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1st meeting of the Bureau of the European Network for the Exchange of Information between Persons and Entities responsible for the Training of Judges and Public Prosecutors

(LISBON NETWORK)

(Web site of the Lisbon Network: www.coe.int/lisbon-network)

Palais de l'Europe (Room 7) Strasbourg, 16 (10h00) – 17 (13h00) December 2004

QUESTIONNAIRE “B” ON THE ROLE OF TRAINING INSTITUTIONS IN RECRUITMENT AND INITIAL TRAINING OF JUDGES AND PROSECUTORS

Questionnaire “B” on the role of training institutions in recruitment and initial training of judges and prosecutors¹

Introductory remark: the answers are bolded!

I. What are the ways of acceding (and the respective related procedures) to the functions of judge and prosecutor (examination, selection based on a file, etc..)?
The judges and prosecutors are being proposed for election by the Judicial and Prosecutorial Councils. The Councils announce the concurs, the interviews take place and each candidate sends the required documents (the opinions of the respective court/prosecution office in which the candidates work, i.e. opinion of the court president and opinion of the session of judges of the concrete court; opinion of the head of the prosecution office and opinion of the session of prosecutors of the concrete prosecution office, are also required). The candidates are being proposed to the Parliament of Montenegro. The Parliament elects judges and prosecutors. It can reject to elect the proposed candidate, in which case he/she is not elected. The procedure of electing the judges and prosecutors is being criticized by the Montenegrin judiciary and international community, there are possibilities that this procedure will change in the future in the terms that the Judicial and Prosecutorial Council will solely elect and appoint judges and prosecutors.

II. How, following which periodicity and by whom is the assessment of vacancies to be filled done?
The assessment of the above written is being done by the Judicial and Prosecutorial Councils (when Prosecutorial Council is concerned, this needed number of prosecutors is decided by this Council upon the proposal of the Minister of Justice, before which proposal this is being initiated by the Supreme State Prosecutor). It is conducted according to the workload and needs of each court/prosecution office. The cooperation between the Councils and the courts/prosecution offices for this purpose is dynamic and regular, and the Councils up-to-date the needed number of vacancies following regularly the needs of each concrete court and prosecution office. This is usually once or twice a year. The concourses for free vacancies in the concrete courts or prosecution offices are announced usually, as already said, once or twice a year, but sometimes even more often-it depends on the circumstances in the courts and prosecution offices. For example, there are 242 judges in Montenegro at the moment.

III. What are the bodies which proceed to the selection of the candidates to the initial training for the function of judge or prosecutor? According to the way of acceding to the function of judge or prosecutor (cf. question I. above), please specify: a) the qualification of the persons proceeding to the selection: members of these selection bodies are they: i) exclusively judges and prosecutors? ii) in majority judges and prosecutors? iii) in majority persons who are neither judge

¹ Members of the Lisbon Network are invited to send their replies to the Secretariat by E-mail (valerie.schaeffer@coe.int) for 31 March 2005 at the latest.

nor prosecutor? and b) the selection procedure; do members of these selection bodies benefit from a specific training, for instance in the field of assessment techniques? If so, please give details;

As for the initial training, it does not exist in Montenegro at the moment and has never existed so far. So far the Judicial Training Center of the Republic of Montenegro (JTC) has been offering only continuous training to judges (initial training has been offered, and it is still, occasionally-this is a type of initial training actually since it is offered to the court trainees who wish to become judges or prosecutors-this can be considered an initial phase of the initial training of candidates for judges of prosecutors in Montenegro). However, the new law is being drafted in Montenegro (Law on Education within the Judicial Authorities) which will introduce the initial training of judges and prosecutors (it is expected to be adopted in the first half of 2006). According to this law there will be a special program board within the JTC composed of three members who will create and be responsible for realization of the initial training program. In addition, there will be Examining Commission composed of three members too, who will be responsible for organizing and conducting Entering and Final Exam for the candidates who attend the initial training. The members of the described bodies will be in majority judges and prosecutors, but possibly a smaller number of them (like one third, for example) will be experts in some particular fields (for example, it is possible psychology). The members of these bodies will be appointed by the main JTC managing body (it will be called Coordination Board according to the new law) which also appoints the members of other JTC program boards responsible for other training programs. The members of these bodies will not compulsory go through any kind of (for example, assessment) training. However, their election will be done carefully following all the needed qualities they must have. The new law, of course, leaves a possibility for organizing their training, which can be included in the future JTC programs as a form of training of trainers or any other similar form.

IV. What qualifications are requested from candidates (university degrees, previous professional experience)?

According to the new law, the initial training is organized for so called expert assistants in the courts (assistants to the judges), as well as for other lawyers who have Bar Exam passed and who fulfil other general conditions for working in the state bodies. This actually means that candidates for initial training will have to have university degree in law, Bar Exam passed and at least two years of working experience in the legal field (because the condition for a graduated lawyer to take the Bar Exam is two years of working experience in the legal field, or of course even more years depending on the fact where he/she has worked beforehand: for example, it is 4 years if the person has worked in the administrative bodies).

V. In the case of a selection done by way of an examination, what are the selection modalities (multiple choice questionnaire, written and oral examinations, psychological tests, etc...)?

According to the new law, i.e. its explanatory note and discussions and intentions of the law drafters, the selection modalities will definitely include oral and written examinations, psychological tests, but also other forms of modalities, which will be defined in detail on a later stage, during the law implementation, through the sub-law acts.

VI. What is the value of passing of initial examination (access to initial training as a tool for further selection, or as a tool to begin the professional career)? What are the consequences on curricula and assessment of training?

According to the new law, passing initial examination, i.e. successful going through the initial training, has a purpose of a tool for further selection. Namely, the candidates who successfully complete the initial training have more chances to be elected for judges and prosecutors.

VII. Please give information on:

a) the framework of initial training;

The initial training is going to be introduced in Montenegro for the first time, in its full scope, by the new Law on Education within the Judicial Bodies. There will be a special program board composed of three persons who will be responsible for creation of initial training program and its realization. There will be Entering Exam for initial training, as well as Final Exam. The list of candidates (made according to the gained results at the Final Exam), will be created and will be sent to the Judicial and Prosecutorial Councils (who propose the judges and prosecutors to the Parliament of Montenegro for election-this procedure is described in other parts of this questionnaire or other questionnaires).

b) the duration of initial training;

6 months periodically (three or more times per month for 4-5 days)

c) the qualification and the selection of trainers;

The three members of the program board for initial training will be appointed by the main JTC managing body (Coordination Board) according to the new law. They will be responsible for creating and realization of the initial training program (in addition, as already said, there will be a special three members Examining Commission responsible for the exams in the initial training only-Entering and Final Exam, the members of this Commission will also be appointed by the mentioned Coordination Board). The trainers within the initial training program can be members of the responsible program board themselves, but the trainers will in principle be selected from the established list of trainers. The list of trainers will be, as already said, in the questionnaire A, defined by the main managing body of the JTC (Coordination Board according to the new law). Some of the trainers

from this list will be engaged occasionally and some permanently. This list will include the trainers for both initial training and for continuous training.

- d) the method used in initial training (seminars, training periods in a jurisdiction, training period in other places, period of the curriculum during which these training periods take place);

The methods used in initial training will be defined in details by the program board for initial training upon the new law adoption and start of its implementation. However, it can be stressed already at this moment that these methods will surely include: lectures (to a small extent), visits and trainings in other institutions apart from courts and prosecution offices, practical discussions, simulations of the cases, practical exams in writing the judgments and conducting the hearings, etc. In general, what is the most important thing to say is that the practical approach will be dominant one in the Montenegrin initial training.

- e) the content of the initial training programmes² and its link with university curricula;

Please see previous paragraph d) concerning when and how the initial training program will be drafted. It will surely contain a bit of everything which was marked in the footnote number 2. As for the link with the University, it is possible according to the new law that, for example, a member of the program board for initial training comes from the University, i.e. Law Faculty. Through such engagement the link with the University and the University educational programs is firmly established. In any case, the University programs will surely be taken into account when drafting the initial training program (as well as it will be like that with the content of the Bar Exam). The initial training is realized as continuation and upgrading of the existing knowledge gained at the University and at the Bar Exam. It is also understood as an important tool of preparing the candidates for the hard tasks of being judges and prosecutors. Any kind of overlapping with the University and Bar Exam aspects of education will be avoided within the initial training program.

VIII. Is there an exit examination? If so, what is the value of this exit examination? Please give details about the methods of selection, the selection bodies and their membership;

There is a final examination (Final Exam named so far in the questionnaire). It has already been described, please see previous answers of this questionnaire. In general, the value of this examination is to provide

² For example: deontology, European and international law, foreign languages, international judicial co-operation, issues related to discrimination; practical studies in the field of forensic medicine, police, cadastre, social security, labour law, alternative dispute resolution (ADR), etc.; familiarization with the functioning of jurisdictions such as Supreme Courts, State Councils, etc...

candidates (who successfully went through the initial training) with higher chances to become elected for judges and prosecutors and to give them priority in the election process.

IX. Are there provisions for the training and tutoring for judges and prosecutors in the first years of their career (complementary training)? If so, what are the modalities?

As for the present moment, the continuous training is offered to the judges who are at the beginning of their carrier. However, this is not a specialized training for them particularly, but the one which is offered generally to all the judges. According to the new law, there are no provisions in the sense of tutoring, but there is a special program provided for the judges and prosecutors who are at the beginning of their carrier (there is a special program for the judges and prosecutors who have less than 3 years of experience). This program will include special training elements necessary at the begging of the judicial or prosecutorial carrier, it will be defined in details at a later stage (during the law implementation) as it is the case with all the other programs (through the sub-law acts).