirit by the authorities of every country as unfortunately the situation of the association YARSAV (Turkey) demonstrates.

1.7. Protection of judges

1.7.1 Are judges frequently attacked in the media, by politicians or other people? Do they have special protection?

1.7.1.1 Intemperate attacks by the members of the executive power, the political parties or by the media seem unfortunately generalised everywhere in Europe.

1.7.1.2 Only a few countries seem to avoid such attacks because they have a strong democratic tradition and the respect for the judiciary is considered there as a pillar of the democracy (Switzerland, Germany, Iceland, United Kingdom). Criticism of the institution of the judiciary or of specific sentences will be made in the press, but there is a constitutional convention criticism of decisions should not come from the executive or legislative power. In The United Kingdom this convention is weakening however and critical remarks have been made by Ministers of judicial decisions notably those concerned with immigration and human rights.

1.7.1.3 In other countries, it seems that the criticisms are especially virulent when Ministers or political leaders are themselves implicated in the case in hand. Some comments seem designed to undermine the independence of the judiciary such as in Turkey or in Georgia -in particular during the first half of 2013 just before the election of the members of the High Council of Justice, attacks coming from Minister of Justice himself-, or in France until 2012.

1.7.1.4 The harmful role of the media is also important to discredit courts actions and their efficiency, by passing on attacks from politicians, or giving erroneous information about facts and legal rules. In some countries journalists use the strong protection given to the freedom of the media, to disregard own professional and ethical rules (Portugal). Erroneous information is given or commented on out of context. Consequently, public opinion thinks that the Constitutional court has prevented the country from responding to economic the crisis, by censoring several projects of reform.

1.7.2 Do judges benefit from particular protective devices?

1.7.2.1 For the main part, there is no specific rule against these attacks, apart from general provisions for the independence of justice. There is no penalty, so apart from these general texts, judges don't benefit from any particular protection (Belgium, Iceland, Ireland, Slovenia, Latvia, Switzerland).

1.7.2.1 In several countries, some remedies may exist in case of attacks against judges (insult, aggravating circumstances when offences are committed against a judge or his family because of its functions) as in Spain or in France. A judge may be able to use defamation laws to protect reputation damaged by inaccurate and unfair criticism Nevertheless, the implementation of these provisions may be difficult or costly in practice. If there is a press complaints authority in the jurisdiction (such as in the United Kingdom) a complaint may be made of a failure to adhere to proper professional standards.

1.7.2.2 Judges can benefit from physical protection when their safety is threatened (Belgium, France, Italy).

1.7.2.3 The most common measure consists in the relationships with the media to remind facts, legal rule or the principle of independence of Justice. In practice, this protection results mainly from the associations themselves (Croatia, France, Germany).

1.7.2.4 Nevertheless, in several countries spokesmen of the Ministry of Justice or of the Judicial Office of the jurisdictions exercise this role either by expressing themselves in the media, or through press releases (Germany, United Kingdom and Austria).

1.7.2.4 The status of judges in France allows them to benefit from the "statutory protection» which is besides recognized by all the members of the public service. The State indemnifies directly the victim (judge or prosecutor), who doesn't have to wait for compensation, and pay his lawyer.

1.7.3 Do you consider these procedures satisfactory? If not, how could they be improved?

1.7.3.1 Except in the countries where attacks are infrequent and/or don't emanate from the executive or legislative authorities, all the associations consider that these procedures are insufficient. The persistence of attacks coming from senior government figures or from the media suggests that all judges are incompetent or act under improper influence.

1.7.3.2 Some associations consider that it is necessary to create criminal offenses when the magistrates are wrongly affected or the judicial institution inequitably questioned (Greece). The strengthening of the disciplinary organs of the journalists (Portugal) or lawyers (Greece) also requires some reflection. By contrast the United Kingdom has recently repealed the common law offence of scandalising the judiciary by intemperate criticism as it was considered to be inconsistent the right of freedom of speech.

Part 2 - Financial issues

2.1. Introduction:

2.1.1 - 18 of the 19 responses dealt with financial questions. These answers divided into four questions:

- (i) overall budget for the courts and how it is set
- (ii) judicial salaries
- (iii) judicial pensions
- (iv) legal assistance

2.1.2 The level of detail from those responding varied and so making comparisons from the data provided is difficult. The raw data as to funding levels is perhaps not particularly informative as much would depend on the size of the population, the nature of the economy and standard of living and the precise breakdown of what is included in the funding package having regard to differences in the legal system.

2.1.3 Equally the variation as to judicial salaries in the different legal systems reflects differences:

- (i) in legal traditions between the career judiciary dominant in the continental system and the common law tradition applicable in the United Kingdom and the Republic of Ireland where a judicial career starts after a qualifying period of exercise in practice as a lawyer;
- (ii) in scales of incremental pay based on years service as opposed to a flat rate salary;
- (iii) in national comparators as to the basis of pay regulated by law: in some systems the comparison is with a Member of Parliament and in others with the salary grade of senior civil servants.

2.1.4 There were common themes throughout the responses that insufficient resources were being deployed on the budget for justice and that judicial salaries had not kept pace with demands of work and the effects of inflation. In one jurisdiction (Ireland) salaries had been reduced by constitutional amendment.

2.2 Issue 1 Overall Budget

2.2.1 The annual budget for the administration of justice is usually made up of the costs for court buildings, staff salaries and the incidental costs of running the courts, maintaining filing and communication systems, the costs of providing legal aid, and depending on the national jurisdiction the salary and pension costs of judges and prosecutors.

2.2.2 However, this figure could be broken down still further distinguishing with the costs for the system of criminal justice including the costs of imprisonment and civil justice.

2.2.3 Civil justice may give rise to income to the state in the form of court fees, but such fees are inevitably insufficient to cover the raw costs of providing the service.

2.2.4 In most states court fees have been rising in line with budgetary pressure, and this raises the question whether the fees are now reaching a level that affords a deterrent in practice to access to the court and if so whether there are sufficient exemptions for those on low incomes to prevent access to justice being denied in principle.

2.2.5 The United Kingdom has witnessed this effect with the dramatic reduction of the number of claims made to Employment Tribunal for unfair dismissal or discrimination following severe rises in the fees to be paid.

2.2.6 Increasingly there is a concern that justice is available for the very wealthy or the very poor who may be exempt fees because resources fall below the minimum standard for social assistance.

2.2.7 This does give rise to some questions of principle for discussion.

Q.1 Is the provision of a system of justice for civil dispute resolution a social service provided by the state to those subject to its jurisdiction or a commercial facility where it is reasonable to expect fees to cover costs?

Q.2 Are there differences in principle between different class of non criminal case: eg claims for damages for breach of contract or civil wrongs, as opposed to disputes about the welfare of children, or disputes with state agencies about refugee or immigration status or other matters such as planning or environmental issues?

Q.3 Should the costs of a system of criminal justice including the costs of maintaining a system of imprisonment and risk assessments as to release from prison be separate from the budget for justice?

Q4. Can it ever be right that the litigant in civil justice may be required by court fees to contribute to the costs of penal justice

How the budget is fixed?

2.2.8 Many associations suggest that there is no or insufficient judicial input into the process of budgetary allocation (Austria, Belgium, Croatia, Germany at the regional level, Spain).

2.2.9 In other countries there is consultation but no criteria for decision making and judicial input can be disregarded (Iceland, Portugal, Switzerland at Cantonal level). Other associations report a system of consultation and discussion between the budget holder and the senior judiciary or judicial council in order to negotiate an agreed package that will be applied by the judges (Georgia, Latvia).

2.2.10 In Ireland there is consultation by the Courts service with the president of each court and then decision taken by the Ministry of Finance. It is reported that for the sixth consecutive year the budget for court infrastructure and administration has been reduced and in real terms stands 42% below the level of funding in 2008. In the Netherlands the budget is fixed by the costs of the previous years but this can result in inflexibility as outputs vary particularly with criminal cases.

2011 In the United Kingdom, the three national jurisdictions have separate arrangements save as to judicial salaries,. In England and Wales since 2003 the Minister of Justice (who carries

the title Lord Chancellor) has a duty to ensure that there is an efficient and effective system to support the carrying out of the business of the courts and appropriate resources are provided. This leads to consultation in an endeavour to reach agreed as to budgets with the head of the judiciary (the Lord Chief Justice). There have been significant budgetary cuts made resulting in closure of courts, reduction of staff, and facilities available to the judiciary.

2.2.11 It is self evident that budgets cannot be set arbitrarily by the executive without some form of consultation with the senior judiciary as to what is needed to run an efficient and effective court system. It is less clear how disputes between the senior judiciary and the executive are to be resolved and whether there is any possibility for common European standards.

2.2.12 Some associations report that there are specialist divisions of the constitutional court or other dispute resolution tribunal allocated to resolved either generic budgetary issues or disputes over judicial pay and pensions.

2.2.13 Given the economic realities of contemporary society and the fact that the budget for justice has to be funded out of general taxation, the responsibility for fixing which lies with the democratically accountable executive it would be interesting to know what criteria are used by these courts or tribunals in resolving disputes? In substance this poses the question

Q. 5 Should there be binding dispute resolution mechanisms to resolve differences between the higher judiciary and the executive over the funding of justice?

2.2.14 There was general recognition that judicial leaders needed to be consulted about budgets and then effective allocations made for the financial years by which judges working down the hierarchy would need to be adhered to. The member associations of judges were not consulted on budgetary issues as a body but there is no particular reason relating to constitutional propriety or independence of the judiciary why they should be and by an large the system consultation with judicial leaders when budget setting seemed satisfactory.

2.2.15 In order to monitor developments in this field we would recommend that future data is collected from national associations in the following format once an agreed definition of what is to be taken into account (and this should exclude judicial salaries that can be considered separately)

“1. What is the annual judicial budget per head of the population in Euros?

2. What is the average salary for all employed people in the jurisdiction over the same period?”

2.3 Judicial Salaries

2.3.1 Very few jurisdictions report above inflation increases in judicial pay over the last few years. Clearly the judiciary is not immune from the economic exigencies that have created serious problems for employment, wages, and state budgets over the past six years.

2.3.2 Although British judges have been concerned at the substantial erosion of the value of their salaries over this period they appear to be the best paid in Europe.

2.3.3 The example of the Republic of Ireland constitutes a cautionary tale. Ever since the Bill of Rights of 1689 the common law tradition in the United Kingdom and related legal systems has enshrined the principle that judicial salaries shall not be reduced. This was seen as a necessary safeguard against executive interference with the judicial function. In Ireland this was copied in to the constitution of the republic of Ireland. Judges were initially exempt from a general reduction of salaries applicable to the civil service, but after the failures of voluntary arrangements, in November 2011 a constitutional amendment was passed that permitted reductions to be made proportionate to reductions imposed on civil servants and as a consequence the salaries of all Irish judges were reduced from January 2012 by between 24% and 29%.

2.3.4 In other jurisdictions it may be more convenient to reduce judicial salaries by not increasing them, year on end, despite rising inflation and there is little that constitutional protection in broad terms can do about that.

2.3.5 If judicial salaries are linked to those of Members of Parliament or departmental civil service heads, there is a basis for challenge in national procedures if discriminatory cuts are made.

2.3.6 It seems that such case law as there is to emerge from Strasbourg does not preclude across the board reduction in salaries that are not targeted at the judiciary as a special section of society or individual judges within the judiciary. Litigation undermines respect for the judiciary amongst the public and conflict between the judicial and executive branches of government will also be unsatisfactory as in the end it is the democratically elected governments that fix the level of taxation out of which judicial salaries are paid for.

2.3.7 The position with regard to salaries is further complicated when the effects of taxation are taken into account but that is not something that the EAJ as a transnational association of judges should become involved with as that is a matter of the domestic financial policy of states.

2.3.8 Some jurisdictions have annual increments to pay according to length of service. It would appear that 20 years' service is a significant length of service in most member states and is frequently the age at which a pension can be taken (in conjunction with age).

2.3.9 Most jurisdictions do not have performance related pay but in France it seems that there is a discretionary addition to basic pay ranging between 0 and 18% that be awarded by the presiding judiciary with a theoretical right of appeal in case of complaint. The concern is that the criteria for this award are somewhat imprecise and arbitrary.

2.3.10 There is consensus that proper judicial remuneration is needed:

- i) to attract the best candidates to the office of judge
- ii) to deter susceptibility to corruption or financial influence
- iii) to enhance the office of judge in terms of [prestige and reputation;
- iv) to ensure that there is some relationship between the earnings of the judge and advocates of equivalent experience who appear before the judge.

2.3.11 In the circumstances, if the EAJ wants to monitor judicial salaries in the future it is recommend that we ask each association to provide the information in the following format:

- i) What is the annual or monthly gross (before tax) salary expressed in Euros of an ordinary trial judge of 20 years experience?*
- ii) What is the equivalent salary of a Member of Parliament or the Permanent Under Secretary (Head of the Civil Service section) for Justice?*

2.4 Judicial Pensions

2.4.1 It is now clear from decisions of the Court of Justice of the EU that judicial pensions are part of pay and that differences in treatment as to pensions with respect to full time and part time judges may result in a legal challenge (as had happened in the United Kingdom).

2.4.2 The reports from national associations reflect a number of concerns with respect to judicial pensions reflecting those related to pay. These concerns are:

- i) the number of years service needed to achieve a full judicial pension*
- ii) the minimum age for a pension;*
- iii) whether a judicial pension is based on final salary or an average salary over the course of the career;*
- iv) the rate of final salary that is awarded as pension;*
- v) whether a lump sum is awarded as well as a pension;*
- vi) the sufficiency of a pension having regard to the economic circumstances in the state concerned to provide a reasonable standard of living in retirement.*

2.4.3 Given the wide variety of circumstances we have not compiled a table of national measures with respect to salaries or pension but we note that in the field of pensions as well as salaries recent amendments have been to the disadvantage of judges.

2.4.4 It seems that retirement ages are within the range of 60 to 70 and most jurisdictions require judges to retire at 70. This probably does not give rise to judicial independence issues, although there is an argument that a senior judge who is fit and able to continue after 70 should be given another 5 years to progress up the judicial hierarchy to the apex court: usually the Supreme Court, otherwise the state is depriving itself of the wisest counsel at the most important level.

2.4.5 In the United Kingdom and Ireland where the tradition has been to take up a judicial career after a career as a lawyer (usually an advocate) when self employed pensions have been accrued, the aggregation of judicial and private pensions and the application of disadvantage tax rates to the combined product is an issue of concern as is the removal of a tax free lump sum from future judicial pensions.

2.4.6 If comparative data is to be collected from the member associations we would suggest that the following standard question is asked:

- i) What percentage of salary is paid to a judge eligible for retirement who has undertaken 20 years of service as a judge?*
- ii) When is the earliest and latest age that a judge can or must retire?*

Part 3 - Regarding national associations

3.1 Introduction

3.1.1 A general overview over the answers to the following questions shows the wide range of size and activities of the member associations.

3.1.2 To most questions there were diverting answers with two exceptions: all associations show a democratic structure, their representatives as well as their office holders are elected, in most of the times directly, in some larger associations indirectly. Secondly all associations are to a large extend if not solely financed by membership fees.

3.1.3 For the details please see the following overview. The abbreviation "n.a." means either "not available" or "no answer", "GA" stands for "General Assembly".

3.2 . The Questions

3.2.1 Representativeness of the association

3.2.1.1 How many members does the association have? Has this number increased since the association became a member?

The number of members and the proportion of members regarding the number of professionals concerned are very different from one country to another. For example in Ireland and Georgia, almost all the judges are members of the association.

Their number is generally increasing.

(for details, see the appendix 1)

3.2.1.2 Do other associations/organizations of judges exist?

Many countries did not answer to this question.

In Portugal, Iceland, Slovenia, Belgium and Italy, there is only one association. In other countries, there are others, sometimes only for administrative judges (Austria), prosecutors (Greece), District Court Judges (Ireland), sometimes with double membership. In Germany, Spain, Switzerland and France there are more than two other associations of judges and prosecutors. In United Kingdom: there are associations within the particular level in the hierarchy of the court or tribunal structure.

3.2.1.3 If elections are held in the country in question, please furnish statistical data relating to the extent to which the association is representative.

Austria, Georgia, Greece, Iceland and Portugal, the representation rate is comprised between 90% and 100% of all active judges.

In Germany, Slovenia, France and Netherlands : between 60% and 75%.

Spain and Turkey : less than 30%

The others countries either gave no figures or said the question is not applicable.

3.2.1.4 Does the association include members who oversee and discipline the judiciary?

This is the case in Belgium, France, Georgia, Slovenia and Spain.

This is not the case in Croatia, Greece, Ireland, Portugal, Switzerland Turkey and United Kingdom. The question is not applicable in Italy. The associations from other countries did not answer to this question.

3.2.2 Means for appointment / election of its representatives

3.2.2.1 How are the leaders of the association selected? Are they elected by the members? Are they appointed? If yes, by whom and by what process?

The leaders of all the associations are elected, either by the general assembly of members or by a committee.

(for details see appendix 2)

3.2.2.2 How is the association organized? Is there a board of directors/association council? If yes, how are the members of the council appointed/elected? What powers does the council have?

Except in United Kingdom, where the organization is informal, there is always a board or a council or executive committee, composed from 5 to 21 members.

These councils have different powers in each country.

(for details see appendix 3)

3.2.2.3 Does the association have regional representatives? If yes, how are they appointed/elected?

There are regional branches or commissions only in Croatia, Austria, France, Germany and Portugal. The Turkish association is working on it. These local representatives are elected.

(for details see appendix 4)

3.3.3 Financing Association

What is the association's annual budget?

What are the association's funding sources: membership dues, subsidies, other funding sources?

What have been the principal expenses?

| Association | Annual budget | Funding sources | Principal expenses |
|-------------|---------------|--|---|
| Austria | 170.000.-€ | membership fees (158.000.-€) + 12.000.-€ subsidy from the ministry of justice for the monthly magazine | Staff, seminars, travel expenses, monthly magazine |
| Belgium | n.a. | Membership fees | Travel expenses, contributions to IAJ, administration |
| Croatia | 32.000.-€ | Membership fees | Travel expenses, communication, yearly GA, activities of the branches |

| | | | |
|----------------|--|--|--|
| France | 280.000.-€ | Membership fees + 23.000.-€ subsidy from the ministry of justice | Travel, meetings of the National Council, staff, communication |
| Georgia | 28.994.-€ | Mainly membership fees | Co-funding of magazine "Justice and Law" |
| Germany | 675.000.-€ (only federal association without magazine) | Membership fees | Staff, travel expenses, judges congress, events |
| Greece | 228.000.-€ | Membership fees | Colloquiums, excursions, events, financial aids to members |
| Hungary | n.a. | n.a. | n.a. |
| Iceland | 500.000.-IKR (= 3.250.-€) | Membership fees | Seminars, participation in international co-operation |
| Ireland | 5.000.-€ | Membership dues; IAJ Contribution and IAJ travel expenses covered by Courts Service | Website, legal advice (Counsels's opinion) on issues affecting the members |
| Italy | 1.017.239.-€ | Membership fees | Quadrennial meetings, staff (4 employees), traveling fees |
| Latvia | n.a. | Membership fees | Meetings, events, IAJ-fees, travel |
| Netherlands | n.a. | n.a. | n.a. |
| Portugal | 400.000.-€ | Membership fees | International meetings; seminars |
| Slovenia | 35.000.-€ | Membership fees | General meeting, educational events, IAJ fees and costs |
| Spain | n.a. | Membership fees, subsidy from the ministry of justice, contributions to educational events | Board meetings, educational programs |
| Switzerland | 100.000.- SFR (= 82.724.-€) | Membership fees | n.a. |
| Turkey | 100.000.- TL (= 33.000.-€) | Membership fees | International meetings, events, office and staff, publications |
| United Kingdom | n.a. | n.a. | n.a. |

3.3.4. Relations of the association with public administration

3.3.4.1 Does the association meet regularly with representatives of the executive? In particular with the Minister of Justice and his/her associates? Is the association consulted in advance of all government reforms?

The practices are very different from one country to another. There are regularly meetings with the Ministry of Justice and the association is consulted on reforms dealing with the judiciary in Austria, Greece, Latvia, Netherlands, Portugal, Spain. Some consultations are

even mandatory in France and Germany. The association is sometimes consulted in Croatia, Ireland, Iceland, Slovenia. In Georgia, Belgium, the association is never consulted, neither in Turkey where the attitude of the executive is very hostile.
(for details see appendix 5)

3.3.4.2 Does the association meet regularly with representatives of the legislature? Is the association asked to provide its opinion on projects and bills before they are examined by the parliament?

There are occasionally contacts with representatives of the legislature, more or less on a regular basis. But the association is generally requested to give an opinion on reforms dealing with judiciary matters or issues concerning the judiciary. There are exceptions in countries where no meetings occur and no opinion is required: in Georgia and Ireland.
(for details see appendix 5)

3.3.5. Actions undertaken by the association during the last 3 years

(1) What were the main actions undertaken in the previous year? In the previous three years? Since becoming a member?

(2) Has the association organized collective action (demonstrations, strikes ...)?

(3) Does the association have a media presence? Has the association published documents (books, reviews, communiques)?

(4) Did the eventual actions taken have a positive impact on judicial powers?

All member associations organize (regular) meetings of their bodies and events for their members. Professional education/formation plays a major role in some associations. All associations have given their opinion to reforms concerning the status and salaries of judges. Some produce a magazine (Austria, Germany, Georgia, France), some electronically: Switzerland, Spain. Almost all provide a website.

Very few organized collective action (Slovenia, Portugal, Greece), in most countries for judges it is forbidden to strike.

Most associations achieve relevant media coverage (except Turkey), very few report a positive impact.

Part 4 - Miscellaneous

What were the main problems encountered by the judiciary in your country in recent years?

Would you say that the situation for the judiciary has improved? decreased? has remained stable?

What are the main reforms underway or planned? These reforms seem they go in the right direction?

| Association | main problems | situation | main reforms |
|-------------|---|---------------------|--|
| Austria | large number of highly sensitive cases | stable | Juvenile justice system, detention of juveniles. Transfer of head of prosecution from the ministry to a person independent from the ministry (right direction) |
| Belgium | reduction of staff, increasing workload for judges | decreased | Large reform of judicial landscape |
| Croatia | workload, lack of resources and attraction of the profession, frequent changes of the law | lightly decreased | Rationalization of number of 1st instance courts from 67 to 18. (wrong direction) |
| France | Stagnation of budget and means at a low level. Composition of CSM does not meet international standards | stable at low level | Reform of the statute of the judiciary, procedural reforms |
| Georgia | Statutory mechanism for monitoring judge's performance; Attacks against the judiciary in the media by politicians | | Draft law on Temporary State Commission to Review Miscarriages of Justice (wrong direction) |
| Germany | Workload, shortage of personal (judges and staff); remuneration | decreased | Not known yet (after Oct 2013 election) |
| Greece | Salary cuts; Politicians attacking the judiciary in the media | decreased | New civil and criminal code (not yet known) |
| Hungary | Case allocation determined by the court president | n.a. | n.a. |
| Iceland | Magnitude of difficult cases resulting from the financial crisis. Cut-downs for the courts and salaries. | decreased | Establishment of a third instance (right direction) |
| Ireland | Poor morale amongst the judiciary due to cuts to salaries, expenses, pensions, support services and | decreased | Reform of the current system of judicial appointments (seriously deficient). Program "working group for |

| | | | |
|----------------|---|-------------------|--|
| | facilities. General deterioration in relations with the executive. Unjustified attacks on the judiciary in the media. | | renewal (WGR). |
| Italy | Stagnation of budget and means at a low level. Defiance from politics toward the judiciary | Lightly decreased | The drafted reforms are not positive but the action of the association is efficient to avoid the worse. |
| Latvia | Reductions of salary | n.a. | n.a. |
| Netherlands | n.a. | n.a. | n.a. |
| Portugal | Lack of resources. Decrease of salaries | decreased | Reform to get rid of the delays in the different judicial procedures (the reform seems to be ineffective due to the severe financial restraints) |
| Slovenia | Rapidly changing legislation | decreased | Creation of a judicial inspection within the ministry of justice (Threat to the independence of the judiciary) |
| Spain | Lack of personal and equipment Too much workload. Cuts of salary. Absence of direct participation of judges in the nomination of the judges members of the General Council for the Judiciary | decreased | Increase of the influence of the executive in the composition of the organs of the judiciary; at the same time reduction of the influence of judges in technical organs of the Council (wrong direction) |
| Switzerland | Selection process of judges | stable | |
| Turkey | Prime minister has considerable influence over the judicial council; the list of 10 members to be elected by judges belonged to the ministry of justice and was imposed on judges and prosecutors as a block. | decreased | Proposal for a new constitution: presidency system instead of parliamentary |
| United Kingdom | No mayor challenge | | England and Wales: court reform in England and Wales. Scotland: reorganization of the civil courts which include the introduction of a new, lower level, judge. Intended to reduce the costs to the State of litigation of such low level claims and to aid access to justice (no reasonable objection) |

APPENDIX

1

| Association | Number of Members | Increased (+) / decreased (-) |
|----------------|---|-------------------------------|
| Austria | 2727 | + |
| Belgium | No answer | No answer |
| Croatia | 1200 | stable |
| France | 2200 (of total 8000) | No answer |
| Georgia | 240 (of total 247) | + |
| Germany | Around 14000 including prosecutors | No answer |
| Greece | 3000 including prosecutors and juges de paix | + |
| Hungary | No answer | No answer |
| Iceland | 80 | No answer |
| Ireland | 153 (out of 161) | + |
| Italy | 90% of the judges and prosecutors | No answer |
| Latvia | 175 (out of 573) | No answer |
| Netherlands | 2700 | No answer |
| Portugal | 2100 | - |
| Slovenia | 586 (out of 970) | + |
| Spain | No figures | No answer |
| Switzerland | 600 | No answer |
| Turkey | 1600 | - |
| United Kingdom | No figures, because of three different legal systems (England, Scotland and Northern Ireland) | No answer |

2

| Association | Elected | appointed |
|----------------|--|----------------|
| Austria | By assembly of delegates, who are elected by members | |
| Belgium | By a committee which is elected by the members | |
| Croatia | By General Assembly for 4 years | |
| France | By general assembly for two years | |
| Georgia | By general assembly for 3 years | |
| Germany | By assembly of delegates for 3 years | |
| Greece | By general assembly for two years | |
| Hungary | n.a. | |
| Iceland | By general assembly | |
| Ireland | By the GA annually | |
| Italy | By the members, every 4 years | |
| Latvia | By general assembly | |
| Netherlands | By general council | |
| Portugal | By general assembly every three years | |
| Slovenia | By members for 4 years | |
| Spain | By members | |
| Switzerland | By members | |
| Turkey | By plenary assembly | |
| United Kingdom | Not applicable | Not applicable |

3

| Association | Board/Council | Appointed/elected | powers |
|-------------|--|---|---|
| Austria | Board of directors (president, 3 VP and 17 other members) | See above | |
| Belgium | board | See above | |
| Croatia | President, VP, board, Audit Commission | elected | |
| France | President, national council, national bureau (8 members) | See above, the 8 members of national bureau are elected by the national council out if its members | <p><u>President</u> represents the association and presides the national council and executes its decisions.</p> <p>The <u>national council</u> safeguards the ethic and material interests of the association and executes the decisions of the general assembly. It represents the association towards the public powers and other associations and summons the general assembly.</p> <p>The <u>national bureau</u> exercises the power between the sessions of the national council.</p> |
| Georgia | Board of 9 members, who elect the chairperson and the executive director | Election by general assembly | <p>The <u>board</u> represents and manages the association and current activities.</p> <p>The <u>general assembly (GA)</u> elects the board, which is accountable to the GA</p> |
| Germany | Board of 12 members (1 President, 2 VP, 8 others) | Elected by federal assembly of delegates from the member organisations (the association has no natural members, only corporate members, which are the regional (Länder) and branch associations.) | <p>The <u>board</u> represents and manages the association, unless The <u>federal council</u> has to take the decision. The national council is formed by the board and the heads of all regional and branch associations and meets twice a year.</p> <p><u>Federal assembly of delegates</u> meets every 18 months and is the supreme body.</p> |
| Greece | Council of 15 members, who elect the presidency board of three among the members of the council) | Elected by the general assembly, presidency members elected by and from the council | The presidency manages the association |
| Hungary | n.a. | | |

| | | | |
|-------------|--|--|---|
| Iceland | Board of 4 members + one Chairperson | Elected by GA for two years | Manages and represents the association |
| Ireland | Executive committee of 10 members plus one chairperson | Executive committee members are elected by the court jurisdictions (Supreme Court, Court of Appeal, High Court, Circuit Court and District Court). Each jurisdiction has two representatives. The Chairperson is the president of the association and is elected by the GA for two years with a limit to three consecutive terms. | Executive committee is the Association's Board of Directors. It manages the day to day affairs and has established offices of Secretary and Treasurer. |
| Italy | Executive board of 9 members | Executive committee members are elected by the 36 elected members of the central committee | |
| Latvia | Board with one President, 3 VP (one from first instance, one from appellate court and one from the supreme Court) and 11 other members | Elected by the members | |
| Netherlands | Board of 9 members (Chairman, Vice-chairman, secretary, treasurer and five others) | Elected by the General Council | The <u>General Council</u> (100 members) forms the highest authority and determines the policy of the association. It meets five times per year. The <u>board</u> deals with the day-to-day affairs of the association. Each of the five <u>sections</u> (Justices of Appeal, Judges, Cantonal Judges, Public Prosecutors, Trainee Judicial Officers) elects a fixed number of delegates to the General Council and is represented in the board. |
| Portugal | Direction council of 9 members | Elected by the members | Direction council, three <u>regional boards</u> with 3 members each. The <u>direction council</u> is leading |

| | | | |
|----------------|--|---|--|
| | | | the association and executes the decisions of the general meetings. One <u>general council</u> (31 members, 6 of them from the national board) as advisory board. |
| Slovenia | Main board, composed by the president and other elected members. The members of the main board elect out of its members 2 VP and four members of the executive board. | | <u>Main board</u> admits policies and positions for the realization of the purpose and tasks of the association. The <u>executive board</u> implements the decisions of the General Assembly and the Main Board. The <u>Supervisory Board</u> (5 members) monitors the physical and financial operations of the association. |
| Spain | Executive committee | Elected by the general assembly (National Congress) | The <u>National Congress</u> is formed by all members. The <u>Permanent Commission</u> is the highest organ between the biannual meetings of the National Congress. |
| Switzerland | Board | Elected by the members | |
| Turkey | Administrative council with 13 members | Elected by the plenary assembly | |
| United Kingdom | Not applicable | | The various judicial associations and the higher judiciary within the UK created an informal, but practical, association known as "United Kingdom Section of the IAJ". |

4

| Association | Regional representatives | Appointed/elected |
|-------------|--|--|
| Austria | yes | Elected, see above |
| Belgium | n.a. | |
| Croatia | yes, regional branches with President, board, general assembly | |
| France | Yes, in each appellate court district is a regional union. | the local representatives are elected by the members of the regional union for 2 years and take part in the meetings of the national council twice a year. |
| Georgia | No | GA may form branches and representations, but hasn't yet |

| | | |
|----------------|---|--|
| Germany | Yes, regional and branch associations | Elected by their members with own board and GA |
| Greece | Yes, commissions at the appellate courts, formed of 3 members | Elected |
| Hungary | n.a. | |
| Iceland | no | |
| Ireland | no | |
| Italy | Yes, in each Court of appeal | elected |
| Latvia | no | |
| Netherlands | n.a. | |
| Portugal | Yes, 3 regional boards | |
| Slovenia | no | |
| Spain | no | |
| Switzerland | n.a. | |
| Turkey | Not yet, but work in progress | |
| United Kingdom | Not applicable | Not applicable |

5

| Association | meeting the executive | meeting legislature |
|--------------------|---|--|
| Austria | regularly meetings with the Ministry of Justice; association is consulted on reforms dealing with the judiciary | Regular meetings with deputies of all parties. association is consulted on reforms dealing with the judiciary and asked to send experts. |
| Belgium | No regular meetings, never consulted. | Consulted to give expertise |
| Croatia | Depending on the ministry, free to give opinion and sometimes consulted | Depending on the MP, free to give opinion and sometimes consulted |
| France | Regular meetings, mandatory consultation on issues concerning the judiciary | Association is invited to both chambers to present its opinion on issues concerning the judiciary |
| Georgia | No meetings and no consultations | No meetings nor asking for opinion |
| Germany | Regular meetings and consulting on all issues concerning the judiciary; The association is acknowledged as top professional organization that mandatory has to be consulted | Regular meetings and consulting on all issues concerning the judiciary |
| Greece | Frequent meetings and consultations | Occasionally in individual questions; opinions are forwarded to parliament by the ministry |
| Hungary | n.a. | n.a. |
| Iceland | No regular meetings but association would be consulted in advance of reforms related to the judiciary | No regular meetings, but regular requests for comments/opinions on projects and bills |
| Ireland | No regular meetings; representations to the executive channeled through the Attorney General. Sometimes consultation by the | No regular meetings or consultations |

| | | |
|----------------|--|--|
| | executive concerning proposed reforms | |
| Italy | Occasional meetings with the Minister of Justice. The members of the association can take part in study commissions. | Regular consultations |
| Latvia | meetings | meetings |
| Netherlands | meetings | n.a. |
| Portugal | Regular meetings | No regular meetings, but opinion heard in projects related to judges |
| Slovenia | Occasional meetings; association is regularly informed of changes in legislation concerning the judiciary | No regular meetings. Association is invited to attend the meetings of the Committee for Justice of Parliament when it deals with laws relating to the status of judges |
| Spain | Regular meetings; consultations before reforms | Regular meetings, the associations are asked for their opinion |
| Switzerland | Consultations before federal lawmaking | Informal contacts |
| Turkey | No, there is a hostile attitude of the executive | Informal contacts and consultations of MP |
| United Kingdom | Not applicable | Not applicable |