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Council of Europe Co-Operation Programme to strengthen the Rule of Law

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 “C” ON THE ROLE OF TRAINING INSTITUTIONS AS REGARDS IN-SERVICE TRAINING OF JUDGES AND PROSECUTORS

Questionnaire “C” on the role of training institutions as regards in-service training of judges and prosecutors ¹

Introductory remark: the answers are bolded!

- I. Please indicate the measures taken with a view to enabling judges and prosecutors to exercise their right to in-service training (for example, days of leave for that purpose, etc.);

Participation of judges in the training activities have so far been realized based on their free will in Montenegro. The presidents of the courts, in cooperation and agreement with judges, and in accordance with the court workload, allow them to leave the courts and attend trainings. According to the Judicial Training Center of the Republic of Montenegro (JTC) experience in this sense, even though attending of trainings is not obligatory at the moment huge majority of Montenegrin judges (approximately 90 %) did participate in the JTC trainings. The judges usually leave the courts for quite high number of days during the year in order to attend various trainings (this is from 20 days for some judges who are very much interested in trainings, to 5-10 days for some judges who are less interested in trainings, there are of course such judges who are minority and who never or very rarely attend trainings). In the new Law on Education within the Judicial Authorities, which is being drafted in Montenegro and is expected to be adopted in the first half of 2006, the training of judges and prosecutors is defined as their right and obligation. There are not however certain number of days defined in the sense of compulsory training days. The training of prosecutors has so far been mainly organized by the Association of Prosecutors of Montenegro. In the Law on State Prosecutor the training of prosecutors is defined as their right and obligation. By the above mentioned new Law on Education within the Judicial Authorities, the obligatory character of training of judges and prosecutors is definitely being made stronger (and the training of prosecutors will in the future be organized by the JTC).

- II. Is in-service training of judges and prosecutors compulsory or optional?

Please see previous answer.

- II. If in-service training is not compulsory as a general rule, please specify if there are areas /and/or subject matters in which in-service training is nevertheless compulsory; If so, please give details;

Training in all areas is regulated as described in answer number I.

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.

IV. Is the judge or prosecutor free to choose the training actions in which he/she wishes to participate? Does he/she have to justify his/her choice? Is it possible for the judicial hierarchy and/or the training institution to oppose to the wish expressed by the judge or the prosecutor concerned and for what reason?

The judges (and prosecutors in the future, after the above mentioned new law is adopted, please read about this law in the questionnaires A and B too) are free to choose in which training they would like to participate. It is done in cooperation with the president of the court (in the future it will be also when prosecutors are concerned in cooperation with the head of the prosecution office). The judges usually choose to attend trainings in the fields in which they work. It is possible to oppose the judges' wishes related to attending the trainings in the terms that president of the court is the one who approves the absence of a judge (it is common that court presidents are very flexible and tolerant, and leave each judge to organize his/her working time according to his/her obligations; the court president will not however allow that the court work suffers because of the judges' absence and non-working; in practise attending of trainings is very well organized in a way that courts work is not affected). In addition, the JTC does not allow same judge to attend same training twice. It also takes care of the field in which judges work, so it directs the invitation letters for the training only to relevant judges in the context of the training topics. It very rarely happens that such "rules" are broken.

V. Please identify the committees and / or trainers that develop in-service training programmes and the authority that approves planning;

As for the present, ongoing training programs of the JTC they were created for the period of two years mostly by judges, as well as international experts (when European Law curriculum is concerned primarily). This is expected since the JTC has so far worked with judges only. The programs were adopted by the Assembly and Managing Board of the JTC, and these bodies are the responsible ones for controlling of programs realization. Their realization is being organized by the JTC staff. In addition to all the said, at present there are three editors (judges) responsible for training activities in three fields of training (civil law, criminal law and separately commercial law). In the future, however, in the light of adoption of a new judicial training law (mentioned and described briefly on few occasions earlier in this questionnaire and in other questionnaires – A and B), the training programs will be created annually. For every legal field there will be separate training program, for drafting and realization of each program there will be a responsible three members program board. The main managing body of the JTC (which will be called Coordination Board) will be responsible for drafting of the general, overall annual program of JTC work, as well as for appointment of the members of the program boards for different fields. Then, those program boards will deeper draft the concrete programs in details, based on this mentioned general program of the JTC work previously drafted by the named Coordination Board. Most of the program drafters and

planners will be judges and prosecutors, but also smaller number of them will come from other relevant branches, which is necessary in order for programs to be of the best possible quality.

VI. Please give the following statistics: number of activities per year (if possible, please specify the average duration of activities); number of training hours offered per year per magistrate; budgetary resources;

In the last two years there were approximately 40 activities per year. Here the following is included: seminars, round tables, conferences and study visits. Apart from those 40 activities per year, there also additionally courses of English and French languages for judges, as well as publishing of publications. For example, JTC has already published two books in 2006 and 4 more are being prepared (there are approximately three publications per year – in the last two years). Average duration of activities is 2 days (of course, study visits and courses are longer – usually 5 days and 3 months).

As for number of training hours per magistrate per year, it is very different for different judges. As it was already said above in the text, there are some judges who participated in JTC activities for 20 days in total per year (one day is actually 6-7 training hours). There are also judges who participated in the JTC activities for 10 days (one day is actually 6-7 training hours), and of course there are those who participated for less than 10 days (one day is actually 6-7 training hours) or even never (their number is smaller though we remind that, according to the recently conducted research, 90 % off Montenegrin judges did participate in various JTC activities).

As for budgetary resources, so far JTC has been mainly financed through donations (the big ongoing financial project is *Project of Support to the JTC by the European Union-European Agency for Reconstruction*, and there is also one ongoing project of support to the JTC by the OSCE/ODIHR). Apart from that, the support of Ministry of Justice of Montenegro has been continuous, but of a much smaller extent. When new Law on Education within the Judicial Authorities is adopted, the JTC will be financed from the State budget, from the budget line of the Supreme Court of Montenegro (since it will be a unit of this court). (This was explained earlier in other questionnaires).

VII. Please specify and describe the in-service training methods (seminars, workshops, traditional lectures, distance learning, audiovisuals);

The most commonly used training methods are: seminars, workshops, round tables, regional conferences, study visits, courses, publishing activities, distance learning means).

VIII. Please give details about the training environment (dedicated structures, court buildings, conference centres in hotels and the like);

The most commonly used premises for trainings are hotel premises or other similar types of premises, and court buildings. However, JTC has recently moved to the new premises in which it has two specially designed conference halls (for trainings). One has a capacity for 30 people, the other one for more than 100 people (the second one is used commonly by the JTC and Human Resources Agency of Montenegro). In the future this will significantly lower the expenses of organizing training activities, at least when central part of Montenegro is concerned (in which a significant, high number of judges work and in which the biggest Basic Court is situated). The JTC is placed in Podgorica, the capital of Montenegro which is in a central part of a country.

IX. What are the contents of training initiatives (role of cultural and social themes; role of ancillary sciences; management techniques);

All training programs now and also those in the future (which will be drafted after the new law is adopted) contain not just strictly legal issues and elements (which is logical and which we will not elaborate in details here-all the JTC programs can be found on its web-site or can be sent to every interested party upon the request sent to the JTC office), but also have elements of other sciences and skills and are very wide in the terms of aspects they involve. For example, managing the court budget, cash flow projections, measuring of work performance, random assignment of cases, independence of the judiciary, judicial ethics, the judge and society, rule of law, anti-corruption measures, mental health awareness, gender awareness, body language awareness, awareness of cultural differences, assessing of character and credibility, listening skills, stress management, child psychology, culture of speech, drafting court documents, using new technologies, computer skills, foreign languages, public relations skills, dealing with expert technical evidence, reading complex financial information, keeping up with changes in the law and related social sciences, lecturing skills, successful use of data bases, successful use of comparative legal methods, etc. One more time we remind that all the JTC programs can be found of the JTC web-site. (The web-site is being renovated these days and it is expected to be finished in a month, but even though this process is ongoing the programs and other information can be easily seen).

X. What are the contents and the modalities of training to support change of functions?

According to the new law which is expected to be adopted very soon, there is a special program defined for judges (and prosecutors, but judges particularly due to the nature of their work) who change the field of work, or who go from one court to the other court of different jurisdiction or instance, and similar. This program will be designed in a way to follow the needs of these categories of trainees. So far JTC has devoted some trainings or parts of some trainings to the judges who changed the courts in the terms of going from court of one (lower) instance to the court of other (higher) instance. However, the future program (described above) will be a special

one, designed with the purpose of full satisfaction of training needs of these categories.

XI. How is the assessment of programmes and methods done (questionnaires, interviews)?

The assessment of programs and methods is done through the questionnaires primarily. After every training event the questionnaires are distributed and later on analysed. Apart from questionnaires, in some longer periods of time, the JTC conducts the research on training needs and opinion on the JTC and its training activities. Such estimation was realized two years ago, when the present, existing curricula was drafted. And JTC has recently finished a huge research which partly concerned satisfaction of judges with its work and training it offers. The research results will be announced in about a month and will be available in both Montenegrin and English language (a copy will be surely sent to the Lisbon Network-Secretariat). This research offered not just a results related to trainings but very many different results related to different issues, starting from very basic data (number of judges, age and sex structure) to data on influx of judges in last 5 years, number of judges who left the judiciary in last 5 years, etc. In addition to all the said, JTC also followed the case-law of the Montenegrin courts in order to find out whether a gained knowledge (particularly that one related to the European Convention of Human Rights-Articles 5 and 6) was applied or not, and that way find out about the success of the trainings it conducts and offer. Positive results were found. This can also be considered a method of assessing the success and quality of trainings.

XII. What are the modalities of the evaluation of trainers?

Main modalities are also through the questionnaires filled by participants. It is the very best modality because the participants largely support certain trainers, while it also happens from time to time that they are largely not satisfied with the certain trainers (in which case the JTC does not engage him/her anymore). The JTC itself follows the quality of trainers from the technical side primarily, but also all the other sides (how eloquent he/she is, how much he/she involves practical examples in his/her presentation, how concise and practical he/she is, and similar). Just to remind in this context that all the members of JTC staff are lawyers, some of whom have the Bar Exam passed or Master Degrees in certain fields of law. The Managing Board is involved in the process of proposing and selecting the trainers, and therefore the best possible solutions in this sense are usually found. As it is already said, some trainers are known as a good ones and are very welcome by the trainees on many occasions. When drafting the training programs, upon the adoption of a new judicial training law, a significant attention of drafters will be given to program evaluation issues, too. This aspect will be even better solved in the future, when implementation of a new law happens.

XIII. What is the impact of participation to training on participants' career?

As for the moment, when candidates apply for the positions of judges (either for the first time or when they apply for a post of judge in a higher instance court), the Judicial Council questions them about the JTC and their participation in the training activities of the JTC. The candidates who are more active in the terms of training are of course more familiar with the JTC and will therefore offer answers of better quality when this part of interview is concerned. In the future, when new law is adopted, the initial training of judges and prosecutors will have an important role. The candidates who successfully go through the initial training will be in a better position comparing to those who did not attend it. They will obviously have a primacy comparing to those who didn't attend the initial training. The continuous training is also very important since it enables judges and prosecutors to gain a necessary new knowledge. There is actually no other form of learning within which particularly practical experience related to many issues can be heard. Continuous training is especially important in the countries as Montenegro is, in which there are many novelties which judges and prosecutors simply must learn (many new institutes, computers skills, foreign languages...). The activities of training institution are the only ones which can help judges in this sense. Therefore, their participation in trainings is necessary and is questioned by the Judicial Council.

XIV. Is there for each judge and prosecutor a file describing the in-service actions in which he/she participated?

Yes, when judges are concerned the JTC has a file for each judge in which all the details about the trainings which he/she attends/ed, are evidenced (together with some other data on judge, like fields in which he/she works and worked in the past, data on working experience, etc.). As for prosecutors, it will be the case with them in the future too, when new law is adopted. It should also be stressed that the system of taking such evidence will be improved by the new law, in a terms that JTC will technically be supported after the law adoption for the purpose of improvement the efficiency of evidencing the data on judges/prosecutors and trainings they attend.

XV. Are judges and public prosecutors offered individual training programmes concerning their personal professional development?

There are special trainings for special groups of judges (like trainings for the judges of commercial courts, or ones for judges of Administrative Court of Montenegro, or for judges who work in the filed of maritime law, and similar). There are no special individual trainings for one particular judge according to his/her wishes and interests. The JTC does not yet have such a financial capacity to offer such types of trainings.