

## **THE EUROPEAN COMMISSION FOR THE EFFICIENCY OF JUSTICE (CEPEJ)**

### **Study session "Dysfunctions within a court: how to highlight them? How to respond to them?"**

#### **THE PORTUGUESE EXPERIENCE**

Mr President, Mr. Guy de Vel, dear participants in this study session:

I would first like to thank you, both personally and on behalf of the Portuguese High Council of Judicature, for honouring us with a so kind invitation to participate in this crucial discussion on the theme of the systems for the monitoring and correction of dysfunctions occurring in the courts activity.

#### **1. Internal solutions**

##### **1.1. The High Council of Judicature**

Within the scope of the proposed subject, I would like to begin by highlighting the key role that, in the context of the solutions that are internal to the system, assumes the Council which I am representing here today.

This body, presided over by the President of the Supreme Court of Justice and composed of members representing the President of the Republic and the President of the Assembly of the Republic and judges elected by their peers, in its quality of independent structure and pinnacle of the Portuguese judicial power, is a fundamental actor in the process of monitoring the workings of the Courts and producing the improvement of its functioning.

The Council's main area of intervention is the making of judicial inspections. The aim of these inspections is to provide it accurate and up-to-date information on the state of the court services and their needs and deficiencies, with a view to enabling it to

take measures which fall within its own jurisdiction. Amongst these are the functions of appointing, placing, transferring, promoting and dismissing judges as well as bringing disciplinary proceedings against them, redistributing cases in some courts, in order to ensure that the services are equalised and operational, establishing priorities in the processing of cases which have been pending in the courts for a period considered to be excessive, notwithstanding other urgent cases, and establishing the number and composition of the sections of the Supreme Court of Justice and the Appeal Courts.

If the intervention pointed as necessary by the data emerging from the inspection falls outside its own legal ability, the Council has the duty to propose to the Justice Minister the measures which require Governmental action.

Parallely, it seeks to obtain a precise idea of how judges perform in the law courts and to assess their merit, although the services engaged in this evaluation may not interfere with the independence of the judges and, in particular, may not proclaim on the merit of the substance of judicial decisions.

As a complement to this, the inspections also aim to provide judges with the means to enable personal reflection on previously adopted procedures and also information on the procedural and administrative practices which are considered to be the most correct, up-to-date and appropriate in terms of speeding up the administration of justice.

There are inspections to the courts and inspections to the work of the judges, in order to assess their merit. These may be ordinary or extraordinary.

In the course of their inspection of the courts, the inspectors aim to gather and present the Council full details on how the inspected organs responsible for the administration of justice have functioned on the fields of filling, appropriateness and efficiency of the judges staff, productivity, patterns of organisation and efficiency, progress of cases, true number of pending cases and assignment of duties, registering any anomalies or deficiencies detected and suggesting the appropriate measures to overcome these.

The ordinary inspections to the work of the judges seek to collect information on their performance and merit and also to propose what is considered to be an appropriate grade regarding their work.

Inspections of both the courts and the work of the judges must be carried out, as a rule, once every four years.

The first inspection of the work and merit of a newly qualified judge must take place one year after he begins exercising his duties. This has pedagogical significance and allows the system to detect any situations that demonstrate obvious difficulties in adjusting to the judicial functions.

Extraordinary inspections are carried out when the High Council of Judicature considers these to be necessary for a given reason, and their scope is fixed on a case by case basis.

In addition, at least once a year there must be a short inspection visit to each court. The aim of this visit is to collect information concerning the working of the court, so that the Co-ordinating Inspector may produce an annual report to be presented in the first half of December. This report provides a summary of the services of the judicial organs included within each inspection area and must highlight those which demonstrate better levels of operation and those which present anomalies for which solutions need to be found.

Each semester, the presidents of the Courts of Second Instance (Appeal Courts) provide the Council with statistics on the number of cases given to each judge, and the number of cases that have been resolved and those that have been delayed.

The inspectors exercise their activity full-time and are exclusive to this service. They are appointed on a service contract from among Appeal Court judges or, in exceptional cases, from among judges with at least fifteen years' experience and who have the highest grade.

Each inspector performs his duties in a specific predefined area for a period of three years.

Only the High Council of Judicature is informed of the results of inspections. If it deems it necessary and appropriate, this body will then forward the information to the entity with jurisdiction to intervene in the area where a deficiency has been detected.

The Council may also conduct inquiries and investigations. Inquiries seek to examine particular facts, whilst investigations are held when facts come to light that suggest the need for a general investigation of how the services are operating.

Courts of both first and second instances and indeed the Supreme Court of Justice may all be the target of interventions which fall within the responsibilities of the High Council of Justice.

In terms of collecting information on the workings of the courts, the Council frequently also contacts a particular judge directly to request specific information, without the need to use the inspection services as an intermediary.

Any relevant source of information may lead to an intervention by the Council, even including news reported in the media.

It is often the case that information concerning apparent dysfunctions within the courts is provided by citizens, many of them anonymous, by the President of the Republic, by the *Provedor de Justiça* (who we might call the Portuguese Ombudsman), or by the Bar Association. All of these methods are integral parts of the extensive system for highlighting dysfunctions.

In a criminal case, if the time periods set down in law for each stage in the proceedings have been surpassed, the Department of Public Prosecutions, the defendant, the plaintiff or the civil parties may make a request to the High Council of Judicature to speed up the case which is before the judge.

In general terms we may state that those who use the services for the administration of justice, given the way this system is organised, are the main source of

non-automated information. The predefined mechanisms for monitoring, in their turn, allow for regular and comprehensive collection of data.

It should be added that in January of each year the Council sends its annual report to the Assembly of the Republic, detailing its activities over the previous year. This report, which is published in the Journal of the Assembly of the Republic, also provides the legislature with an assessment of how the system is performing.

By way of an example to illustrate what has been said, I can tell you that, in 2003, 92 ordinary and 42 extraordinary inspections were carried out and 252 judges were graded. In that same year, 49 inquiries and 42 investigations were originated. 9 cases of disciplinary proceedings and 2 unofficial warnings resulted from the former and 2 of the latter developed into disciplinary proceedings. Also in that year, 19 requests were made to the High Council of Judicature to accelerate proceedings. In addition, the Council held on 68 appeals arising out of disciplinary or grading proceedings of court officials. Lastly, 773 cases were the result of attending individual citizens and receiving complaints and statements.

## **1.2. The High Council of Administrative and Fiscal Courts**

Another internal body operates in the fiscal and administrative area, which is identical in character to the High Council of Judicature and is also composed of members appointed by the President of the Republic and elected by the Assembly of the Republic and by their peers. This organ is **The High Council of Administrative and Fiscal Courts**.

The actions of this Council, in terms of monitoring and responding to dysfunctions in the system over which it has jurisdiction, are, for the purposes of the present discussion, similar to those described above. I will not, therefore, bore you with unnecessary details.

However, I should point out that this Council, based on the detailed knowledge it has regarding the area of intervention that it oversees, has jurisdiction to propose legislative measures to the Justice Minister with a view to improving and increasing the efficiency of the administrative and fiscal area. It may also issue official opinions on proposals for legislation related to this area.

### **1.3. The High Council of the Public Prosecutions Department**

It is the duty of **The High Council of the Public Prosecutions Department** to assess professional merit, engage in disciplinary actions and carry out all acts of a similar nature regarding the public prosecutors, with the exception of the Attorney-General.

As far as monitoring the actions of these prosecutors is concerned, this Council has a duty to approve an annual programme for inspections and decide on the carrying out of inspections, investigations and inquiries. Assessing professional merit and conducting disciplinary actions also fall within its remit.

Alongside the High Council of the Public Prosecutions Department is the Inspectorate of The Public Prosecutions Department that is made up of inspectors and inspection secretaries appointed on a service contract who perform these functions on a full-time and permanent basis.

It is the responsibility of this Inspectorate, under the terms of the law, to carry out inspections, inquiries and investigations within the Public Prosecutions Department, and to instigate disciplinary proceedings according with the deliberations of the referred High Council or on the initiative of the Attorney-General. In addition, the inspection services also gather information on the work and merit of the Public Prosecutors.

Also based on its understanding of the situation, obtained through inspections, this Council has the responsibility to deliberate and issue directives regarding internal organisation and staff management, to make proposals to the Attorney-General for the issuing of directives governing the actions of the Public Prosecutors and to

propose legislative measures to the Minister of Justice, via the Attorney-General, directed to increase the efficiency of the Public Prosecutions Department and to improve the judicial institutions. Furthermore, it may issue official opinions on judicial organisation and, in general, on the administration of justice.

It is the jurisdiction of the Attorney-General to assess requests for the speeding up of delayed criminal cases, if the case is being dealt with by the Department of Public Prosecutions.

#### **1.4. The Council of Court Officials**

As a rule, court officials are graded every three years, which requires that inspections of court secretaries are carried out with the same periodicity.

The body responsible for this internal assessment procedure is the **Council of Court Officials**.

This Council is composed of the Director-General for the Administration of Justice, who presides, two members appointed by the Director-General for the Administration of Justice, one of these being a judge, one member appointed by the High Council of Justice, one member appointed by The High Council of Administrative and Fiscal Courts, another member appointed by the Attorney-General's Office and one court official for each judicial district, elected by their peers.

It is the duty of the Council of Court Officials to assess professional merit and, among other entities, to bring disciplinary actions against court officials, notwithstanding the disciplinary responsibilities attributed to judges or public prosecutors and the responsibility of the president of a high court to grade the respective secretary. This Council also assesses requests for the re-examination of disciplinary and grading procedures, issues official opinions on legal statutes regarding judicial organisation and the Statute on Court Officials and, in general, on matters related to judicial administration. One further duty is to study and propose legislative measures to the Minister of Justice

oriented to increase the efficiency and improve the judicial institutions, and also to draw up a programme of inspections and determine inspections, inquiries and investigations.

The inspection services work alongside the Council of Court Officials. Inspectors are appointed on service contracts for periods of three years, which may be renewed for a further three, thus providing a guarantee of stability, permanence and exclusive dedication to the activity of inspections.

The High Council of Justice, The High Council of Administrative and Fiscal Courts or The High Council of the Public Prosecutions Department have the power to avoke or to revoke the deliberations of the Council of Court Officials on professional assessment and disciplinary power. These Councils function as organs of appeal on these matters.

## **2. External monitoring, via organs included within the Ministry of Justice**

The Ministry of Justice's Auditing and Modernisation Office has been engaged in a qualitative assessment of the justice system, working in tandem with the Inspectorate-General of the Justice Services.

Part of its activities involved monitoring the results, at ground level, of the various legislative reforms, via participation in working groups which also included the Ministry's various Directorates-General. In this context, it has monitored the reform of administrative claims, executive action, court fees, the system of legal aid and the legal system of insolvency.

It has also assessed budgetary issues regarding the administration of justice, specifically by monitoring the development of the cost of the process and some aspects related to the actual physical premises.

Parallel to this, in the area of legislative planning and quantitative assessment, another Ministerial body, the Office of Legislative Policy and Planning



(GPLP) has assumed responsibility for the production of legislation and the publication of statistics regarding the issue of justice.

In the performance of this first task of producing legislation, this body has drawn upon data resulting from assessments of the system carried out by a range of actors, both internal and external.

Recently, in a Council of Ministers meeting held on the 4<sup>th</sup> of November, it was decided that the aforementioned Auditing and Modernisation Office would cease to exist and, instead, become absorbed within the Office of Legislative Planning and Policy, principally with regard to the monitoring of legislative procedures.

This body will, then, become responsible for a complete analysis of the system, both quantitative and qualitative, and will be under a duty to use the ideas presented to it in order to prepare rigorous yet realistic alterations to the legislative system.

In terms of statistics, the Office has an ample collection of data on all areas of the administration of justice which is openly available on the Internet.

The various entities which provide statistical data in the Justice area, such as the courts, civil registries, notaries' offices and the police, amongst others, usually send the GPLP information on a monthly basis concerning the quantity and nature of their activities. This is sent by mail in the form of paper records such as charts, official reports and statistical formula.

However, it is envisaged that this system of collecting statistical data will soon undergo profound changes, with the introduction of greater flexibility and reduction in bureaucracy in the way statistical information is sent. Hard copy will be replaced by the automatic electronic collection of data (via the direct transfer of files) whenever possible, or, in cases where this is not possible, in a decentralised manner by the introduction of data to complete online forms.

Statistical data will be retrieved directly from the databases of the entities which supply information, which will produce statistics without the need for a conscious effort to do so.

Using this method, it will be possible to maintain statistical information which is updated on a daily or weekly basis (depending on what is considered to be most viable in terms of the nature of the information in question). This will also allow for analysis of the flow of cases rather than simply numbers of completed cases, and will bring to an end the current system of receiving massive information about the progress of cases, thus making it easier, namely, to detect obstructions to cases. The possibility of errors arising out of the fact that the same information has been included twice will be eliminated, and savings will be made in terms of human resources, costs and time.

### **3. External analysis in partnership with the academic community**

The administration of Justice in Portugal is also the object of external assessment by the academic community.

The Permanent Observatory on Portuguese Justice was created in 1996 within the Centre for Social Studies of the Faculty of Economics of the University of Coimbra, through a contract with the Ministry of Justice.

This Observatory was born out of a continuity relationship with the investigation carried out by the above mentioned Centre for the Centre for Judicial Studies (a body dependant from the Ministry of Justice, responsible for the training of judges in Portugal), between 1990 and 1996, on the operation of the courts and the Portuguese citizens' understanding and assessment of law and justice in Portugal.

The Observatory's main aim is to monitor and analyse the performance of the courts and other related institutions and activities, such as police forces, prisons, social reintegration services, expertise and forensic medicine, the legal profession and alternative systems for dispute resolution. It is also responsible for assessing reforms which have been introduced, suggesting new changes to legislation and carrying out

comparative studies, both within and beyond the European Union. In addition to this, the Observatory conducts opinion surveys on issues related to law and justice.

This unit participates in international projects and networks, in partnership with other institutions, and publishes articles in both Portuguese and foreign journals specialised in the socio-legal field. The results of its research become reports and it has researchers and research assistants from a wide range of academic fields working for it.

The idea behind this Observatory is that, by bringing together the many contributions it makes, it will be possible to obtain scientific information on various aspects of the administration of Justice and lend credibility to the legislative reforms based on them.

Contributions of the Observatory are considered when plans are being drawn up for the production of legislation, and the aforementioned GPLP, whose mission is also to consider such information when presenting proposals for reform, makes these available online for all citizens.

Studies by the Observatory have so far produced reports on the following themes:

- a) Social Reintegration of Prisoners and reform of the prison system (2003);
- b) Fee structures for registries and notary services (2003);
- c) Adoption (2002);
- d) The courts and territory – reform of the judicial system (2002);
- e) Access to law and justice (2002);
- f) Procedural reforms and criminality in the 1990s (2002);
- g) Labour justice (1998 to 2002);
- h) Criminality trends and sanctions in the 1990s (2002);
- i) Making justice more informal and less “judicial” – a comparative analysis (2001);

j) The administration and management of justice – a comparative analysis of reform trends (2001);

k) Legislative measures to simplify civil and criminal actions, court fees and legal aid (2001);

l) Recruitment and training of judges and public prosecutors (2001);

m) Administrative justice in Portugal (1974-1999) (2001);

n) Executive action (2001);

o) Institutional arbitration (2000);

p) Blocks to proceedings and proposals for solutions (1999);

q) Civil and criminal justice (1998);

r) Tardiness in the administration of justice (1998);

s) Justice for minors (1998).

The Observatory is currently engaged in studies on:

a) Analysis of the performance of the legal system in the fight against complex criminality;

b) Assessment of the application of guardianship law;

c) Social conditions for the application of Environmental Law in Portugal;

d) The High Councils of Justice and the Public Prosecutions Department;

e) The functional performance of police forces as auxiliaries bodies of justice;

f) The impact of EU policy on justice in Portugal;

g) Absence of litigation in the courts;

h) Alternative methods of dispute resolution in Portugal and Europe in minor disputes and in mass litigation;

i) Recruitment, training and the functional performance of lawyers;

j) Public opinion survey on the workings of the courts in Portugal;

k) Legal and judicial treatment of the issue of the body and life.

#### **4. Conclusion**

I have thus provided an outline, albeit general and schematic, of the system which exists to detect and correct dysfunctions within the system for the administration of Justice in Portugal. I very much hope that this modest contribution, together with the time and attention you have kindly granted me, may be of some use in the context of the noble and fundamental missions of the European Commission for the Efficiency of Justice and that it may be of benefit for those who are the ultimate object of your activity, that is, the citizens of Europe.

Thank you very much.

Strasbourg, 30 November 2004

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