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**COUNCIL OF EUROPE CO-OPERATION PROGRAMME  
TO STRENGTHEN THE RULE OF LAW FOR 2005**

**SEVENTH PLENARY MEETING OF THE LISBON NETWORK**  
(European Network for the exchange  
of information between persons and entities responsible for the  
training of judges and public prosecutors)

**(LISBON NETWORK)**

Palais de l'Europe (Room 8), Strasbourg, 23 November (9 am) – 24 November 2005

Website of the Lisbon Network: [www.coe.int/lisbon-network](http://www.coe.int/lisbon-network)

**The quality of the training of Magistrates and common European  
standards for judicial training**

**THEME 1**

*The quality of judicial training in the light of the recent European  
developments (at national and international level) in the field of training  
of Magistrates*

**Rapporteur : Mr Michel ALLAIX, Deputy Director of the National School of  
Magistrates (ENM) of France**

The search for quality is a key requirement today in all fields, reflected especially in certification procedures, which are by no means confined to the trade sector, but have also spread into the public services sphere.

Among the standards for measuring the quality of a service, the degree of training of the people involved in providing that service, and the methods employed for training them, always occupy a prominent position.

The justice system is no exception to this rule.

Accordingly, ***the quality of a country's justice system can be measured in particular in the light of the system for recruiting and training its judges and public prosecutors.***

Where the quality of justice is concerned, discussions held in European forums such as the CEPEJ or the CCJE point to the training of judges as a key parameter.

Given the centrality of training in measuring the quality of justice, the issue of how to measure the quality of that training inevitably arises.

In this field, each of our judicial training institutions is inevitably faced with this question, and some have engaged in debate and experiments at national level.

Although this is a necessary stage that we have to go through, it is not in itself sufficient.

It is also essential to share experience at European level.

We have a number of ***European instruments*** at our disposal which give us some valuable pointers.

The Lisbon Network is a particularly appropriate forum for this sharing of experience.

But our wish to develop exchanges and mobility for judges between countries requires us to pursue a broader goal and to seek harmonisation between our training systems while respecting the distinctive features of each.

At the end of the second stage, on which we have already embarked, it is therefore desirable that we should be able to ***agree a number of criteria by which we shall be able to evaluate, on a shared basis, the quality of our judicial training systems.***

A considerable amount of work has already been accomplished within our network.

In this connection, I should like to draw attention to the discussions held

- in Strasbourg from 13 to 15 May 1996 on the training of judges and prosecutors in matters relating to their professional obligations and ethics
- in Bordeaux from 2 to 4 July 1997 on the training of judges in the application of international conventions

- in Warsaw on 17 and 18 December 1998 on competences, impartiality and independence in the recruitment and training of judges
- in Budapest on 25 and 26 October 1999 on the training of trainers
- in Vilnius from 30 September to 1 October 2002 on the training of judges and public prosecutors in professional skills
- in Bucharest on 18 and 19 November 2003 on the position of schools of magistrates in the judiciary and their role in the training of magistrates.

The proceedings of our present meeting maintain this continuity.

Developing quality indicators that are shared between our schools is a lengthy process involving several stages.

Today I shall confine myself to suggesting some pointers as to how this work might be undertaken.

There are four basic questions:

- the first concerns the context in which the judges and prosecutors we are called upon to train will be working
- we shall then need to consider how judges and prosecutors are recruited, which sheds light on the question of “prior-requirements”, which forms the basis on which our teaching method will be built
- lastly, we shall need to take a look, in turn, at our initial and in-service training systems.

## **I Some contextual elements**

If we are to measure the quality of judicial training systems, it seems essential to address first of all the issue of the appropriateness of our training courses to the context in which judges and prosecutors will be called upon to work.

### **1.1 The first step is to specify our training institutes’ target groups**

- The French judicial system comprises:

\* 7,675 judges and prosecutors divided among one court of cassation, 35 courts of appeal (plus two high courts of appeal) and 181 regional courts.

All these 7,675 judges and prosecutors came from the Ecole National de la Magistrature (ENM), where they received initial training and where, every year, they are offered the opportunity of attending at least one five-day in-service training course.

\* Local judges (at 26 August 2005, 829 local judges had been recruited, of whom 436 were actually serving)

271 industrial tribunals and 191 commercial courts, together with a number of other categories, such as assistant judges in juvenile courts.

All these form the ENM’s “clientele”.

***What are the “clienteles” of each of our schools and institutes, and what are their distinctive features:***

- judges only, or judges and prosecutors?
- judges within the judicial system proper, or also those working in administrative, financial and tax courts?
- judges and prosecutors only, or also judges’ assistants, clerks, deputy prosecutors etc?

## **1.2 As well as defining the target groups, we shall also need to entertain a number of general considerations relating to the justice system in our respective countries**

It might be argued that a characteristic feature of the justice system in our respective countries is the ***increasing place it takes*** in people’s lives. Drawing on the various studies carried out within our network and within the wider framework of the Council of Europe, we might mention, as shared features:

- the increasingly central role of a justice system seen as regulating social life
- the judicialisation of everyday life (the courts seen as a last possible recourse, eg growth in liability litigation, active policy of promoting access to the law etc)
- a significant increase in litigation (number of mass litigation cases, new cases etc)
- a proliferation of legislation

- the justice system is also a ***source of considerable, and increasing, expenditure*** – and that is a second observation we all make. Those who fund us, first and foremost the national legislature, are expressing increasingly forcefully a legitimate concern to control that expenditure, not necessarily to reduce it, but to promote better spending. Such control entails new working methods: in France, for example, the recent institutional act relating to finance laws sets new frameworks, including a precise estimate of expenditure and an evaluation system. These changes mean that judges and prosecutors are henceforth called upon increasingly to account for the use of the finite public funds allocated to the justice system. These changes particularly affect court presidents, whose managerial role will be decisive. From now on, it must constantly be borne in mind that every judge or prosecutor, in the performance of his or her judicial duties, commits public funds and may be called upon to play a role, and account for his or her actions, in controlling expenditure related to the administration of justice.

- Lastly, it is essential to listen to the ***criticisms*** which litigants, as clients and partners of the justice system, level against it:

These criticisms may be summarised in the form of three adjectives: ***slow, expensive, obscure*** (difficult to understand, difficult to enforce).

These contextual elements obviously represent valuable indicators for training, which is supposed to contribute to an improvement in the quality of justice.

For the judicial trainers we are, the criticisms levelled against the functioning of the justice system may be expressed, positively, in the form of three groups of expectations or requirements:

First group of requirements: *technical excellence. Through training, we must contribute to a reliable justice system handing down decisions that can be applied in practice.*

Second group of requirements: *a welcoming and receptive attitude, a readiness to explain and sound advice to litigants. Judges should adapt their behaviour to these requirements* (saving of time, money and resources). This second group of expectations should no doubt be incorporated into our training systems.

Third group of requirements: *justice that is swift and properly administered* – choice of appropriate procedures, management of stocks and flows, procedural contracts, short time frames for hearing cases, deliberating and typing up decisions. This administrative and managerial dimension is no doubt the newest feature in our training systems. Traditionally and culturally, the judges called upon to work on cases involving individual situations are not administrators. It is on this point, no doubt, that we shall encounter the greatest difficulties. It is therefore on this area in particular that we shall have to focus our training efforts.

For institutions responsible for training judges and prosecutors, these three types of expectations represent as many educational goals to be achieved, each combining “knowledge”, “practical skills” and “life skills”.

These goals can be worked on at three stages: on recruitment, during initial training and during in-service training.

## **II - “Prior-requirements”: the issue of how judges and prosecutors are recruited**

The procedure for selecting future judges and prosecutors plays an essential role in relation to the quality objectives set for the judicial system.

It is also with reference to these prior requirements that we shall be able to measure the added value provided by our training systems and our study of quality indicators for judicial training cannot overlook the instruments used for measuring those prior requirements.

How and on what basis do we select those who will be entrusted with responsibility for dispensing justice: what knowledge and qualities are required?

### **2.1 There are two possible systems for recruiting judges and prosecutors:**

Recruitment by *competitive examination* (which is democratic and guarantees the attainment of a verified level of knowledge)

Recruitment *based on qualifications* (with selection by a board specially appointed for that purpose or, in English-speaking countries, election)

These two approaches, one based on the Romano-Germanic tradition, the other favoured in English-speaking countries, are tending to merge today to give rise to hybrid systems combining the advantages of both. France, for example, currently has a system combining recruitment based on competitive examination and on qualifications.

In all cases, the recruitment system should be based on a *two-stage screening* procedure and determine not only whether candidates have the requisite *level of knowledge* and intellectual abilities (analysis-synthesis) but also whether they have the *human and personal* qualities that are essential for performing a judge's duties (as stressed by the CCJE in its opinion No. 4).

This dual verification is carried out in various ways, or combinations of ways, depending on the recruitment system.

## **2.2 The level of knowledge can be measured by requiring candidates for judicial posts to have qualifications of a certain level**

The link between our recruitment systems and the European university training system, otherwise known as the Bologna system, constitutes an important and difficult issue. Briefly, it should be noted that the Bologna system provides for a reorganisation of higher education into three levels: secondary leaving certificate plus three years, corresponding to a first degree, secondary leaving certificate plus five years, corresponding to a master's degree, and secondary leaving certificate plus eight years, corresponding to a doctorate. This sequence does not correspond to the reality of the systems for recruiting judges and prosecutors in a number of European countries. For instance, it may be noted that German judges and prosecutors are recruited on the basis of an initial state examination, taken four years after the secondary leaving certificate, then a second state examination taken two years after that.

In France, the entrance examination to the ENM is open to students who have successfully completed four years of study after the secondary leaving examination. This qualification is destined to disappear as the Bologna system is implemented.

If we want to develop a set of shared indicators to evaluate the quality of our training systems, *we shall have to agree on the level required for admission to our initial training systems*.

## **2.3 Lastly, it is useful to consider the kinds of test or verification on which recruitment is based**

These may take the form of written and oral examinations or continuous assessment to test the candidates' knowledge. The Spanish competitive examination system is a good illustration of this.

A prospective judge or prosecutor must also demonstrate an ability to analyse and synthesise: this can be tested on the basis of specific examinations, and the typically French examination in which candidates are required to produce a “note de synthèse” (synoptic note) can be mentioned by way of an illustration. This may also be tested on the basis of work experience.

Lastly, assessment of the human and personal qualities of candidates for judicial positions is no doubt the most delicate point. Here again, there is a range of possible solutions: inclusion of psychological tests in the recruitment procedure, oral examination, probationary nature of training, etc.

In any event, it is on the basis of these prior requirements that we shall be able to build and further develop an initial training system for judges and prosecutors.

### **III - Initial training**

How can we devise instruments for measuring the quality of our initial training programmes?

#### **3.1 Measuring the quality of a training programme means, in the first instance, clearly identifying its educational goals**

We had a first glimpse of this when we looked at the context in which justice is administered in our various countries.

It is now a question of *turning these still very general expectations into precisely worded educational goals, which is not necessarily easy. In the light of these goals, we shall be able to assess, at the end of the training programmes offered, whether they have been wholly or partly achieved, and what progress our trainees have actually made.*

The task of our schools is to train judges and prosecutors who will be operational on leaving the initial training system, which presupposes:

#### ***a technical training (knowledge and practical skills):***

- a judge or prosecutor must possess a fund of basic knowledge. How should his or her knowledge be expanded, and in what areas? In theory, most legal knowledge should have been acquired on the university course preceding admission to the training system for judges and prosecutors. This fund of knowledge may, however, require some very technical additions, related specifically to the exercise of a judicial profession.
- a judge or magistrate must be capable of implementing his or her legal knowledge and applying it appropriately to practical situations in a judicial context. This means learning all the skills proper to judges and prosecutors – judicial writing skills: drafting

submissions, a judgment, an order etc, and oral skills: how to conduct questioning, hear the parties, chair a hearing, etc, all of which are essential skills, particularly in countries with predominantly oral procedures.

- lastly, a judge or prosecutor must be capable of managing an office, a particular type of litigation or a court. This is a third area of concern whose increasing importance we stressed when we discussed the contextual changes affecting our judicial institutions.

***Human training (geared mainly to life skills):***

While the profession of judge or prosecutor requires mastery of a certain number of practical skills, it is above all also a profession with a human dimension, in the exercise of which relations with others, be they litigants, criminals or victims, judicial auxiliaries, lawyers, members of the police, prison staff or educators, are essential. To a large extent, the profession of judge or prosecutor requires communication skills.

This calls for training in interviewing and listening and, more broadly, a grounding in oral techniques.

Above and beyond that, the profession of judge or prosecutor has an essential ethical underpinning, incorporating in the first instance the values of the European Convention on Human Rights, such as independence and impartiality, and respect for the parties and their rights. As well as being a profession, to hold the position of judge or prosecutor is to be steeped in such values as those of dignity, fairness, due diligence and respect for confidentiality.

Lastly, the judge's or prosecutor's culture is one of permanent doubt and reappraisal, starting with oneself.

Our teaching methods should incorporate these values and prepare prospective judges and prosecutors for them, within the context of an ethical training programme embracing both general and professional ethics.

A good initial training programme is one that reconciles this set of educational goals and achieves them.

**3.2 A second series of quality indicators relates to the teaching methods and aids used**

The curricula of our schools generally combine periods of theoretical learning within the school with periods of practical work experience. What is the duration of these periods? Can one identify criteria for the minimum length of training?

Where theoretical learning is concerned, our respective experiences now suggest that students learn better in ***small groups*** than in impersonal lecture halls. Similarly, we know how instructive ***simulation*** exercises can be. We have also learned to work with ***mixed***



**groups:** trainee judges and trainee police officers, lawyers or judicial auxiliaries, and now joint groups of trainee judges from different European countries.

**Work experience** is an essential adjunct to the theoretical input. What **alternation** should there be between periods of work experience and periods of study? **What kinds of work experience** do we use? It can be useful to supplement work experience in a court with periods of work experience in various partner institutions of the justice system: prisons, educational institutions, voluntary associations, investigation services etc. Regarding work experience in courts, is it mere **observation**, does it involve **assisting** the judge or prosecutor, or is it full-scale work experience with the trainee performing all the judge's or prosecutor's duties, under the supervision of the judge or prosecutor acting as training supervisor?

The **teaching aids** available to students are also relevant in terms of measuring the quality of our training programmes. What kinds of teaching aids are available: handbooks, case studies, audio and video material? What is the role of digital media in our teaching system: CD ROMS, websites, discussion forums, e.learning platforms, etc.

The **professionalisation of trainers** is another possible criterion for measuring the quality of our teaching. Who are the trainers in our schools? Do they work on a full-time or occasional basis? Are they judges and prosecutors themselves, academics, or other categories? How are they recruited, and on the basis of what qualifications? How are they trained when they take up their duties, then throughout their career as trainers? How is work experience supervised? Does the school train its training supervisors, and how? What links does the school establish between its teaching team and its correspondents responsible for work experience arrangements?

The question of **student evaluation** can give rise to the development of another set of indicators. Is it summative evaluation confined to testing knowledge or skills, or is it evaluation incorporating monitoring of the student's performance? What arrangements are there for evaluating "life skills", which are known to be of crucial importance for the future professional activity of judges and prosecutors?

Lastly, we cannot overlook the question of our training **premises**, which must be adapted to our curricula and methods, and the facilities which should be available: in particular, documentation services and computer facilities.

This set of questions could help us to **build a shared reference framework for evaluating our training programmes**.

#### **IV - In-service training**

The approach suggested for evaluating initial training can be transposed to the field of in-service training.

**4.1 Defining the educational goals pursued in in-service training** is a delicate matter.

The period of initial training is merely an introduction which, although essential, is insufficient for exercising the profession of judge or prosecutor. *Career-long training* forms part of the professional obligations and responsibility of a judge or prosecutor.

This general statement of principle encompasses *a range of different goals*, which it is important to identify clearly since the purpose of evaluation is precisely to verify to what extent they have been achieved.

The goals traditionally assigned to training include the following:

- *refreshing or updating knowledge and skills*  
keeping abreast of changes in legislation and practice  
preparing for the performance of new duties  
specialisation  
acquiring managerial skills  
opportunities for developing parallel skills (languages)
- *pooling and sharing good practices* and promoting their development,
- *providing a forum for reflection* on important issues,
- *providing a window to society* and the major issues facing it

**4.2 In all cases, this in-service training will adopt a number of teaching methods which will be amenable to evaluation**

In-service training is a professional duty of judges and prosecutors, and it can be a right: *how do our institutions make it possible for the individual judge or prosecutor to regularly fulfil this duty, or for this right to be fulfilled?*

In the French system, this principle of career-long training is secured through a statutorily recognised right to five days' in-service training a year for every judge and prosecutor. This right may become a mandatory duty in some cases, particularly where a judge or prosecutor changes posts.

Where is this right or duty exercised? Our systems offer *national facilities*, or *local facilities*, or a *combination* of the two, as the case may be. Given the increasingly widespread use of computer facilities, it is now possible to conceive of virtual training environments.

Lastly, all the questions relating to teaching methods and aids, trainers and trainee evaluation and monitoring can of course be transposed to the field on in-service training.

These are some of the elements which could be taken into account for the purpose of evaluating our judicial training programmes. But the above list is far from exhaustive.

Today's meeting is a further stage in the development of shared tools and of agreed training standards.

This is of particular importance if training is to contribute effectively to the quality of our justice systems.