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WORKING PARTY N°2 (IMPROVEMENT OF ADMINISTRATION OF JUSTICE)
OF THE PROJECT GROUP ON EFFICIENCY AND FAIRNESS
OF CIVIL JUSTICE (CJ-JU-GT2)

Summary of the replies to Questions 4, 8 and 9 of the
questionnaire on persons exercising judicial functions
(Appendix II CDCJ (92) 17)

Information from the expert from Liechtenstein



COE243804

Question 4

- (a) In agreement with the Chairman of the Second Working Group, a summary of the answers concerning the judges' remunerations shall be omitted. In general, it may be stated that the remunerations of the judges vary widely in the different countries, but this gives little impression of the judges' standard of living in these countries, because the cost of living also varies widely.
- (b) Assistance (staff and equipment):
- Staff:
- In all countries the courts are provided with the necessary office staff, such as keepers of the minutes, officials of the filing department, court messengers, etc. In individual countries, however, there are peculiarities which are mentioned in the following:

- (aa) In a few countries (Germany, Austria) there is the institution of the judicial officer. Judicial officers are officials of the court who, while not having completed juridical studies, have received special juridical training in certain areas as, for example, bankruptcy, execution, curatorship, guardianship and matters relating to inheritance, and are capable of dealing with and deciding such legal cases independently. There also appears to be a similar arrangement in Denmark, where experienced senior officers may deal with certain cases independently.
- (bb) In other countries (Belgium, France, Luxembourg and Switzerland) there is the arrangement of the "greffier", who keeps the minutes at the court proceedings and also prepares the decisions for the judge.
- (cc) Only a few countries provide the judges with their own secretaries, namely Liechtenstein, Lithuania, Switzerland and Estonia. In Italy each judge has a registrar to assist him personally; in the United Kingdom a clerk is allocated to each judge to assist him in his activities.

Equipment:

The court equipment with respect to offices, courtrooms and technical back up varies widely. In most countries, in addition to the usual office equipment (typewriters, dictaphones, photocopiers, fax etc.) computers are in use for registering the files, for the Commercial Register and the Land Register, and word processors are employed in the preparation of the judgments, although to varying extents. In Finland and Cyprus computers for word processing and database are available to all courts.

Accommodation for the judges also varies. Whereas most countries provide each judge with an office of his own,

there are certain countries where this is not necessarily the case, in Luxembourg, for example, two judges sometimes have to share an office.

(c) Working hours and holidays

Working hours:

The judges do not have definite working hours in Austria, Belgium, Finland, Germany, Hungary, Italy, Luxembourg, Sweden, Portugal and Switzerland.

In the other countries, the working hours vary between 37 hours (Denmark) and 40 hours (Netherlands, Estonia and Iceland).

In several countries the judge is only required to be present in the court during the proceedings (Luxembourg, United Kingdom).

Holidays:

In some countries the holidays coincide with the court vacation and holidays at any other time are granted only to those judges who deal with urgent cases during the court vacation (Luxembourg, Belgium, Portugal, Turkey). In other countries, holidays are arranged independently of the court vacation. The amount of holiday varies between 21 days (Norway) one month (Spain) and six weeks (United Kingdom, Liechtenstein, Estonia). In certain countries (Germany, Liechtenstein, Sweden) the amount of holiday is age related. The average length of holiday for judges is five weeks per annum.

(d) Age of retirement:

Retirement age is also different in the various countries. In Czechoslovakia, Hungary and Latvia the retirement age for men is 60 years and for women 55 years.

Retirement age is 65 years in Austria, Estonia, Finland, Germany, Liechtenstein, Lithuania, Luxembourg, Norway (64 years), Sweden and Turkey.

Retirement age is higher in Belgium, Cyprus (in the Supreme court), Iceland, Italy, Netherlands Portugal, Spain, United Kingdom.

Certain countries determine a minimum age, at which a judge may retire, and a maximum age, at which he must retire (Austria, Denmark, Norway).

An arrangement in Norway is worthy of note, this allows pensioned judges to work part-time.

(e) Case load:

Quite generally, it may be stated that the workload of the courts with respect to civil cases exhibits a tendency to increase in recent years. This applies in particular in Belgium, Czechoslovakia, Finland, Iceland, Italy and Switzerland.

The number of civil cases dealt with and decided by one judge of the first instance varies so enormously that the premise for the answers cannot be correct. Thus, in civil cases, the workload of a judge of the first instance amounts to

1000 to 2000 cases per annum in Italy
900 cases per annum in Cyprus
661 cases per annum in Germany
20 to 25 civil cases + 5 to 8 penal cases per annum in
Latvia
16 civil cases and 6 penal cases in Norway
900 to 1000 cases in Spain
30 to 60 cases per day in Turkey

These enormous differences may be partly explained by the fact that in individual countries petty cases are dealt with in summary proceedings as, for example, in Germany, Switzerland, Austria and Liechtenstein, and only the really litigant cases requiring oral proceedings are counted.

- (f) Whereas most countries provide career opportunities for judges in the form of advancement to higher courts, there is no country that offers any special incentive to judges who work more efficiently than others.

Question 8

Preparation of decisions by judges:

In all countries, the decisions are prepared by the judge who makes the decision, at least in the first instance.

In most countries, trained juridical staff members for the preparation of decisions are available only for the supreme courts.

In the preparation of their decisions, judges are assisted by qualified specialists only in a few countries (Belgium, Switzerland, Netherlands). In certain countries (Austria, Czechoslovakia, Denmark, Spain), candidates for the office of judge are engaged in the preparation of decisions, during the course of their training.

In general, it is not possible to state precisely the amount of time needed to make out judgments; similarly, it is not possible to provide information concerning the size (number of pages) of the decisions. They both vary from case to case.

In a number of countries (Austria, Liechtenstein, Norway), the code of procedure prescribes certain time limits for the preparation of judgments. Generally, however, sanctions are not imposed if these time limits are exceeded. It is only in accordance with Norwegian law that an exceeded time limit provides grounds for appeal when the long period of time that elapses between the termination of the proceedings and the completion of the judgment has an influence on the content of the decision.

Question 9

In the majority of countries, the number of pending court cases has increased considerably, but so, too, has the complexity of these cases. Since the number of judges has not increased commensurably, the workload has grown significantly. Only Denmark, Hungary, Norway and Sweden report that the number of pending civil cases has not increased in these countries.

PROPOSALS FOR A RECOMMENDATION CONCERNING THE QUEST. 4, 8 and 9 OF THE QUESTIONNAIRE.

Question 4

- (a) A judge's remuneration should be commensurate with the dignity of his profession and the burden of his responsibility. While the income from his work should not enable the judge to lead a life of luxury, it should

certainly conduce to an elevated standard of living, which enables him to pursue his profession without economic worries. A poor remuneration for the judge involves, on the one hand, the risk of an unsatisfactory choice from the available jurists and, on the other, exposure to economic pressure, which may well weaken the judge's immunity from interest groups.

- (b) Well trained court officials and the equipment of the court with the achievements of modern office technology not only protect the members of the population seeking justice against unnecessary delays and errors in the preparation of court decisions, but also enable the judge to work faster and more efficiently. Computers installed in various departments of the jurisdiction (Commercial Register, Land Register, summary proceedings, filing) have proved their worth in a number of countries.

It is not absolutely essential for each judge to have his own secretary, nevertheless, there should be sufficient staff available for the immediate engrossment and dispatch of decisions drawn up by the judge. An orderly and well equipped library also has its place in a well organized court.

- (c) Basically, it is by no means essential to grant the judges shorter working hours than is customary in other professions. In many countries, however, free working time is regarded as an expression of judicial independence. The judge's freedom from a commitment to fixed working hours is to be recommended because his work does not always arrive in a regular flow, so that a certain degree of flexibility is necessary in the handling of the work. In any case, the judge's workload should be as much as a judge of average ability and diligence can complete within an average working time.

The judge's entitlement to holidays should be brought up to the level of other officials. A certain degree of graduation with regard to the length of holiday, according to age, should be recommended. This practice is already pursued in a number of countries.

(d) Age of retirement:

The age of retirement for judges should conform with the general provisions concerning the retirement of public servants. It is not necessary to provide a regulation specially for judges. In those countries where the judges' workload is particularly heavy, it would be advisable to continue to engage retired judges on a part time bases, according to the Norwegian model.

(e) The judges' workload should be as much as a judge of average ability and diligence can complete during normal working hours. An excessive workload mostly leads to a deterioration of work quality or, even worse, to substantial delays in the settlement of legal cases. Both are harmful, to the public seeking justice and to the high standing of the profession.

(f) Within the scope of the court organization, the judge should have career opportunities as in every other profession. It goes without saying that primarily the judge's ability and age should be taken into consideration when decisions are made concerning promotion. It is not desirable that salary increases or career advancement should provide the incentive for higher output. Every judge should complete the work entrusted to him expeditiously and conscientiously, of his own accord and with a sense of duty, without such incentives.

Question 8

A judge's work is obviously less laborious when assistance is available for the formulation of decisions, regardless of whether the assistance is provided by a clerical employee, a candidate for the office of judge or a trainee. In most countries such institutionalized assistance is not or only partly possible. Thus the judge must also be capable of editing his decisions himself, within a reasonable period of time.

Question 9

That which has been stated under Item 4. e shall apply with respect to the judge's workload.