European Network of the Councils for the Judiciary
ENCJ – RECJ

WORKING GROUP

MISSION, VISION, RULES AND OTHER RELEVANT MATTERS OF THE COUNCILS

FINAL REPORT

Barcelona, June 2-3 2005

1. Introduction

The Working Group "Mission, vision, rules and other relevant matters of the Councils" has been established by a resolution of the ENCJ General Assembly, which took place in Rome on May 21st 2004([1]). In this first meeting, the WG decided to gather information about the Councils of Justice and about the similar institutions of the Member States and of the Observer States, with the distribution of a questionnaire (**Enc. 1**). To that end it has been reworked the questionnaire which was distributed in view of the The Hague Assembly (13-15 November 2003).

During the following meeting on January 24th 2005 the working group coordinators presented a first analysis of the answers to the questionnaire([2]). It was also decided to formulate a new short questionnaire for the countries without a Council of Justice (**Enc. 2**) and to divide the work among two sub-groups: the former, coordinated by Italy, dealing with the analysis of the answers concerning with the institutional framework of the Councils, their composition, organization, functioning, rules of procedure, supervision power, difference between the practical activity of the Councils and the rules and general principles of law; the latter, coordinated by Belgium, dealing with the analysis of the answers concerning with the competences and tasks of the Councils and in particular with training, international cooperation, regulation, projects and strategies.

The draft text of the final report was analysed during the meeting of 29th April 2005 in Rome. The answers of three countries (Cyprus, Finland and Germany) to the questionnaire about the countries without a central Council of Justice arrived shortly before this meeting.([3])
A summing up of these answers you can find in attachment (**Enc. 3**). Here attached there is also a list of the most frequent terms used in the answers to the questionnaire (**Enc. 4**).

This report has no scientific approach, its main aim is the development of a mutual acquaintance of the different judicial and administration systems, existing in the ENCJ countries, both members and observers. The working group members, in fact, know that an in-depth study of the several national organizations requires not only a complete knowledge of the whole constitutional system, but also of the historical, political, and cultural background.

From a descriptive point of view, in the last ten years a lot of european countries, especially those which recently joined the EU, decided to establish a national Council of Justice to safeguard the independence of the judiciary. Even in the countries without a Council of Justice, the Boards or

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[1] The working group is coordinated by Italy (Mr. Wladimiro De Nunzio and Mr. Giuseppe Salmè, members of the Italian Superior Council of Judiciary - Csm) and made up of Belgium (coordinator of a sub-group), Bulgary, Denmark, Finland, France, Germany, Hungary, Irish Republic, Netherlands, Poland and Spain.

[2] Until the 24th January 2005 arrived the answers of 11 countries: Belgium, Bulgary, Cyprus, Denmark, Finland, Hungary, Italy, Netherlands, Poland, Spain, United Kingdom. Then also the answers of France, Germany, Irish Republic of Eire, Lithuania.

[3] Cyprus (it is, however, included in the group of countries with a central Council of Justice, even if the tasks are performed by the Supreme Court), Finland and Germany.

Courts with administrative tasks in the judicial system, have anyway a strong independence, i.e., the "Council of Justice model" has so much expansion potential, as to exert a lot of influence even on the structure of the independent institutions in the countries which up to now didn't implement this model.

In addition to these introductory remarks, it is necessary to point out that the Councils of Justice are divided into two main groups: on one hand, the Councils with prevailing functions of guarantee and safeguard of the independence of the judiciary, on the other hand those with tasks mainly in the organisation and the management of structures, judicial services, etc.

The report is divided in eight paragraphs (1. Introduction; 2. Institutional framework; 3. Composition; 4. Organization and functioning; 5. Competences and duties; 6. Mission and vision; 7. Countries without a central Council of Justice; 8. Conclusions and work programme for the future).

2. The institutional framework of the Councils of Justice

The main purpose of the questionnaire was to gather information about four different aspects: a) the rule-making ground and the judicial kind of the Councils; the relationship of the Council with other institutional bodies (Head of State, Parliament, Minister of Justice); the relationship with further institutional bodies concerning the judiciary; d) the financial self-sufficiency.

In all countries the Councils of Justice or such other similar bodies are independent of the other national institutions.

A) The juridical framework of almost all of them is the Constitution([4]). Instead the Councils of the Netherlands and of Lithuania are based on law.

Consequently in the first group of countries the Councils of Justice are constitutional organizations, while the others are administrative organizations.

But also in the countries where the Councils are constitutional organizations or bodies with constitutional relevance, it is not possible to set them in the usual separation of powers (legislative, executive, judicial), because the relationship with the judicial power, however, doesn't rule out the possibility of a clear distinction from the structural viewpoint (the Councils of Justice are not Courts of Justice) and from the functional viewpoint (they don't wield any jurisdiction).

The set up of the Councils of Justice in the constitutional framework guarantees the stability of the organization and gives it a key role in the whole institutional framework.

A particular point of the questionnaire was about the difference between the practical activity of the Councils and the rules and general principles of law (the difference between provisions and

[4] Belgium, Bulgary, France, Hungary, Italy, Poland, Portugal.

practices), i.e. to clarify if there are activities of the Councils not ruled by the law or other rules of procedure. The answers are very concise. Most countries affirm that there is no difference between provisions and practices (Belgium, Cyprus, Denmark, Hungary).

B) As far as the relationship with the **Head of State**, only in Italy and in France the Chairman of the Council is the Head of State. In Poland the Head of State appoints a member of the Council and the administrative personnel of the Council belongs to the staff of the Head of State. In Hungary and Bulgary the Head of State appoints the judges proposed by the Council and among these, are appointed the President of the Supreme Court, of the Supreme Administrative Court and the Attorney General. They are members of the Council by law.

B1) In Belgium, Italy, Poland and Spain the Council sends opinions to the **Parliament** concerning with bills (In Italy the Minister of Justice is charged to inform the Parliament). In Spain the Council sends an annual report to the Parliament. A general review of the state of the judicial system is at variable times drawn up also by the italian Council and sent to the Parliament by means of the Minister of Justice. As you can see in the paragraph concerning with the composition of the Councils, in some countries the members are appointed by the Parliament. In Hungary the Parliament is charged of the approval of the Council's budget.

B2) The relationship with the **Minister of Justice** are quite different and of another kind. Only in Poland the Minister is a member of the Council and has a personal jurisdiction in the appointment and of the heads of courts and in their transfer of seat or function. In Bulgary he chairs the Council, but he has not the right of vote. In Denmark he appoints the administrative direction of the Council. The Minister of Justice usually is not a member of the Council. He can take part in some Assemblies at the istance of his own or of the Council, but without the right of vote.

In addition, the relevant difference among the Councils is the role and competence allocation between the Council and the Minister of Justice. In Spain they have simultaneous competences in the appointment of some judges and prosecutors and in some important phases of the judges and prosecutors career (recruitment, training, transfer, disciplinary measures). In most cases the Minister of Justice is competent about the budget and financial resources, staff, proper premises and telecommuncations, but not about the legal status of judges and prosecutors.

C) In the countries with a central Council of Justice, the legal status of judges and prosecutors falls exclusively within the Council's competence. In the countries where there are independent bodies, like for example the Courts service in the Irish Republic of Eire or the Judges Council of England and Wales and the Judicial Appointment Board in the United

Kingdom, the legal status of judges and prosecutors falls primarily within the Executive's competence, while these judicial bodies deal only with some secondary aspects.

D) Almost all of the Councils has a financial independence, i.e. the autonomous management of the financial resources, which every year are allocated([5]).

3. The composition of the Councils of Judiciary

The greater part of the Councils of Judiciary is composed by elected members e by members by right([6]). The almost of them have got a mixed composition with stipendiary and lay members (for example Belgium, Italy, Netherlands, Spain, Hungary). The stipendiary members of the greater part of the Councils are both judges and Public Prosecutors([7]). In the Netherlands, Spain, Poland only judges are members of the Councils of Judiciary.

The appointment system of the members of the Councils is of three kinds: the first one provides exclusively parliamentary appointment (for example in Spain, where the Parliament proposes the designation to the king: the greater part of the members are magistrates) or of presidential designation (as in Cyprus, where the functions of the High Council of Judiciary are attached to the Supreme Court, in which the members are of presidential designation), while the other two systems provide a mixed system. In one of these, some members are elected by the magistrates and others are designated by the executive (for example in Hungary), while in others a part is elected by magistrates and another part is elected by the Parliament (Belgium, Bulgaria, Italy and Poland).([8])

The number of the members varies from the 15 of Hungary to the 44 of Belgium.([9])

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[5] The annual budget foreseen for the last year amounts to 5.800.000 euro for the Belgium, 35.000.000 euro for Italy, 13.000.000 euro for the Netherlands, 57.732.980 euro for Spain, 277.674 euro for Hungary, 1.500.000 euro for Poland, 106.016 euro for the Irish Republic, 380.000 euro for France.

[6] A lot of the Councils of Judiciary have got members by right inside. This is the case of the Council of Judiciary of Bulgaria, of which there are as members by right the President of the Court of Cassation, the President of the High Administrative Court and the Attorney General. The same is for Hungary, where in the Council for judiciary there are the President of the Supreme Court, the Minister of Justice , the Chief of the Public Prosecution and the President of the National Association of the Barristers. In Spain the President of the Supreme Tribunal is member by right, as President of the Organ.
Members by right are provided also in France, (the President of the Republic presides over the Council and the Minister is vice-president) and in Italy (President and Attorney General of the Court of Cassation).

[7] In the French Council are provided two kinds of training, one for judges and another for the Public Prosecutors.

[8] The Council of the Judiciary of Belgium is composted in equal number by stipendiary members elected by magistrates and by lay members nominated by the Senate. In Bulgaria, a part of the members is designed by the National Assembly and another part by the magistrates, divided for professional categories (judges, Prosecutors and preliminary investigation judges). Also in Italy the stipendiary members are divided for professional categories (two judges of the Court of Cassation, four Public Prosecutors and ten trial court judges). In France the Council is composted by 16 members, 4 lay and 12 stipendiary (6 judges and 6 Public Prosecutors).

[9] Precisely, the members are 15 in Hungary, 17 in the Irish Courts Service, 20 in Spain, 22 in Poland, 24 in Italy, 25 in Bulgaria, 44 in Belgium.

4. Organisation and functioning

A) Internal structure

In all the Councils of Judiciary works are divided into departments and/or internal commissions, that have reporting and investigative tasks, and the plenum, that have decision functions. In Hungary, the magistrates who are not elective, charged with the role of Chief of the twelve internal departments, have advisory functions towards the plenum. The Spanish Council has also its own Inspectorate.

The administrative staff has generally its autonomous status.([10])

B) Internal regulations

The greater part of the Councils has got its own internal regulation, of no-legislative character, that rules the relationship between departments and/or commissions and plenum, the functioning of the plenum, the ballot ways (for example in Bulgaria, Poland, United Kingdom, Hungary). In other Countries, the activities of the Councils are ruled directly by law, in others in part by law and in part by organisational regulations (for example in France, Italy, Lithuania and Spain). In Belgium the organisation and functioning of the Council are ruled both by the Constitution and by law.

We have acquired the texts of some internal regulations and they will be sent to the managing agent of the website.

C) The control on the acts of the Councils.

In the greater part of the Countries there is a system of control of the acts, committed to the different organs: the Audit Office in Hungary, the Administrative Cases Sector of the Court of Cassation in Spain; the High Administrative Court.

In other Countries the acts of the Council are not submitted to any control. These Countries are: Cyprus, the Netherlands and Poland.

In Belgium, instead, there is a control exercised only on some specific acts: by the Council of State for the acts concerning the administrative staff management and public contracts, while the control on the acts about the use of the budget funds is carried on by the Audit Office and the Accounting Commission of the Chambers of the Representatives.

[10] In Denmark the staff consists of 90 units, in Italy of 230 units, in Spain of 414 units.

5. The different tasks of the members of the ENCJ

It is impossible to seek to attempt to give a uniform image of the activities of the different institutions which are partners in the Network of Councils for the Judiciary.

An attempt to summarise the situation can be made as follows, with the caveat that the summary is not the outcome of a scientific study.

5.1. In the human resources management field

The first responsibility mentioned involves **human resources management** of the judiciary, and more particularly the selection (organisation of examinations giving access to the judiciary) and appointment of members of the judiciary (and more particularly judges of the ordinary courts), training (initial and advanced [professional development]) and discipline.

In this respect the members of the Network can be classified in two main categories.

Firstly, most of the members constituted in the form of a 'Council'([11]) have been assigned responsibilities involving the **selection** and **appointment** of members of the judiciary. In this area some differences remain, with particular reference to transfers and the appointment of 'lay' members of the judiciary([12]).

Secondly, in other countries([13]), where there are 'Court Administrations' instead, this responsibility is not assigned to them, even though it is to be noted that in some cases, the Administration has links with the body (often advisory and composed primarily of members of the judiciary) responsible for nominating candidates for the judiciary.

Some institutions also have wide-ranging responsibility for the **initial training** of judges. But in most States, this responsibility lies with a Training Institute, which in certain cases([14]) has direct links with the Council.

Several institutions also have wide-ranging responsibility for the **advanced training (professional development)** of members of the judiciary([15]). This is an important aspect of the human resources management of the judiciary. However, this responsibility is often discharged via a Training Institute. It should also be pointed out that in some countries([16]), the Ministry of Justice is involved in the training of members of the judiciary to some extent.

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[11] Hungary, Denmark, Spain, Bulgaria, Belgium, Cyprus, Netherlands, Poland, France, Portugal, Italy.

[12] Or 'honorary' members, often appointed, according to the different interpretations of this term, by the municipal authorities. It must undoubtedly be a question of a community judge or magistrate.

[13] Sweden, Ireland.

[14] Spain, Netherlands.

[15] Belgium, Spain, Hungary, Denmark, Bulgaria, Cyprus, Poland, Italy.

[16] Belgium, Poland, Finland.

The question of the assignment of responsibility for **disciplinary matters** in the case of members of the judiciary is often asked. In fact, some([17]) Councils are competent to exercise disciplinary power as such. But in the majority of countries disciplinary action is organised directly within the judiciary itself.

5.2. In the management of the judiciary field

It is in the areas involving **management of the judiciary** that the action of several Councils and Court Administrations is again to be found.

A substantial proportion of the activities of most Court Administrations([18]) in fact involve areas associated with the provision of administrative, logistic and budgetary support for courts and tribunals. Some Council have wide-ranging responsibilities in this field([19]), while others are restricted to formulating opinions or recommendations on the subject.([20])

It is within the framework of this responsibility that several Councils([21]) and Court Administrations([22]) are taking concrete action to raise standards as far as the quality of the public provision of legal services is concerned: optimisation of budgetary resources, development of information and communication technologies, measures to combat delays in the judicial system, greater effectiveness of judicial activity.

5.3. In the opinions and recommendations field

Some Councils([23]) are still responsible for producing **opinions** for the political authorities on draft legislation concerning judges and their status or the operation of the judicial system.

5.4. In the international cooperation field

It is to be noted that there is no uniformity in the field of international cooperation in general and **judicial cooperation** in particular (with the European Judicial Network). While it is true that most institutions develop international cooperation relations, the Ministry of Justice very often retains wide-ranging responsibilities in the field. Two Councils([24]) are, however, ahead of the others, in the sense that they have a cooperation strategy and that they are concretely involved in the carrying out of international cooperation activities.

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[17] France, Spain, Cyprus, Bulgaria, Poland.
[18] Ireland, Denmark, Sweden, Poland, Netherlands.
[19] Netherlands, Bulgaria, Cyprus.
[20] Belgium.
[21] Netherlands.
[22] Ireland.
[23] Hungary Belgium, Spain.
[24] Spain and Hungary

5.5. Competences concerning stipendiary magistrates

The information gathering, through the distribution of the questionnaires, has concerned also the lay judiciary.([25])

On this subject there is a strong diversity of models. About the competences, in some Countries the lay magistrates have competence only on civil matters, and in particular with reference to cases between private citizens, in other Countries also on criminal matters, but exclusively for the petty offences. In some other cases (Germany) the competence of lay judges concerns specialized sectors of cases, as labour sector, social security or trade cases.

We can recognise two models of lay magistrate: the first model is the magistrate with his own competence, even if in "minor subjects", while the second one is the model of magistrate who has the functions of stipendiary magistrate, by substituting him when absent or engaged, or by taking part in the bodies with stipendiary magistrates.

A lot of the Councils of Judiciary have specific competences with reference to both the nomination of judges and disciplinary matters([26]). They never are members of the Council of Judiciary nor, when the members are elected, it results that they have active elective franchise.

6. A 'mission' and a 'vision' for members

The responses to the questionnaire (the answers to questions 4 and 12 in particular) give an overview of the tasks of the members and observers and bring to light, in terms of function and duties, similarities (one important function of the members is, for example, to ensure the independence of the judiciary) but also differences (tasks performed).

After trying to categorise all the tasks of the members and group them under a common denominator, it emerged that the tasks reflect the purpose of the organisation.

It is to be wondered, therefore, whether, in addition to the discussion on members' tasks, it would not be important for their operation and future development to determine the organisation's purpose in an explicit mission and vision.

Some members already work with such management instruments.

Each member is free to opt to use a mission and a vision.

The aim of the Network's 'Mission and Vision' Working Group is to inform members properly – whether or not they already work with a mission and a vision – of the usefulness of these means for an organisation and to offer them support should they wish to take steps to use them or to improve their use.

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[25] In Bulgaria, Cyprus and the Netherlands there is no a lay judiciary.

[26] France, Italy, Belgium, Spain and Hungary.

To that end, the Working Group will exchange information and reflections on and experiments with mission and vision. The experience thus acquired will be significant in the development of a mission and a vision.

In this paragraph of the report, what ‘mission’ and ‘vision’ can mean for an organisation is clarified. ‘Mission’ and ‘vision’ are briefly defined in terms of the functions which they can fulfil for an organisation.

The question of the extent to which the members can consider mission and vision as a common concept is also put. After the definition of each concept, this issue is briefly addressed.

In conclusion, paragraph 8 of the report proposes how the Working Group might wish to continue its mission.

6.1. Mission

Mission answers the question “What is our raison d’être?”

Mission describes the permanent intentions to be fulfilled by the organisation for one or more target groups over a long period of time. Mission therefore encompasses the central values which the organisation intends to uphold unceasingly for the target groups.

A mission statement has an internal function and an external function.

External function:

The mission statement

- clarifies for the outside world in which the organisation is located the organisation’s raison d’être;
- clarifies the needs which are met by the organisation;
- gives an idea of its significance for society;
- is decisive for the image which the outside world has of the organisation

An internal function:

The mission statement:

- gives a lasting sense of direction; draws attention to what is central in an organisation;
- gives direction to the reflections and the acts of the management and of all the staff;
- is a source of motivation for the pursuit of a common goal;
- reflects the organisation’s identity.

To enable these functions to be fulfilled, it is important for the mission to be formulated in clear language, so that it is imprinted on the memory of the management and staff and provides a constant frame of reference for their action.

It is therefore preferable for a mission to be short and snappy, expressed in a maximum of one or two sentences. It needs to state forcefully what the management and staff want for the organisation. It is important for the message to be clearly understood by everyone, both inside and outside the organisation.

Envisaging a common mission can be inspirational for the members of the Network.

On the basis of the two common denominators characterising the various activities of the members of the Network (see conclusions to point 5), a working definition of a Council's mission might be as follows:

A Council, an institution which is independent or autonomous in relation to the governmental or legislative authorities, is instrumental in

- guaranteeing the independence of the judiciary

- and ensuring the effectiveness and efficiency of operation of the judicial system,

for citizens' benefit.

When – following further analysis – the Working Group comes to present (the basic elements of) a common mission, the members of the Network which opt for the common mission will find themselves in one of the following situations:

(a) the common mission is immediately applicable;

(b) the common mission will be applicable only at a later date. Meanwhile, the member will operate with an individual mission, formal or otherwise.

It is conceivable that in the long term all the members will work with the common mission.

6.2. Vision

Vision gives an image of what the organisation wishes to achieve in the long term.

Vision indicates where the organisation wishes to go. Vision is not just a dream, it is primarily an ambitious but achievable image of the future.

Having a view of the future enables the organisation to cope with the environment in which it operates, to decide on the direction which it is taking and to deal with events which may occur.

Vision therefore helps the organisation to fulfil its mission on a sustained basis. It may happen, although this is rather exceptional, that the vision is so innovative and far-reaching that the organisation has to review its mission.

Vision helps to involve and motivate the entire organisation, ensuring the commitment and action required to achieve concrete results.

It is for this reason that it is crucial for vision to be formulated in such a way that everyone can draw inspiration from it. Both vision and mission need to be clearly and intelligibly defined.

A concrete vision can relate to one or more elements, including the organisation's objectives, its staff or its financial resources, its development in its own environment, etc. It can also relate to new tasks or improvement of carrying out of the tasks coming within its remit (see the 4 categories of tasks mentioned above in point 5).

As each member of the Network is located in a different constellation, the Network is unable to offer a ready-made vision to the different members.

Here the Working Group can provide the members with support in tailoring one for themselves.

7. Countries without a central Council of Justice

The countries belonging to this group are Denmark, Finland, Germany, The Irish Republic and the United Kingdom.

In Denmark the Court of Administration is an independent body, which has been set up by an Act of Parliament and which is responsible for the economic and administrative management of the Courts. It is chaired by a Board of Governors (which is in turn made up of a Judge of the Supreme Court, two judges of the High Court, two judges of the District Court, a delegate judge, two officials, a trainee lawyer and two employees with specific professional experience in the managerial field). The governors are appointed by the Minister of Justice, who can also dismiss them, if they do not carry out the functions required of it. The Court of Administration, together with the Minister of Justice and the Minister of Finance, draws up the budget plan indicating the global provision amount for the following year. The Court of Administration appoints the "delegate judges" (who stay in office for three years), while the "permanent judges" are appointed by the Independent Judicial Appointment Council.

The characteristics of the Irish Republic is very similar. In this country there is the Courts of Service, an independent institution, which deals above all with the economic and administrative management of the courts (for ex. providing facilities and supports for the magistrates, service for

users, infrastructures management, etc.). It is chaired by a Board, made up of 17 members, 9 of whom are members of the judiciary.

In Finland the justice administration goes beyond the competence either of the Minister of Justice or of the Judicial Appointment Board. This institution has been established by the law in the 2000 and it is made up of 9 gowned magistrates, 3 lawyers and two members appointed by the Attorney General and by the Minister. In addition to the planning of the activities and the productivity's evaluation of the courts, the Judicial Appointment Board is charged to send the proposal for a judicial nomination to the Council of State and then to the Head of State, who makes the final decision on appointment.

In the United Kingdom the *Lord Chancellor* is responsible for the appointment, assignment/transfer, dismissal of the magistrates of the first instance courts, for the supervision on the judiciary, he is responsible also for running the Court system and provides the administrative staff for the Courts. The tasks, which usually are performed by the Minister of Justice, in the United Kingdom are performed on one hand by the *Department of Constitutional Affaires* for the judges, on the other hand by the *Home Office* for the criminal affairs and policies. The *Senior Salaries Review Board* is an independent body of the Executive, which formulates opinions in relation to the magistrates' salaries. It is also foreseen a *Judges' Counci,* a consultative body of the judiciary, which consults and discusses with the *Lord Chancellor*. It appoints a member of the Judicial Appointment Board.

The german system is quite different in relation to the others, because of the particular rule-making relationship between the *Länder* and the central Government. At the level of the federal government, the judges are appointed by the Minister of Justice. At local level the Northern *Länder* are characterized by the system of the Appointment Boards, while in the Southern *Länder* the judicial appointment is a task of the regional Minister of Justice. Furthermore, at local level there are three different independent bodies, in which take part also members of the judiciary: the *Präsidialrat*, the Council of judiciary and the *Präsidium*. The *Präsidialrat* takes part into the recruitment and appointment of the magistrates, the Council of judiciary deals with general and social questions. The *Präsidium* is a jurisdictional body made up of magistrates. It deals above all with the composition and the implementation of the judgement Benches, it coordinates the representatives of magistrates and rules the assignment of the proceedings to the courts.

8. Conclusions and proposals

A first conclusion of the Working Group is that one of the main aims of the Group is to incite the Members and the Observers of the Network who have not done yet a "declaration of mission" to declare their own "mission" and to adopt one "vision", to define a common "mission" and to devote themselves to the organization for which such a mission could be valid.

In the meetings of the Working Groups the attention was drawn, besides the need to indicate the instruments and the ways with which the Councils of Judiciary can contribute to spread the trust of the citizens in the judiciary and the reciprocal trust between the judiciaries of the different Countries, on two specific matters: a) which is the meaning and the importance of the deontology in the judiciaries of the different Countries; b) how the advisory function of the ENCJ can be organised.

A) The deontology of the judiciary

A reflection on this question would have a considerable importance on the mutual approach of the several systems of the national judiciaries.

The professional deontology, differently from the question of the disciplinary liability, has a propulsive task that is able to have relevant influence on the different aspects of the exercise of the jurisdiction: with regard to the values of the independence and impartiality, of the trust and of the relationship with the users, of the consciousness of the magistrate of his own role in the society. It is particularly important the advice n. 3 of the 2002 of the Advisory Council of the European Judges that, on the basis of a general survey of the different systems of judicial deontology, has worked out the proposal to distinguish the ambits of the deontology from the ones of the disciplinary liability of the magistrate, giving to the deontological principles a propulsive task and not the value of a sanction.

Therefore, the question of the deontology is particularly indicated as subject of proposals' study by the Network of the Councils of Judiciary. The need of safeguard of the independence and autonomy of judiciary, that is at the basis of the creation of the Network, involves also that the deontological rules cannot put from the outside, in a official way, but they must be worked out inside the same professional category, so that such rules can express the common thought. Therefore, the aim appears suitable for a body that gathers the guarantee's organs and the institutional representatives together.

A reflection on this matter would have the relevant effect to obtain a mutual approach of the judges of different Countries with regard to their own *culture of the judiciary*. In fact, they are very often called to co-operate ad to apply common rules in view of the creation of the common space of

Freedom, Security and Justice that the European Council of Tamper of 1999 has indicated as a priority of the European Union.

The Network of Councils for the Judiciary - as prof. Berlinguer said during his report of the 18th January 2005 at the LIBE Commission of the European Parliament - can have an important role in the process of strengthening of the efficiency of the judicial co-operation policy in European ambit, based on the principle of the mutual recognition.

Therefore, the attention that the initiatives of the Network solicit on the values of autonomy and independence of the judiciaries is a factor of growth, besides of the reciprocal trust between magistrates of the different Countries called to a direct collaboration, also of the trust of the actors of the trial towards the decisions and the requests of the judicial authorities of the other States.

The question appears to be very relevant both to the magistrates and to the components of the society where, especially in the last years, we can see the birth of a widespread need of justice that involves non only the extrinsic quality of the judicial product, but looks also at the *behaviour of the magistrate*, at his way of being ad appearing when he exercises his function.

We can remember, concerning this question, that in Italy, in 1994, the National Association of Magistrates (Associazione Nazionale Magistrati) has worked out its own ethical code and that, in European ambit, the question of the professional deontology of the magistrates has been the subject of the plenary assembly, held in Strasbourg on May 1996, of the Network of Lisbona, instituted inside the Council of Europe as a connection's body between the national institutions that are liable for the judicial training of the magistrates. Recently, the Committee of Ministers of the Council of Europe has issued the Recommendation n. 19 of 2000, which has established the duties of the Public Prosecutor.

While the Report of the Advisory Council of the European Judges (Report of the 3rd meeting – Strasbourg, November 13th–15th 2002) has drawn the attention on the fact that the modern democratic societies are characterised by a progressive increasing recourse of the citizens to the judicial system. So, it is clear that the effectiveness of the reply of justice to the needs of the society depends on the credibility that magistrates must enjoy, from which derives also the trust in the Institution.

In this context, the behaviours of the magistrates, the observance of a high level of rules of conduct, based on the values of impartiality and independence, represent a guarantee of the trust of the citizens in the Judicial Institution.

Trust in Judicial system, that is the essential condition - the most important condition – in the view of the strengthening of a supranational sphere of action of the justice.

The proposal, at operational level, wishes to promote a reflection directed to set up a table of common deontological values, that must be the point of reference for the judicial activity and for the magistrates' behaviour. What must be done is to indicate – in definitive way – a series of professional duties concerning the exercise of the profession, that can be shared by the magistrates of the different Countries, whatever their proceedings systems.

The aim should be pursued also by dealing with the most complicated aspects that appear when such principles must be put into operational behaviours: examples can be the implications between the value of the independence and the right to express one's thought, or the right to join in associations, the relationships between magistrate and press and so on. However, every specification concerning this point should avoid the risk to prefigure models of conduct that are pre-established and too strict.

In this context, an in-depth study of the deontological aspects, in the view of a definition of a platform that is common to the various judiciaries, can contribute to the autonomous regulation of the phases of *direct collaboration* between the magistrates of the different Countries, without that the difference of institutional position in their respective national structures can be an obstacle for a full reciprocal trust, pre-condition of an active collaboration.

B) Advisory Function of the ENCJ.

Under the ENCJ Charter, the objectives of the Network described in Art. 1 include the possibility to put forward proposals and provide experiences to the institutions of the European Union and to other national and international organisations.

This implies that the Network of Councils can perform an advisory function in favour of Community institutions in the drafting stage of legal instruments, whatever their nature, aimed at strengthening the tools of judicial co-operation.

In this connection, we would like to recall that the feasibility and benefits of such an advisory function of the Network of Councils for the Judiciary is dealt with in the document bearing the title "*Identification of possible initiatives by the ENCJ in the field of judicial co-operation*" which was presented by President Berlinguer during the meeting of the Network Steering Committee held in Dublin on 7 February of this year.

The production at Community level of rules in the field of judicial co-operation, mutual recognition of judicial decisions or, more generally, of rules introducing provisions concerning procedural matters (consider, for instance, the regulation on the service of documents) usually has *effects on the organisation* of the judicial activities of the single Countries that, due to the lack of appropriate means to spread knowledge, are not always known in advance or sufficiently pondered. In any case, the analysis of useful initiatives to adjust the internal organisational models to the new rules or competences is completely left to the national institutions, that are often late in their action. The assessment of the possible fall-out effects on the judicial organisation should on the contrary be

performed in advance, so as to effectively consider the viewpoint of the competent organs already when draft regulations or directives are being discussed.

There is therefore the need to set up a *stable channel* of communication and consultation with the Community institutions that can anticipate the effects stemming from the introduction of the new rules, thus making it possible to pre-emptively ponder them and, if necessary, to adopt measures aimed at favouring their implementation.

From an operational point of view, this proposal aims at studying the problems entailed by the formation of an opinion that might be the expression of unanimity or of qualified majorities, just reflect different stances or go beyond that, but which must in any case meet the needs for timeliness imposed by the requesting Authorities.

An in-depth study of the ways through which opinions are produced is a very topical issue, given the expectations that the European Institutions have of the role and activities of the ENCJ, as demonstrated by the meeting that took place on 18 January 2005 with the European Parliament and the Commission, with specific reference to the Hague Programme that has sanctioned its prominent acknowledgement in the European scenario.

Wladimiro De Nunzio Giuseppe Salmè

Rome, 23rd May 05

Enc.: 1) General questionnaire

2) Questionnaire for the countries without a central Council of Justice

3) Summing up of the answers to the questionnaires

4) Glossary