



Bucharest, 19 November 2003

Gen Rap (Bucharest) 2003

**Council of Europe's Co-operation Programme
to strengthen the Rule of Law**

6TH MEETING OF THE MEMBERS OF THE EUROPEAN NETWORK FOR THE
EXCHANGE OF INFORMATION BETWEEN PERSONS AND ENTITIES
RESPONSIBLE FOR THE TRAINING OF JUDGES AND PUBLIC
PROSECUTORS

(LISBON NETWORK)

Bucharest, Romania, 18-19 November 2003

GENERAL REPORT

**The position of Schools of Magistrates in the Judiciary and their role in the
training of magistrates
The Lisbon Network and the Future of the Professional Training of Magistrates
in a Wider Europe**

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TABLE OF CONTENTS

1. *The position of schools and other entities charged with training of judges and prosecutors in the **national institutional frameworks***
2. *Schools and other entities charged with training of judges and prosecutors in the **European institutional framework***
3. *The role of Schools and other entities charged with training of judges and prosecutors in the field of **recruitment and initial training***
4. *The role of Schools and other entities charged with training of judges and prosecutors in the field of **continuous training***
5. *The role of Schools and other entities charged with training of judges and prosecutors in the field of **training in deontology***
6. *The Lisbon Network and the **future of the professional training of magistrates in the Wider Europe***

1. **The position of schools and other entities charged with training of judges and prosecutors in the national institutional frameworks**

1.1. Contributions in this meeting showed that Europe offers **several models of subdivision of institutional competencies in the field of Justice.**

1.2. In all countries the **Ministry of Justice** is responsible for the **management of human and financial resources** necessary for the functioning of the judicial and prosecutorial services; in some countries all courts, or the highest courts, as a part of their statute of independence, enjoy administrative autonomy.¹

¹ See, on this subject, Opinion No. 2 (2001) of the Consultative Council of European Judges (CCJE) for the attention of the Committee of Ministers of the Council of Europe on the Funding and Management of Courts with Reference to the Efficiency of the Judiciary and to Article 6 of the European Convention of Human Rights.

1.3. Whereas **judges' independence in the discharge of judicial duties** both from the legislative and the executive branch is obviously guaranteed in all European countries in compliance with the very basic principle of separation of powers,² Europe is divided as to relationships of the **prosecutorial function** with other State functions, between the systems under which the public prosecutor enjoys **full and formal independence** from Parliament and Executive and those where it is subordinate to one or other of these authorities while still enjoying some degree of scope for independent action; in fact, the common denominator is in the sense that, regardless of the formal position of prosecution in the institutional framework, States should take appropriate measures to ensure **independence in practice**, so that public prosecutors are able to perform their professional duties and responsibilities without unjustified interference or unjustified exposure to liability; the nature and the scope of the powers of the government with respect to the public prosecution must be established by law and exercised in a transparent way and in accordance with the law, with the exclusion of instructions not to prosecute.³

1.4. A relevant role is increasingly played by an "**independent authority**" (in the different forms of a High Council of the Judiciary, or a High Council of Justice, or a Judicial Service Commission, each with different institutional nuances). Such a body, within which the majority of those who sit are judges chosen by their peers, can be viewed, both in national practice and in international instruments, as the guarantor of independence in the field of **selection, career or discipline of judges**.⁴ Some national

² See, on this subject, e.g.: Art. 6 of European Convention of Human Rights; the United Nations Basic Principles on the Independence of the Judiciary (1985); Recommendation No. R (94) 12 of the Committee of Ministers of the Council of Europe to Member States on the Independence, Efficiency and Role of Judges; Opinion No. 1 (2001) of the Consultative Council of European Judges (CCJE) for the attention of the Committee of Ministers of the Council of Europe on Standards Concerning the Independence of the Judiciary and the Irremovability of Judges.

³ See, on this subject, Recommendation Rec (2000) 19 of the Committee of Ministers of the Council of Europe on the Role of Public Prosecution in the Criminal Justice System. See, also, for a call to independence of prosecutors, "The training of judges and public prosecutors in Europe", Conclusions of the First Plenary Meeting of the Lisbon Network, Lisbon, 27-28 April 1995.

⁴ See Recommendation No. R (94) 12 of the Committee of Ministers of the Council of Europe to Member States on the Independence, Efficiency and Role of Judges; the European Charter on the Statute for Judges (1998); Opinion No. 1 (2001) of the Consultative Council of European Judges (CCJE) for the attention of the Committee of Ministers of the Council of Europe on Standards Concerning the Independence of the Judiciary and the Irremovability of Judges; Opinion No. 3 (2002) of the Consultative Council of European Judges (CCJE) for the attention of the Committee of Ministers

experiences show the possibility that the same independent authority competent for judges, or a separate entity having a similar status, may serve as a guarantor of independence for public prosecution.

1.5. As contributions to this meeting showed, regardless of the diversity of national institutional systems and the problems arising in certain countries, there is pan-European convergence on the principle that **legislation** on the status of judges and prosecutors should provide for training as **a right and duty** of both categories, deriving from the principles guaranteeing their independence and impartiality,⁵ as magistrates should not rely on outside sources and influences to acquire and maintain a high level of professional skill.⁶

1.6. Legal Europe offers, however, different solutions in the identification of the **entities competent for judicial and prosecutorial training**.

1.7. As to principles, in the field of **training of judges**, where **links between independence and training** are more evident, the European Charter on the Statute for Judges points to the conferral of competence in this field to the "independent authority", stating that any authority responsible for supervising the quality of the training programme should be **independent of the Executive and the Legislature** and that at least half its members should be judges. No similar arrangements have been so far recommended for training of prosecutors, although the recognition of their peculiar status suggests the need of further reflection.⁷

of the Council of Europe on the Principles and Rules Governing Judges' Professional Conduct, in Particular Ethics, Incompatible Behaviour and Impartiality.

⁵ See, for training of judges, Principle III of Recommendation No. R (94) 12 of the Committee of Ministers of the Council of Europe to Member States on the Independence, Efficiency and Role of Judges; and, for training of prosecutors, § 7 of Recommendation Rec (2000) 19 of the Committee of Ministers of the Council of Europe on the Role of Public Prosecution in the Criminal Justice System.

⁶ The European Charter on the Statute for Judges recommends that the training of judges should not be limited to technical legal training, but should include social and cultural issues, in order to make the judge also independent from social bias.

⁷ In some countries, regardless of the fact that judges and prosecutors are recruited on common bases, Ministries of Justice maintain certain training competencies for prosecutors. One may note that the Lisbon Network has already emphasised that training also of prosecutors should be placed "under the control of professional organisations of judges and prosecutors or bodies within which representatives occupy a dominant place" (Conclusions of the meeting of the Lisbon Network held in

1.8. In practice, European States have generally set up **specific entities** charged with judicial and prosecutorial training. Almost always they are independent of the Executive and the Legislature, although these branches of the State may in some way contribute to management; sometimes training agencies have legal personality, some other times they are mere departments of the "independent authority" (High Council of the Judiciary/of Justice or Judicial Service Commission) or organisational sections of the court system itself. In some cases, the same training institution is competent for training of both judges and prosecutors. Different training arrangements may exist for initial and in-service training. Denominations such as "School for the Judiciary" or "Judicial Studies Centre" are quite common.

1.9. If one only considers that widely shared opinions have been formulated in the sense that - at least for judges - training should be an activity also independent of the court hierarchy and of the organs responsible for appointments and professional evaluation (so as to preserve genuineness of training and interferences with interpretation and application of the law),⁸ one may easily realise that the institutional framework is far from being stable, due to profound changes under way in many countries.

1.10. A specific topic addressed in this meeting has concerned the **role of Ministries of Justice in training institutions**.

1.11. The role of Ministries as **providers of funds** to be devoted to judicial and prosecutorial training is rather obvious, but nonetheless deserves some reflections. Whereas regulating the amount of funds to be allocated to training may appear coherent with the political responsibility that Ministries of Justice usually take for actions in the field of justice, financial decisions (both in the sense of restriction

Strasbourg, 13-15 May 1996, on the theme "Training of Judges and Prosecutors in Matters Relating to Their Professional Obligations and Ethics")

⁸ Some of these worries have been voiced in the debate in preparation of the Opinion to be adopted in November 2003 by the Consultative Council of European Judges (CCJE) for the attention of the Committee of Ministers of the Council of Europe on Appropriate Initial and In-Service Training of Judges at National and European Level.

and/or selective increase of allocations) are not neutral vis-à-vis the independent programming of training by the responsible agency.⁹ In some countries, solutions have been envisaged to avoid such risks. In order to ensure sustainability of training, States should in any case provide adequate budgetary means to it.¹⁰

1.12. Similar problems are posed by the possible role of Ministries in the provision of **material and human resources** to training institutions.

1.13. Doubts have also been expressed as to the compatibility with the principles mentioned above of **participation of the Ministries in the management** of training institutions. This meeting has shown that Ministries in some countries at least appoint the Director, or appoint representatives in the Managing Board of the training institution (even though such persons may belong to the categories of judges and prosecutors).

1.14. A more positive approach should concern co-operation of the Ministries of Justice in **identification of training needs of judges and prosecutors and development of training techniques and projects**. Since the Ministry of Justice is a privileged observation point on the operation of justice, it is all too obvious that the Minister is one of the main institutional actors able to advise training institutions as to actions required (e.g., in the field of management of courts, where administrative and judicial competencies are closely linked). Such **consultation**, on the basis of loyal co-operation, could in principle also involve other institutional actors (e.g., Ministries of Foreign Affairs, as to international judicial co-operation).

1.15. In those systems in which Ministries have competencies in prosecutors' training, the need of a **"common training" of legal professionals**, in particular

⁹ See the conclusions of the meeting of the Lisbon Network held in Strasbourg, 13-15 May 1996, on the theme "Training of Judges and Prosecutors in Matters Relating to Their Professional Obligations and Ethics".

¹⁰ The problem is similar, from the institutional view-point, to the problem posed by financial allocations to the court system; see, on this latter topic, for a comparison, Opinion No. 2 (2001) of the Consultative Council of European Judges (CCJE) for the attention of the Committee of Ministers of the Council of Europe on the Funding and Management of Courts with Reference to the Efficiency of the Judiciary and to Article 6 of the European Convention of Human Rights.

judges and prosecutors,¹¹ places both on Ministries of Justice and other training agencies the delicate task of developing joint activities.

1.16. Participants in this meeting expressed the need to further analyse the institutional position of training structures in national systems by means of exchange of information, in conformity with Lisbon Network standards. One may propose that, as a follow-up to this meeting, with the assistance of the Secretariat and/or other structures of the Network that may be instituted, a questionnaire be circulated, on the basis of country reports available, so that answers - to be disseminated through electronic posting in a website - may form the object of further activities.

2. Schools and other entities charged with training of judges and prosecutors in the European institutional framework

2.1. Several actors operate in the field of judicial and prosecutorial training on the European scenario.

2.2. Participants in this meeting, of course, are all well aware of their own role within the **Lisbon Network**, i.e. the "European Network for the exchange of information between the persons and entities responsible for the training of judges and public prosecutors" operating in the framework of the Council of Europe. The Network - as a tool to improve the different training systems through exchange of experiences on methods and content of actions in order to ensure the functioning of a competent, independent and impartial justice - is composed obviously of States, but its **members are personally involved in the training activity**. This feature of the membership of the Network, closely linked to the main theme of this meeting, i.e. the position of training institutions, is especially crucial to ensure that a genuine dialogue takes part within the Network and outside of it with other entities that share the same or similar objectives. This meeting offered the possibility to gain a deeper insight into

¹¹ See the Draft Opinion to be adopted in November 2003 by the Consultative Council of European Judges (CCJE) for the attention of the Committee of Ministers of the Council of Europe on Appropriate Initial and In-Service Training of Judges at National and European Level.

the European framework within which training institutions, and the Lisbon Network, are to operate.

2.3. Within the Council of Europe, an increasingly important role is being played by the reflections of the **Consultative Council of European Judges (CCJE)**. The CCJE is the sole body within the Council of Europe whose members are **servicing judges**, and with which judges' associations have observers' status, so that the opinions that CCJE adopts each year on the topics contained in the Framework Global Action Plan for Judges, as well as other activities in the judicial field, are a valuable expression of the voice of the European judicial community.

2.4. The CCJE has dealt with the topics concerning judicial training already in its Opinions concerning judicial independence and deontology.¹² The CCJE is now expected to adopt, in its forthcoming plenary meeting in this month of November 2003, an **opinion specifically dealing with the topic of training of judges** at the national and European level. Although no approved text exists, the CCJE representative has presented in this meeting the content of a **draft opinion** prepared by a Working Party with the assistance of the CoE Secretariat, an elaboration that has been an important contribution on most topics addressed in this meeting. Reflecting on this elaboration has represented in itself an occasion of co-operation; one may suggest that the conclusions of this meeting be submitted to the CCJE during its plenary session. Co-operation, however, may continue in the future since training is always relevant for topics to be addressed by the CCJE.¹³

2.5. Leaving aside other details of the future Opinion of the CCJE on training, one could mention that, notwithstanding the fact that the CCJE does not represent the point of view of **public prosecutors**, the CCJE will probably recommend "common

¹² See §§ 10-13 of Opinion No. 1 (2001) of the Consultative Council of European Judges (CCJE) for the attention of the Committee of Ministers of the Council of Europe on Standards Concerning the Independence of the Judiciary and the Irremovability of Judges; see also §§ 25 and 50.ix of Opinion No. 3 (2002) of the Consultative Council of European Judges (CCJE) for the attention of the Committee of Ministers of the Council of Europe on the Principles and Rules Governing Judges' Professional Conduct, in Particular Ethics, Incompatible Behaviour and Impartiality.

¹³ See, for the close association between the Lisbon Network and the work of the CCJE, already the conclusions of the meeting of the Lisbon Network held in Vilnius, 30 September-1 October 2002, on the theme "Training of Judges and Public Prosecutors in Professional Skills".

training" even in countries where judges and prosecutors have separate careers. This quite important goal of facilitating "common training" of judges and prosecutors is already incorporated in the Lisbon Network, so that this is a further base for collaboration. The fact that CCJE might restate the need of "common training" represents one more step toward recognition of the *"complementary nature of ... duties"* of judges and prosecutors *"but also"* of *"the fact that similar guarantees in terms of qualifications, competence and status are required in relation to both professions"*.¹⁴

2.6. The **European Commission for the Efficiency of Justice (CEPEJ)** also operates within the framework of the Council of Europe, aiming to improve the efficiency and the functioning of the justice system of Member States. Although efficiency of justice rests fundamentally with the quality of judicial organisation (management of courts, clerical and technological resources, and - to some extent - rules of procedure), it is self-evident that **a well trained judge or prosecutor can better contribute to the efficiency of the justice system**, and that training in the matters relating to efficiency is crucial (i.e. techniques to reduce excessive delay of procedures, etc.). Links between themes concerning the efficiency of justice and those concerning training are already spelled out in the Resolution establishing CEPEJ (*"initial and on-going training is a right and a duty of all those involved in the judicial service and is an essential requirement for justice to fulfil its functions"*; training should *"be guaranteed, in particular by taking into account the relevant Council of Europe international legal instruments"*).¹⁵

2.7. A possible subject of co-operation between CEPEJ and the Lisbon Network is, therefore, magistrates' training on efficiency topics. This is especially relevant for training of **Chief Judges and Prosecutors, involved in managerial duties**, as well as in the field of training in **new technologies**.

¹⁴ See Explanatory Memorandum to § 18 of Recommendation Rec (2000) 19 on the Role of Public Prosecution in the Criminal Justice System, where - even though it is recognised that "the very notion of European harmonisation around a single concept" in the field of prosecution "seemed premature" - the standing was taken to favour the possibility, where States allow it, for the same person to perform successively the functions of public prosecutor and those of judge or vice versa.

¹⁵ See Resolution Res(2002)12 establishing the European Commission for the efficiency of justice (CEPEJ).

2.8. The **European Judicial Training Network (EJTN)** consists of the institutions specifically responsible for the training of the professional judges and prosecutors of all **EU-Member States**. The objective of the EJTN is promotion of training programmes for judges and public prosecutors with a genuine European dimension, as well as collaboration with candidate countries for accession to the E.U. in the field of judicial co-operation.

2.9. The EJTN has chosen to act, on the basis of a Charter as well as of Articles of Association, as a **private association** under Belgian law as a "**provisional organisation ... until the enactment of a European legal instrument** recognizing the EJTN". Close coordination with the Lisbon Network is already provided for by the EJTN statutes, since EJTN has a **common constituency** with the Lisbon Network. It may be proposed now that the Lisbon Network establishes a similar "**passerelle**" toward stable collaboration with EJTN, obviously having the **E.U.** as the **interlocutor** in this process.¹⁶

2.10. More in general, participants to this meeting expressed a strong interest in keeping contacts between the Lisbon Network and the several actors of the European scenario in the field of judicial and prosecutorial training. One may propose that, as a follow-up to this meeting, this priority be cultivated with the assistance of the Secretariat and/or other structures of the Network that may be instituted. Relevant bodies could report to the Network on questions which they consider should be included in training programmes.¹⁷

3. **The role of Schools and other entities charged with training of judges and prosecutors in the field of recruitment and initial training**

¹⁶ The conclusions of the meeting of the Lisbon Network held in Vilnius, 30 September-1 October 2002, on the theme "Training of Judges and Public Prosecutors in Professional Skills", already expressed the hope "to establish means of co-operation in order to carry out their work together according to European standards concerning the training of judges and prosecutors".

¹⁷ See, already, the conclusions of the meeting of the Lisbon Network held in Vilnius, 30 September-1 October 2002, on the theme "Training of Judges and Public Prosecutors in Professional Skills".

3.1. After an insight on the national and the European institutional framework in which judicial and prosecutorial training agencies operate, this meeting offered the opportunity to consider the role of such agencies in different activities, namely recruitment of judges and prosecutors, development and management of initial and in-service training, assessment of training, and its impact on judges' and prosecutors' careers.

3.2. First of all, one should investigate if it is advisable, in view of a clear separation of tasks, that **competencies** in decisions concerning **recruitment** (as well as discipline), on one side, and **training**, on the other, are vested in the same body.¹⁸ Any worry about concurring competencies is all too excessive as to **initial training**. European systems, in fact, offer different models of recruitment, with different "mixes" between actions aimed at selection and actions aimed at training, also serving as a fruitful process of professional orientation. The goals of recruitment and professional orientation prevail over other goals, so that there should be no obstacle to recognizing that the same institution may select and train future judges and prosecutors. If an institution different from the agency competent for recruitment and initial training should then assure **in-service training**, the advantage of having the same institution dealing, in continuity, with all phases of training is lost.

3.3. Worries about concurring competencies have, however, their foundation on the fact that some or all the competencies may be out of the control of the magistrates themselves. Therefore, the solution lies in the recognition of the fact that concurring competencies are acceptable, but only if training and recruitment (and discipline) are vested into an "**independent body**" such as a High Council for the Judiciary, or into a School under the authority of such an independent body. Even in this case, provision of **separate branches** could be recommended.¹⁹

¹⁸ See the debate in preparation of the Opinion to be adopted in November 2003 by the Consultative Council of European Judges (CCJE) for the attention of the Committee of Ministers of the Council of Europe on Appropriate Initial and In-Service Training of Judges at National and European Level.

¹⁹ See Draft Opinion to be adopted in November 2003 by the Consultative Council of European Judges (CCJE) for the attention of the Committee of Ministers of the Council of Europe on Appropriate Initial and In-Service Training of Judges at National and European Level.

3.4. As for **initial training**, this meeting showed how important it is that training of future judges and prosecutors be the object of careful **planning** after consideration of all variables involved.

3.5. One should separately consider those countries where judges are recruited from among students leaving university and those other countries where judges are selected from among experienced lawyers (**Common Law countries**); it is obvious that training, in the latter case, albeit still necessary, involves a **particular approach** in many areas. There is no similarly relevant difference for public prosecutors (although in Common Law countries even more peculiarities exist, as public prosecution is vested, during investigations, in a specific agency, whereas during trial it is entrusted to lawyers). It is evident that the initial training syllabus and the intensiveness of the training will differ greatly according to the chosen method of recruiting judges. The **length of initial training** should be more significant for trainees with no or little professional experience.

3.6. Whereas in some countries initial **training contents** are in principle defined by the law, in all countries detailed training initiatives are subject to specific planning by the responsible agencies with the assistance of scientific committees and/or specialized trainers.

3.7. This meeting confirmed the opinion according to which a well trained judge or prosecutor should, at the very beginning of his or her career, be extensively exposed not only to legal questions, but also, e.g., to social sciences, management methodologies, foreign languages and information technology. Judges and prosecutors should be fully aware, during their initial training, of European issues, including the ECHR and other relevant Conventions and Treaties, as applicable in the magistrate's work.²⁰ Having been already discussed the need of common (both initial and in-service) training of judges and prosecutors, it is also important that trainees are

²⁰ See the conclusions of the meeting of the Lisbon Network held in Bordeaux, 2-4 July 1997, on the theme "The Training of Judges on the Application of International Conventions".

provided, at least during their initial training, a period of training common to the various legal and judicial professions (lawyers, court clerks, etc.).

3.8. **Evaluation of the results of training** is especially necessary in those countries that consider initial training a part of the recruitment process, in order to select candidates who have reached the most satisfactory performances. Also in those systems in which this goal is not relevant, evaluation is nonetheless necessary, as for in-service training.

3.9. In order to reach the objective of the Lisbon Network to improve - through mutual knowledge - the several training systems, participants in this meeting welcomed the opportunity of a further reflection, over the next years, on the most relevant topics connected with the role of training agencies in **recruitment and initial training**. In view of this goal, one may propose that, as a follow-up to this meeting, with the assistance of the Secretariat and/or other structures of the Network that may be instituted, a questionnaire be circulated, on the basis of country reports available, so that answers - to be disseminated through electronic posting in a website - may form the object of further activities. Themes to be investigated may be as follows:

- a) criteria for appointment of initial selection board members;
- b) qualifications for candidates (university degrees, previous professional experience) and assessment of vacancies to be filled;
- c) selection methods (computer assisted pre-selection tests, written and oral examinations, topics for examinations, assessment of general culture and knowledge of foreign languages);
- c) evaluation of test results;
- d) value in the different systems of passing of initial examination (access to initial training as a tool for further selection, or as a tool to begin the professional career); consequences on curricula and assessment of training;
- e) magistrates' school initial training curricula; in particular, relation with university curricula; qualifications and selection of trainers; inclusion in curricula of subjects concerning deontology, social awareness, European and international law, foreign languages, international judicial co-operation; inclusion in curricula of "stages" outside the courts;

- f) value in the different systems of an exit examination; methods of selection;
- g) provision of training and tutoring for judges and prosecutors in the first years of their career (complementary training).

3.10 With the occasion of such investigation, a number of other topics may form the object of research, concerning more closely the **structural and functional features of training institutions**. Such investigation would, therefore, also concern structures in charge of continuous training and address possible topics as follows:

- a) criteria for appointment of managerial staff and instructors of the training institution;
- b) role of judges and prosecutors as instructors and/or members of the management;
- c) choice between full-time instructors or instructors that preserve contact with court practice;
- d) training of trainers;²¹
- e) institutional arrangements to assure pluralist training;
- f) institutional arrangements to assure vicinity between trainers and trainees (decentralised training vs. centralised training; personalised training programmes);
- g) institutional arrangements to assure participation of the training institution in international co-operation in the field of training.

4. The role of Schools and other entities charged with training of judges and prosecutors in the field of continuous training

4.1. A wide consensus emerged in this meeting on the principle that **programmes and methods for in-service training** of judges and prosecutors should greatly differ from initial training.

²¹ See the conclusions of the meeting of the Lisbon Network held in Budapest, 25-26 October 199, on the theme "The training of trainers".

4.2. In general, training initiatives for experienced judges and prosecutors should avoid didacticisms, and resort to active learning.²² Methods should encourage an environment, in which members of different branches and levels of the judiciary and prosecution may meet and exchange their experiences and achieve common insights.

4.3. Contents of training initiatives should address all matters relevant for professional practice, as well as cultural and social phenomena, the knowledge of which is a pre-requisite for professional activity. Also, attention should be devoted to sciences that may play ancillary roles in investigation and court activities. Therefore, initiatives should regard not only changes in the law and/or its interpretation by courts, but also technology, medicine, accounting, social sciences, etc. Specific programmes should concern mediation, as a number of instruments call for training in alternative dispute resolution schemes.²³ Another field of specific interest is management techniques, of which judges and prosecutors should be aware when they acquire managerial duties. Continuous training has great importance to support judges and prosecutors when they change post and sector of the profession (e.g. change from civil to criminal functions; or, even more relevant, changes to juvenile, family or social court).

4.4. In order to continuously improve the quality of training, the organs responsible should conduct frequent **assessments of programmes and methods**. An important role in this process should be played by opinions expressed by all participants in training initiatives, which may be encouraged through appropriate means (answers to questionnaires, interviews).

4.5. While participants agreed that **performance of trainers** should be monitored, the evaluation of the **performance of participants** in in-service training initiatives formed the object of discussion. On one side, participants considered that training

²² The desirability of training in professional skills (e.g. concerning the conduct of hearings, evidence-taking, questioning, communicating with other participants in the proceedings and the media, drafting of judgements) was stressed already in the conclusions of the meeting of the Lisbon Network held in Vilnius, 30 September-1 October 2002, on the theme "Training of Judges and Public Prosecutors in Professional Skills".

²³ See Recommendations No. R (98) 1 on Family Mediation, No. R (99) 19 concerning Mediation in Penal Matters, Rec(2001)9 on Alternatives to Litigation between Administrative Authorities and Private Parties, Rec (2002)10 on Mediation in Civil Matters.

may be truly fruitful if not influenced by career considerations, on the other side it seemed possible to envisage some form of relevance of participation to training for assignment of a judge or a prosecutor to some specific functions (juvenile or family law court). Aside from this latter possibility, the only solution to give some weight to training could be that participation in itself, objectively considered, may however be taken into account for professional evaluation.

4.6. While it is common to refer to in-service training a right and duty for judges and prosecutors, in all countries the duty may be relevant only at the deontological level, as continuous training is **not compulsory**. Participation on a voluntary basis is the best guarantee for the effectiveness of the training. It is therefore important to make in-service training attractive. There could be, however, compulsory in-service training in exceptional cases, for example when a judge takes up a new post with particular functions, or in the event of fundamental changes in legislation.

4.7. As in § 3.9 above, in order to reach the goal of mutual knowledge of the most relevant topics connected with the role of training agencies in in-service training, one may propose that a questionnaire be circulated for further dissemination of the relevant data. Themes to be investigated may be as follows (see, also, themes under § 3.10 above):

- a) identification of committees and or trainers that develop in-service training programmes and of the authority that approves planning;
- b) statistics: number of activities per year; number of training hours offered per year per magistrate; budgetary resources;
- c) in-service training methods (seminars, workshops, traditional lectures, distance learning, audiovisuals);
- d) training environment (dedicated structures, court buildings, conference centres in hotels and the like);
- e) contents of training initiatives (role of cultural and social themes; role of ancillary sciences; management techniques);
- f) training to support change of functions;
- g) assessment of programmes and methods (questionnaires, interviews);
- h) evaluation of trainers;

- i) areas in which in-service training is compulsory;
- j) impact of participation to training on participants' career.

5. The role of Schools and other entities charged with training of judges and prosecutors in the field of training in deontology

5.1. A striking difference between disciplinary rules for other professionals and magistrates is that, while ethical rules in other professions are usually under the control of professional bodies, that may apply disciplinary sanctions for violations, disciplinary rules for magistrates - in particular, for judges - should be based on the law and more precisely defined by case-law; and the law should provide for sanctions and the procedural guarantees to be applied.²⁴ Therefore, speaking of **deontology** for judges and prosecutors implies, in theory, a reference also to **rules of conduct outside of the area of discipline**.

5.2. Participants in this meeting have considered with interest the experience of adoption of **ethical codes** within the judiciary and the prosecution offices. These ethical codes, where existing, have usually a disciplinary nature; sometimes they also include broader rules of conduct. Council of Europe texts also resent from the **different meaning of these terms**, as they call for the adoption "codes of conduct" for public prosecutors (breaches of which, although informal and flexible, may lead to appropriate sanctions) and deontological codes for judges, that may also have no direct legal relevance in governing judicial behaviour.²⁵ Also, institution of Ethical Committees is envisaged within the judiciary, with the assistance of judges' associations.

5.3. What seems interesting is that, in any case, ethical rules spelled out in codes may become a benchmark for claims on the part of citizens and other legal professionals, that must have the possibility to distinguish the hard-working, correct,

²⁴ See Recommendations No. R (94) 12 and Rec (2000) 19, quoted above.

²⁵ See Recommendation Rec (2000) 19 of the Committee of Ministers and Opinion No. 3 of the CCJE, quoted above.

prepared, impartial, and independent judge or prosecutor. Such a public scrutiny, which is necessary as the judiciary assumes a greater burden of responsibilities and public prosecutors become increasingly independent and autonomous, makes the Codes a tool for the credibility of magistrates. It is therefore obvious that sensitivity to the problems of deontology may develop through initial and continuous training. Since ethical themes should be components of training programmes in all fields, it is an important responsibility of Schools to develop programmes and methods to make deontology a vital part of curricula.

5.4. Aside from this relationship (that one may define as "**training in deontology**"²⁶), one should also underline the opposite relationship between deontology and training: the need of professional training, managed in an independent way, at all stages of a judge's career must be perceived as one of the main moral obligations of this profession, together with those of impartiality and correctness ("**deontology of training**").

5.5. The theme of training in deontology may also be included, as to programmes and methods, in the proposed investigation and consequent dissemination of information for the benefit of Network's activity.

6. The Lisbon Network and the future of the professional training of magistrates in the Wider Europe

6.1. This meeting of the Lisbon Network has allowed participants, on one side, to recapitulate the "acquis" of the Network, as it grew up since the institution of the Network itself; on the other side, to update and complete that "acquis" with relevant information and discussion offered by rapporteurs and interveners on topics that covered the wide area concerning the position of School of magistrates in the judiciary and their role in the training of magistrates. It is now time for participants to

²⁶ See the conclusions of the meeting of the Lisbon Network held in Strasbourg, 13-15 May 1996, on the theme "Training of Judges and Prosecutors in Matters Relating to Their Professional Obligations and Ethics".

look ahead over the next two-year period, thinking of initiatives that, being compatible with financial constraints, may ensure that the Network's action in the field of professional training of judges and prosecutors be adequate to the challenges posed by the context of a Wider Europe and the need of a high quality of justice as a key element to assure the primacy of law.

6.2. I think that the first topic on which we should concentrate is, of course, the adequateness of the **operational arrangement of the Network** itself. If the early implementation of the idea behind the Lisbon Network, i.e. to create a system through which experiences and information on training of judges and prosecutors in Europe would be shared, could well be realised by means of a two-yearly plenary meeting, it seems all too obvious that, in order to realise the further goals of the Network (i.e. to find practicable solutions of common interest in the field of training of judges and prosecutors), a more sophisticated and "active" structure is needed.

6.3. In my opinion, the first need is that, at each moment, there should be **an entity that can act on behalf of the Network**, e.g. participating to a meeting of other correspondent bodies or informing participants on a relevant issue on which an action should be taken. In order to ensure that a genuine dialogue takes part within the Network **between one plenary meeting and the next one**, one could borrow from other experiences the idea of establishing a Working Party or a **Bureau**, elected in their midst by the members of the Lisbon network, with the task of assisting the Network, preparing and ensuring the follow-up to its work, as well as keeping in touch with all Network's members and other relevant bodies and strengthening their relationships. The Bureau could have, among other tasks, the competence to propose and collect answers to questionnaires. The Bureau would of course avail itself of the Secretariat of the Council of Europe, as well as of specialists.

6.4. In order to ensure prompt information on activities during intervals between meetings of the Lisbon Network, the Bureau, with the co-operation of the Secretariat, shall favour electronic dissemination of documentation through a specific section of the Council of Europe's **website**. Electronic messaging could also be used to guarantee the flow of opinions among members of the Network.

6.5. But even such a Bureau would not fully satisfy the need of a sustainable operational ability of the Network. In fact, some of the relevant actions of the Network to be implemented in the next years regard specifically judicial training institutions. In order to manage the technical aspects concerning initiatives in this field, I think that we could take advantage of the fact that, while the Network is composed by States, its members are personally involved in the training activity. Directors of Schools of Magistrates or similar national institutions already see themselves as a group: they exchange ideas and methodologies; sometimes they organise joint activities; their institutions are already part of regional arrangements (such as, within the Lisbon Network, the members of the South Eastern Europe Regional Agreement for the training of judges and prosecutors; and, within the Member States of the E.U., the European Judicial Training Network). In view of their experience as officers in charge of implementing training policies at the national levels, Directors of Schools of Magistrates seem especially apt to meet in a flexible way during the intervals between one plenary meeting of the Lisbon Network and the following one, and work using a common conceptual framework. Thus, the proposal to institute a **Conference of Directors of Magistrates' Schools** is almost a natural solution to the above need. This Conference, as a technical body entrusted with the assistance of the Secretariat of the Council of Europe to execute the Network's decisions regarding specifically judicial training institutions, could also benefit of the fact that potential continuity in office of participants can create a favourable atmosphere for stable relationships and contacts.

6.6. A second need one should deal with concerns the concrete content of **actions to be taken** by the Lisbon Network. After an initial phase, in which the Network has discussed general principles and has compared solutions given by the several national systems, time has probably come for the Network to envisage its own proposals to improve training of judges and prosecutors in a Wider Europe. In my opinion, two main levels of actions may be relevant.

6.7. At a first level, the Network - through appropriate contacts with other bodies within the Council of Europe (CCJE and CEPEJ, as well as the European Committee for Legal Co-operation - CDCJ, if relevant) and outside of the Council of Europe (reference is made to the proposed "passerelle" with the EJTN and the E.U.) - should

act toward a clarification about **European standards in the field of judicial and prosecutorial training**. These standards are clear enough, and have been well illustrated in this meeting. However, they are somewhat dispersed in several texts,²⁷ so that they are accessible with difficulty. A specific action could concern their restatement, which could represent a milestone accomplishment of the Network and its partners.

6.8. At a second level, the Network should draft its own list of priority actions in the field of judicial and prosecutorial training. Such priorities - to be drafted into a specific **Networking Action Plan for the Training of Magistrates in Europe**, in coherence with the Framework Action Plan for Judges in Europe and other relevant texts concerning public prosecution - would then be realised step by step over set periods of time. A list of topics to be investigated, both in relation to organisational aspects and operational aspects of the training activity, has been provided above. For the first year, the Conference of Directors may be assigned the task of preparing draft documents and proposing a limited number of priority themes, on which the Network should envisage solutions; the Plenary of the Network will then adopt the Plan and discuss the aspects that have been chosen as priorities; it would also set priorities for the next years. The introduction of a planning methodology will close the phase of the generalist approach so far adopted by the Network; it will ensure that no actions overlap, and that all topics are dealt with, even though they may seem less relevant in the context of the moment.

6.9. While specific actions should, in my opinion, be initiated within this planning approach, there should be some permanent actions of the Network, the realization of which is necessary in order to meet the very basic expectations of participants. I am referring to the need that members of the Network be informed and, in some way, become partners in some of the training initiatives of other members. **Partnership**, in fact, is a very fruitful tool to share experiences and methods in training.

²⁷ See Draft Opinion to be adopted in November 2003 by the Consultative Council of European Judges (CCJE) for the attention of the Committee of Ministers of the Council of Europe on Appropriate Initial and In-Service Training of Judges at National and European Level; see also Recommendation Rec (2000) 19 on the Role of Public Prosecution in the Criminal Justice System.

6.10. For instance, each year the Conference of Directors could propose one **model training action** that could be performed in association by more members of the Network (both jointly, i.e. with a common training initiative of more Schools to which judges and prosecutors of several countries would take part, with problems associated to costs for travel and translation; and separately, i.e. with a homogeneous but autonomous implementation of the same training scheme in each country). This model action, translating into a **training standard**, could then be disseminated among other members, by means of written and audiovisual documentation, so that they may adapt it to national needs. Contacts among trainers of different Schools to develop joint actions would constitute a first experiment of an "on-the-job" **training of trainers** initiative of the Lisbon Network. Initial training and training in European judicial co-operation themes may be the most attractive topics to begin with, given also the fact that single national Schools have long-term experiences in this field.

6.11. Another permanent action that the newly established Conference could take care of could be the creation of a **data bank**, with appropriate indexes, concerning all training actions for judges and prosecutors performed all over Europe by partner Schools. Many Schools have already developed their websites, in which information is available; in these cases, a web-ring technique may be employed. It is all too obvious that access to data, by means of the website resource of the Lisbon Network, will need some regulation, due to the confidential content of some actions (e.g. investigation techniques); this confidentiality already bars general access to some existing web-site resources. It is also easy to recognise that a barrier to dissemination will be the fact that original materials will be drafted in **national languages**. Although automatic translation provided by some web resources, with appropriate links, may partially assist for some languages, it may be necessary to discuss the need (and the associated cost-benefit analysis) that each School avails itself of an international department, among whose tasks translation services would be included. An immediate realisation could concern insertion in the data bank of **training syllabi** of each School for the following year; mutualisation of information in this field could stimulate a positive emulation among Schools on certain themes, as well as the creation of standards toward yearly or long-term planning of training.

6.12. On one side, I am aware - and I have tried to specify - that some of these proposals may find obstacles, especially of a financial nature. On the other side, I am aware of the fact that one may think of wider and more sophisticated initiatives (e.g., one could imagine to discuss the opportunity to develop distance learning, as is widely done in European training of other professionals). Among the two extremes of pessimism, that would induce us not to put forward any innovative idea, and optimism, that could easily translate into just wishful thinking, I think we should be once more realistic and call for a rational use of existing energies and resources to develop further steps to contribute to a qualitative training of judges and prosecutors in Europe.