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**Directorate General for Administration of Justice of  
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**BENCHMARKING ANALYSIS  
OF THE ROLE, RECRUITMENT, STATUS, TRAINING AND CAREER  
DEVELOPMENT OF JUDICIAL ASSISTANTS IN FRANCE, SLOVENIA AND THE  
NETHERLANDS**

**18 December 2019**

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## **ABBREVIATIONS**

CEJ - Centro De Estudios Judiciarios

CEPEJ – European Commission for the Efficiency of Justice

CCJE – Consultative Council of European Judges

CoE – Council of Europe

DGAJ - Directorate General for Administration of Justice of the Ministry of Justice

DGAJ Training Centre – Directorate General for Administration of Justice of the Ministry of Justice Training Centre

ENG - L'Ecolenationale des greffes - National School of Clerks

EU – European Union

JTC – Slovenian Judicial Training Centre

SSR – Studiecentrum Rechtspleging – Dutch Study Centre for the Judiciary

## Executive Summary

Legal systems differ in several aspects and, even within the same judicial system, the court structure and staffing vary. The circumstances in which judicial assistants are employed and function are globally truly diverse. Therefore, this analysis does not aim to conduct a comparative study between entire judicial systems. Instead, this analysis aims to record specificities in duties and responsibilities, recruitment, status and career development of the judicial staff in the selected countries.

Three countries are presented as the case studies: France, Slovenia and the Netherlands. Though these countries are civil law countries, differences in the judicial assistants' role are existent. Each country is unique in its own way, either by the competencies of the judicial assistants or by their status or by the current training and educational requirements. The models differ significantly: from the extensive list of competencies in judicial decision-making process to purely administrative tasks entrusted to the judicial assistants. Their specificities were identified and presented in the analysis in the best way possible, having in mind limited literature and regulations on judicial assistants in general. Furthermore, the challenges that these three countries were faced with in the process of judicial reforms mirrored in the role of judicial assistants, could serve as a valuable lesson learnt, and therefore elicited on several occasions in this paper.

The French system was presented by two categories of court staff within judicial system: "the Judicial Clerk" (Greffier) and "the Judicial Assistant" (Assistant de justice). Key duties and responsibilities of both categories are described as to their status in the judicial system. A similar approach was kept in the cases of Slovenia and the Netherlands. The Slovenian judicial system recognizes two sub-categories of judicial assistants: judicial assistant (sodniški pomočnik) and judicial adviser (strokovni sodelavec) and in the Netherlands the most common one, judicial assistants who are appointed to trial courts or "juridisch medewerker" were presented. In the latter two countries, responsibilities and duties of the judicial assistants are also explained according different stages in the judicial process (pre-trial, hearing, deliberation, drafting judgement). National training institutions and requirements for both initial and continuous training of judicial assistants form a special chapter of the analysis. Comparisons to the Portuguese judicial clerks are made, wherever possible.

The focus of the analysis was discussed and agreed with the beneficiaries during workshops in Lisbon. The chapters address issues of interest of the Portuguese authorities, which include recruitment, duties, status, training and career development of the judicial assistants. The same chapters were part of the surveys conducted previously. These two documents; the Survey Analysis and the Benchmarking Analysis together with the Final Report are part of one package, and therefore complementary. Though they are all stand-alone documents, for better understanding it is recommended that they are considered as one whole.

The practices presented in this paper, should serve as a menu of alternatives available and assist the authorities in defining the most suitable model of judicial assistant for the justice system in Portugal. The analysis does not endorse copying of the processes and practices presented. It encourages the authorities to further analyse some of the practices that could be applicable and bring performance improvements in certain area, having in mind the experience of the recent judicial reforms and local environment and tradition.

The adoption of the CCJE Opinion 22<sup>1</sup> comes in the right time in terms of this analysis, subsequently the recommendations made therein served as guidance and reference in all the areas of interest addressed below.

The Benchmarking Analysis was developed in the framework of the co-operation programme “Support to the improvement of training programmes in the judicial sector of Portugal”, which is funded by the Structural Reform Support Service of the European Commission and by the Council of Europe. The co-operation programme is implemented jointly by the Directorate General for Administration of Justice of the Ministry of Justice of Portugal and the Division for Legal Co-operation of the Council of Europe.

The Benchmarking Analysis is prepared by the international consultant of the Council of Europe Ms Marina Naumovska-Milevska<sup>2</sup>. The consultant would like to express its gratitude to the persons and institutions for their support and contribution especially to the Directorate General for Administration of Justice of the Ministry of Justice of Portugal and its Training Centre and the Division for Legal Co-operation of the Council of Europe.

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<sup>1</sup>CCJE<sup>1</sup> Opinion No. 22 (2019) on the Role of the Judicial Assistants

<sup>2</sup>**Marina Naumovska-Milevska** has been involved in justice sector reform projects for more than 20 years, both at international and national level. She was Assistant (Deputy) Minister of Justice and Team Leader of the Inter-Ministerial Committee for the reform of the Macedonian judiciary, responsible for drafting strategic documents and monitoring its implementation. She has been working under the framework of international projects with the EU, Council of Europe, OSCE, World Bank, UNDP. Her experience covers support of judicial reforms in harmonizing judicial legislation, improving efficiency within the judiciary and conducting assessments and analysis. She was responsible for defining HR policies, designing court performance indicators, identifying training needs and implementing court surveys. Ms Naumovska-Milevska has a vast experience in institutionalizing training and strengthening capacities of all members of the legal professions. She is Council of Europe trainer in judicial ethics, training methodology, court time management tools, judicial statistics and cyberjustice tools.

## Background

In the key stages of the judicial process, judicial assistants are usually not visible and are only present in the background. The judge is the key figure, positioned at the centre of the judicial process. However, on the other side, behind the scenes, judicial staff play a vital role in all the stages of the judicial process; from performing various administrative duties as assisting judges in their adjudicative responsibilities, to the most complex tasks of drafting judgements. Nearly, all judicial systems employ these types of judicial assistants; yet, the position that they occupy in the judicial process and the duties they perform vary significantly from country to country.

The goal of this benchmarking analysis is to present case studies of the roles of judicial assistants in three different judiciaries. The emphasis of the analysis is put on the recruitment, duties, status, training and career development of the judicial assistants as agreed with the beneficiaries during Workshops in Lisbon held on 6-7 September and on 30-31 October 2019.

The countries were selected based on good examples and practices that seem relevant for the Portuguese environment. They were selected in close cooperation with the Directorate General for Administration of Justice of the Ministry of Justice of Portugal (hereinafter DGAJ) Training Centre. France was taken primarily for the fact that the Portuguese judiciary is based on the French judicial system, however not entirely for that reason. The reforms that the judicial system in France embraced with the introduction of judicial assistants' position in 1995, brought a new light to the French judiciary. A fair balance between the roles and responsibilities of the judicial assistants and judges was established keeping the necessary safeguards in respect to the fair trial provisions. Slovenia has implemented a very comprehensive judicial reform project and their success was also recognized and awarded with the Council of Europe CEPEJ<sup>3</sup> Crystal Scales of Justice<sup>4</sup> for 2019. The system of judicial assistants in terms of their duties and responsibilities, as well as their practical approach towards training and the efficiency in the division of labour within the judiciary, was found as relevant for the Portuguese example. And finally, the Netherlands were selected as being a country with one of the most efficient judicial systems and one of the rare countries where judicial assistants career is the most developed (except the countries where "Rechtspfleger" is introduced).

The analysis should assist the Portuguese national authorities, primarily the Directorate General for Administration of Justice of the Ministry of Justice of Portugal (DGAJ) in their efforts to develop national strategies in the judicial system related to the judicial staff, and bring improvements in their performances, by studying and learning from the practices and analysing the processes of the three countries presented. This in no way means that the exact processes and practices presented should be copied. It means that some of those innovative practices that brought performance improvements in certain area should be further analysed and, if applicable, regulated and adapted according to the needs of the local environment.

This activity is part of the co-operation programme "Support to the improvement of training programmes in the judicial sector of Portugal", which is implemented jointly by the Directorate General for Administration of Justice of the Ministry of Justice of Portugal and the Division for Legal Co-operation of the Council of Europe.

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<sup>3</sup> CEPEJ – European Commission for the Efficiency of Justice

<sup>4</sup> Council of Europe CEPEJ Crystal Scales of Justice Prize is a competition aimed at discovering and highlighting innovative and efficient practices concerning the functioning of justice, judicial procedures or the organisation of courts

### **About the document**

In the analysis, the country's cases on judicial assistants' role are presented according to four key chapters:

- Duties and Responsibilities;
- Recruitment, Status and Career;
- Organisation and
- Training.

Portugal specificities are shadowed along different chapters wherever possible. Making reference to relevant chapters, in consultant's view, gives a better overview of specificities when aligning the two models.

The presentation made by country in this analysis has no intention to assess the level of compliance of the selected countries with the recommendations given by the new CCJE Opinion 22. The main goal of the analysis was to present the systems of different EU Member States as examples and best practices with regard to the role, duties, status and career advancement of the judicial assistants.

The selected countries in different ways exemplify a typical civil law judicial system. The presentation of country cases made in this paper does not aim to define the precise relationship between the judicial traditions of the studied systems and the judicial assistant models.

## Council of Europe standards—CCJE<sup>5</sup> Opinion No. 22 (2019) on the Role of Judicial Assistants

Satisfying the requirements of modern society necessitated substantial revisions to the court system. Having been faced with the challenges and priorities as well as the needs of the modern society, many countries have undertaken significant judicial reform measures, such as: reducing number of courts; reorganizing judicial map; strengthening safeguards for judicial independence etc. Alongside these structural changes, the judiciary has been also occupied with modernising its work processes, by introducing electronic case files. The courts backlogs and the increase of the workloads of judges with the constant pressure to deliver outputs and meet the timeliness in case processing have provoked judiciaries to search for new public management approach.

New public management perspectives often focus on efficient division of labour. One way of achieving this goal is to delegate additional tasks to assisting court staff members, a tendency that is observed in many countries in Europe. Bearing in mind the growing number of court cases and the high workload of judges with non-judicial tasks, the Committee of Ministers of the Council of Europe prepared Recommendation No. R (86) 12 concerning measures to prevent and reduce the excessive workload in the courts. The Recommendation encourages the Member States to think about the assignment of such tasks to qualified judicial clerks based on the model of the Austrian and German Rechtspfleger.

Inspired by the Rechtspfleger position, more than fifteen European countries created a new judicial function similar to the German Rechtspfleger. A Rechtspfleger<sup>6</sup> can be described as a quasi-judge, who does not assist a judge but works alongside him and is responsible for making independent judicial decisions on specific matters. According to the Green Paper for a European Rechtspfleger *“Rechtspfleger are judicial civil servants who have originally been assigned with legal tasks for independent and self-dependent handling and completion. They belong to the upper grade of the civil service at a court. The appointment in this profession implies in general highly-qualified judicial studies of minimum three years at a college of higher education. The training in the member states is quite different. Thus, it must be harmonised for a uniform occupational image of the European Rechtspfleger.”*

The new public management concept inevitably led to the creation of new judicial positions in the judicial system as well as a more efficient division of labour within the judiciaries. Although the role of an individual judicial assistant in the past should not be underestimated, it seems that, their participation in the judicial decision-making process in most of the European countries in last decades has generally expanded. Their duties and the extent to which judges rely on their work appear to have changed over time significantly. As their duties increased, the issue of legitimacy of their involvement in the judicial decision-making process was raised.

However, judicial assistants are still heavily neglected in terms of regulating their status, updating their duties and competencies and supporting judicial assistants' career development. In most of the European countries they come under the umbrella of the general public service, however very rarely special regulations are introduced which regulate the specificities of this profession, especially having in mind their proximity in the judicial decision-making process.

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<sup>5</sup> CCJE -Consultative Council of European Judges

<sup>6</sup> European Commission for the Efficiency of Justice – CEPEJ definition of a Rechtspfleger



Therefore, the recent adoption of the first European regulation regarding judicial assistants, **CCJE Opinion No. 22 (2019) on the Role of the Judicial Assistants** (hereinafter CCJE Opinion 22), was warmly welcomed.

As stated in the introduction of the CCJE Opinion 22 *“Judges’ independence and impartiality are protected both during their appointment and in the exercise of their duties so that they can adjudicate according to these guarantees. When judges are supported in the adjudicative process by assistants, the quality and efficiency of their work can further be improved in the interests of society and the parties to the proceedings. However, this must be done in a way not endangering the parties’ rights under Article 6 of the ECHR.”* Therefore, regulating the role of the judicial assistants in the judicial system is of crucial importance in safeguarding impartiality and independence of the judicial decision-making process.

The key recommendation of CCJE Opinion 22 is that *“Decision-making is at the heart of the judge’s duties in all legal systems”* and so **“Judicial assistants must support judges in their role, not replace them”**. This clearly defines the boundaries and the path which the Member States should follow in regard to the judicial assistant’s role within respective judicial system.

Furthermore, according to CCJE Opinion 22, *“Judicial assistants should have a legal education and support judges or panels of judges in their adjudicative work. Judicial assistants undertake a wide range of tasks such as research, preparing memos on legal questions or drafting judgments. Such persons may have many different titles including judicial assistants, law clerks, legal officers, secretaries, Referendare, Wissenschaftliche Mitarbeiter, Gerichtsschreiber, référendaires or greffiers.”* The opinion defines as judicial assistants only those professional legal staff that are involved in the judicial decision-making process. However, it excludes the Rechtspfleger, Judicial officers, the Spanish Letrados de la Administración de Justicia, and other judicial assistants who decide their own cases and work independently on their own tasks rather than support judges in their adjudicative work, thus their work might also demand a certain degree of independence even from the judge.

Most importantly, CCJE Opinion 22 defines the role of the judicial assistant in different stages of the judicial process, making distinction between:

- **the work of the judicial assistants related to the decision-making process** (Organising papers and researching facts, Drafting decisions or writing memos with a proposal for a decision; Independent work on cases; Work in the selection of cases for appeal or constitutional review; Work in the selection of cases for appeal or constitutional review) and
- **the work of the judicial assistants outside decision making process** (Legal research; Writing the official record of court hearings; Writing the official record of court hearings; Preparing decisions for publication; Preparing information for the media).

In terms of confidentiality and recusal CCJE Opinion 22 asks for the same safeguards for judicial assistants like those already available for judges, presuming that judicial assistants are involved in the judicial decision-making process. Regulations regarding confidentiality must of course respect the rights and freedoms protected by Article 10 of the ECHR and other relevant provisions of the Convention.

CCJE Opinion 22 also recommends that duties and responsibilities related to judicial decision-making process should be regulated, and if delegated to judicial assistants “*judges must command the law and facts in a way that judicial decisions remain fully theirs*”. In that line, the Opinion reaffirms that the decision-making is not the privilege of judges which can be delegated at will but is at the heart of their duties in a society based on the rule of law.

With regard to the selection and recruitment of judicial assistants besides the typical requirements such as “*a transparent process based on objective, merit-based criteria taking into account experience, qualifications, legal skills, integrity, communication skills and motivation*”, the recommendations of CCJE Opinion 22 also include that the selection should be made by the judiciary and in cases where judicial assistants are appointed to work with an individual judge, the judge should also be involved in the selection process.

With regard to the organization of the judicial assistants according to CCJE Opinion 22, there are three different ways of organising the work of judicial assistants within judiciaries: a judicial assistant or a number of them working with one judge; judicial assistants assigned to a panel of judges and judicial assistants organised in a pool and work with different judges. In this paper these three models are presented.

The Opinion supports judicial assistants becoming judges and encourages judiciaries to recognize and promote this way of educating future judges. To build on their experience, gained during court work, can reduce training needs and help develop an efficient court system, is stated further in the Opinion.

The Member States should consider regulating the status of judicial assistants, taking into consideration their selection, remuneration, evaluation, organisation, training needs and career. The benefits of short-term or long-term engagements of the judicial assistants are elaborated in detail and it is left to the Member States to find the balance in the duration of their engagements. CCJE Opinion 22 recommends that “*the time of work should not be too short, so that judicial assistants can provide support of high quality and gain valuable insights.*”

In this analysis the same division of “Administrative Assistants” and “Judicial Assistants” will be used as terminology already embedded within CCJE and therefore the focus will be put on Judicial Assistants as defined in CCJE Opinion 22 “.

## I. France

Judges in France are assisted by both administrative assistants (hereinafter Clerks) and judicial assistants. Assistance by administrative assistants is systematic and mandatory, while, the assistance by legal assistants is not systematic and varies from court to court.

In this paper they will be presented in separate chapters having in mind their duties, selection and status in the French judicial system.

Though very little literature is available about the role of judicial assistants in French courts, as it is the case anywhere else in Europe, this study is based on the existing data, regulations and literature.

In the light of CCJE Opinion 22 the duties and responsibilities of the French “greffier” and “assistant de justice” are intertwined. Some of the typical judicial assistants’ duties are in the hands of the “greffier” and some are in the hands of “assistant de justice” as it could be seen from the elaboration below.

### **Clerk – “Greffier” – Administrative Assistant**

The clerks in the French system, according to the terminology used by the CCJE, generally belong to the category of administrative assistants. They play a key role in the proper functioning of the administration of justice. They assist the magistrate and authenticate the jurisdictional acts. There are three key categories of clerks: Secrétaire Administrative, Adjoint Administrative, and Adjoint Technique.

#### Duties and responsibilities

The clerk is the procedural specialist and the guarantor of the authenticity of the acts. The clerk assists magistrates in their daily work. In general, the clerk is the essential link in the running of the justice system; responsible for recording cases, informing parties about the hearing and closing dates, preparing files for the magistrates, taking notes of proceedings, drafting minutes, formatting decisions etc.

The clerk acts as an intermediary between lawyers, public and magistrates. The clerk also informs, guides and accompanies the court users in the accomplishment of formalities or judicial procedures.

The clerk is present at all stages of a judicial proceeding and guarantees the authenticity of the judge’s decisions. For example, the clerk’s signature on a judgment is necessary for the judgement to be valid. Any judgment rendered in his absence may be annulled, for it would be null and void. The clerk also has a welcoming role. He/she is often the first interlocutor whom the citizen meet, when entering the Palace of Justice.

Though at a first glance it seems that the French clerks provide typical administrative work if their duties are compared with the competencies of judicial assistant defined by CCJE Opinion 22, it could be noted that some of the typical French clerks duties of a judicial assistant are: organizing papers for the magistrates, taking notes of proceedings, writing the official record of court hearings, however not the competencies regarding the authenticity of decisions.

Having in mind that the Portuguese judiciary is based on the French model, in terms of duties and responsibilities the judicial assistants from the highest rank or Clerk 1- Escrivão de direito/Técnico de justiça principal, like Greffier, have mainly administrative tasks. Though they have no responsibility with regard to the authentication of judicial decisions, they do have more responsibilities in some areas such as the witness inquiry, cost calculation etc. However, in many cases in Portugal some tasks that have been delegated by law to the judicial assistants (e.g. in the area of civil procedure) are not implemented properly. Some judges are reluctant to give up those tasks. On the one side they do not want to give up their “power” and on the other side they mistrust the judicial assistants level of competence and abilities to do the tasks with expected quality.

There are 4 categories of judicial clerks in the Portuguese judicial secretariat:

- Secretary of Justice – the highest rank of all clerks with some managerial tasks;
- Clerk 1- Escrivão de direito (highest rank);
- Clerk 2- Escrivão adjunto (middle rank);
- Clerk 3- Escrivão auxiliar (lowest/entry rank)
- 

And consequently, there are 4 categories of judicial clerks in the Portuguese prosecution office:

- Secretary of Prosecution – the highest rank of all clerks with some managerial tasks;
- Clerk 1- Técnico de justiça principal (highest rank);
- Clerk 2- Técnico de justiça adjunto (middle rank);
- Clerk 3- Técnico de justiça auxiliary (lowest/entry rank).

### Recruitment, career and status of the clerks

To become a clerk, one has to pass a public service competition. There are two types of competition: external and internal competition.

For an external competition a potential candidate is required to possess a diploma level bachelor plus 2 years practice, at least. For an internal competition the potential candidate has to be civil or public servant or public official, with 4 years of public service. The diploma may have been obtained in any area. Given the nature of the tests, law studies are recommended.

The two competitions follow almost the same procedure.

The competition consists of two written tests and one oral test: The written eligibility tests are as follows: drafting a briefing note based on documents relating to general legal or administrative issues to assess the candidate's aptitude for analysis and reasoning that lasts up to 4 hours. The second written test consists of two sets of questions. First series of questions include: two questions relating to the French administrative and judicial organization; second series include: two questions relating to the civil procedure and labour tribunal; - or two questions relating to the criminal procedure; - or a question relating to civil and commercial tribunal proceedings and a question concerning criminal procedure. This test takes up to 3 hours.

The oral test consists of an interview with the jury to assess the candidate's personal qualities, his/her potential, his/her behaviour put in a real/concrete situation, particularly in the form of a scenario. The interview begins with presentation by the

candidate of his background and his motivation to apply to the post. All the details about the competitions are clearly described and announced in due time.

Throughout clerk's career, a clerk can change his jurisdiction (high court, court of appeal, industrial tribunal, etc.). Since the latest statutory reform of 15 October 2015, one could say that clerk's career is introduced i.e. evolving to higher positions. Namely, the clerk of the senior rank can thus access jobs of functional clerks enabling him/her to exercise managerial functions as head of registry, deputy director of the registry, head of department, experts within specialized services in the handling of technical disputes or certain judicial proceedings. With four years of experience, he/she can also pass the internal competition to become the Director of Registry Services.

The clerks are civil servants and to them apply the rules and regulations applicable to civil service status. The remuneration of a clerk is € 1,610 net per month at the beginning of the career plus a quarterly bonus. It can reach € 2,580 net per month at the end of clerk's career.

The recruitment procedure for Portuguese judicial assistants is regulated in detail by legislation (Statute of Officials, 2019) and reassembles to the French recruitment model (or any other model for the recruitment procedure in the civil service) in terms of procedure but not in terms of authority. In Portugal the recruitments are administered by the Ministry of Justice. In practice, this rarely happens due to the decision currently in force for freezing employments in civil service. For every two vacant judicial assistant positions only one judicial assistant is hired.

As for the status, Portuguese judicial assistants are also civil servants, recruited by the Ministry of Justice and with no distinct institutionalised career development scheme. Their salary scale is very low, hence it has been frozen for almost five years now. Furthermore, there are inconsistencies in the salary scales for the same position between clerks in courts and clerks employed within the Ministry of Justice, which drives the best clerks to move from the courts to the Ministry.

The situation with the clerks in Portugal is quite difficult. They are frustrated and demotivated. Their demotivation most probably is derived from many years of neglect. The unregulated status of clerks, frozen salary range since 2015, forbidden new entries in the clerks' service, unfavourable working conditions, and unchanged duties and responsibilities are just few of the problems that need to be addressed as priority.

## Training

### *L'Ecolenationale des greffes (ENG) - The National School of Clerks*

The main goal of the National School of Clerks (ENG) is training clerks and chief clerks. ENG is also responsible for training secretaries and administrative assistants of the judicial services.

The staff of ENG, who are chief clerks and clerks, provide most of the teaching within the School. Given the specific nature of certain training courses, external speakers (magistrates, officials from the courts or the central administration, heads of organizations and private or public companies) also provide support. The School is built as a true professional training centre. Equipped with modern classrooms and two lecture labs, the school has more than 600 computer stations dedicated to pedagogy, a reprographic workshop and a library with some 5,000 books.

Near the city centre of Dijon, the school welcomes people for training in excellent conditions. As to accommodation, they benefit from studios for 1 or 2 people. A restaurant is also available, as it is a nursery that can accommodate children until the age of four. The School offers the courts an assistance service on the technical and legal aspects of the clerks' profession. At the end of the competition, those that pass the competition can benefit from a paid training of 18 months at ENG in Dijon. The training programme includes theoretical classes, scenarios and internships in the courts.

Similarly, like the DGAJ Training Centre in Portugal, both training institutions are specialized in training solely of the judicial staff members. They have been identified by legislation as unique training institutions dedicated for training of this specialized target group. This is understandable, having in mind a big number of judicial assistants (about 22000 in France and 8000 in Portugal). Both training institution are under the Ministry of Justice and are responsible for all clerks within the judiciary.

### *Initial training*

The initial training is entirely focused on preparing future clerks for their future job. It includes:

- Orientation internship at ENG: 1 week
- Orientation internship in jurisdictions: 2 weeks
- Schooling at ENG: 9 weeks
- Practical internship in jurisdictions: 28 weeks
- Advanced course of the future functions: 3 to 5 weeks
- In-depth study: 1 to 3 weeks
- Pre-assignment internship: last 6 months

When they join the School, the participants sign the commitment to complete four years as clerk in the service of the State.

### *The Continuous Training*

The specialization of clerks' professions and the evolution of the profession implies a growing complementarity between initial training and continuing training. The ENG also plays a central role in maintaining and developing the professionalism of judicial officials. The ENG thus proposes each year a national training plan, according to the needs identified by the judicial institution. The ongoing training program of ENG also relies on a decentralized system, organized under the responsibility of regional trainers. These are variations of actions carried out at the national level or regional courses to meet the specificity of local needs. These sessions can be organized in partnership with the National School of the Judiciary, the National School of Penitentiary Administration or the National School of Judicial Protection of Youth.

Constant efforts are made by the Portuguese Training Centre to increase the capacities of judicial clerks in the whole judiciary. Their number is quite big - about 8000 judicial clerks of different categories and they assist both judges and prosecutors (magistrates). They offer various trainings, but it seems that these trainings are too general and not sufficiently tailored to the local court environment.

## Judicial Assistant

In order to increase the quality and efficiency of the judicial activity, magistrates surround themselves with high-level legal professionals to whom they delegate a certain number of preparatory works. These professionals are called the "assistants de justice".

Under the category of "assistants de justice", the French system understands two types of assistants:

- assistant jurists = juristes assistants;
- legal assistants, in the strict sense = assistants de justice.

### Duties and Responsibilities

In terms of competencies there is no big difference among these two very similar categories. Of course, they might have different tasks but that also depends on the court they are working in, their contract and the magistrate they work for.

They contribute, through their expertise, to the legal analysis of technical files or working on cases involving elements of particular complexity submitted to them by the magistrates under whose responsibility they are placed. They do not participate in the procedure or the hearings. They do not attend deliberations. On the other hand, the assistants can be present at the hearing, for example to note the principal questions debated, but they do not intervene during the debates.

Legal assistants, are in most cases candidates for future judges, provide part-time support in a jurisdiction for preparatory work for judges' decisions.

The legal assistants provide support with the preparatory work usually done by magistrates. Their main tasks include research work, case-law analysis and writing case briefs or memos. They are also allowed to draft decisions, sometimes being responsible for drafting a complete draft judgment, at least for the simplest cases, guided by instructions of magistrates. Each court may lay down the specific rules applicable to the work of the assistants. However, they do not take any decision and they have no jurisdictional power.

It seems that the spirit of CCJE Opinion 22 is completely translated into French judicial system when it comes to preserving judicial independence in drafting judgements. Judges are the main figures in the judicial decision-making process.

### Recruitment, Career and Status

The profile of assistants in the French judiciary differs; some have previous professional experience which is necessary in the case of legal assistant. Legal assistants must hold a PhD in law or a diploma leading to a legal education of at least 5 years and must have 2 years of professional experience in the legal field. They can be hired on a full-time or part-time basis.

The judicial assistants are contracted for a period of two years, renewable twice, for a maximum duration of 6 years<sup>7</sup>. They are appointed by a decision of the chief of the court of appeal in one of the courts of the jurisdiction of the court of appeal. They have been introduced in 1995, and there are still dilemmas about the impact of their work due to the heavy turnover of judicial assistants.

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<sup>7</sup> For assistant lawyer 3-year contract renewable once and for justice assistant, 2-year contract, renewable twice.

The assistant jurists come under the authority of either the Chiefs of the Court of Cassation or the heads of the Court of Appeal or the High Court of Appeal in whose jurisdiction they are exercising. At the Court of Cassation, the assignment of the assistant jurist is appointed by the chiefs of the Court.

According to the Code for the Organization of the judiciary<sup>8</sup> assistant jurists are recruited by contract specifying in particular the effective date and duration, the nature of the duties performed, the conditions of remuneration, the assignment jurisdiction (s) and the organization of working time. If the interest of the service so requires, the latter may be modified during the implementation of the contract. The contract begins with a trial period and may be terminated during or at the end of the trial period without notice or compensation. Before the end of the term, the contract may be terminated by the heads of the Court of Cassation, the Court of Appeal or the High Court of Appeal if *“In the performance of his duties, the assistant jurist may not receive or request instructions other than those of the magistrate (s) under whose direction he is placed”*.

Assistant jurists receive training organised either by the Court of Cassation, the High Court of Appeal or the Regional Administrative Service of the Court of Appeal in whose jurisdiction they are assigned.

Before taking up their duty, the assistant jurists take the same oath, before the Court of Cassation, the Court of Appeal or the High Court of Appeal.

They are not civil nor public servants, they work on contractual bases for a maximum of 6 years. They are paid by the State, Ministry of Justice. Their remuneration varies according to the type of recruitment: assistant jurists receive a monthly salary as contract agents of the State and the legal assistants receive an hourly compensation fixed by order. In both cases, the remuneration is much lower than the one of the judges.

This category of judicial servants is not available in the Portuguese judicial system. Therefore, often some of the judicial tasks typical for a judicial assistant are delegated by a judge to the judicial clerks assisting them. However, this solely depends on the will of an individual judge.

#### Organisation of clerks

Both the clerks and the two categories of judicial assistants exercise their functions in the district courts, high courts, the courts of appeal, the Court of Cassation or at the National School of the Judiciary. They are assigned to an individual magistrate and act under the authority and responsibility of the magistrates.

The ratio of non-judge staff per judge is 3.25 according to the latest data available from the CEPEJ data base (2016). More precisely, there are 22712 non-judge staff in France in relation to 6995 judges which leads to approximately 3.25 non-judge staff per one judge (in 2010 the same source states that there were 3.04 non-judges per judge and in 2014 3.22 non-judges staff per judge in France). According to these data in France there is a constant trend of increasing the number of judicial assistants.

Judicial assistants, the same as clerks, are subject to professional secrecy. They take an oath and are bound to secrecy information about judicial cases of which they would be aware during their work in the courts, prior their engagement, no matter if it is a short term or long-term engagement.

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<sup>8</sup> Last amendment 13.11.2019



*" I swear to keep the secret information on judicial cases as well as on the acts of the public prosecutor's office and the investigating and judging courts, of which I will have become aware during my work in the courts. "*

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The challenges of the French judicial assistant system lay in the high turnover rate of judicial staff. Judicial assistants are considered as valuable collaborators to judges. They appreciate the diversity of the tasks entrusted to them, the relationship of trust they establish with the magistrate and the experience they acquire. However, the high turnover rate of judicial assistants, who quickly terminate their contracts either because they have found lasting employment in the public service or the private sector is problematic. Judges consider it regrettable to have to constantly devote time and efforts to the training of assistants. Furthermore, the process of hiring judicial assistants is criticised as being not sufficiently transparent. At the same time, judicial assistants are worried about their precarious status, especially the inability to extend their contracts beyond four years, as well as the scale of their remuneration.

## II. Slovenia

Slovenian judges are supported in their work by both administrative assistants and judicial assistants. In the last years the judicial system in Slovenia was facing serious problems with the court backlogs as well as the high ratio of judges per capita. One of the priorities within the judicial reform therefore was to reduce the number of judges and increase the number of supporting personnel. However not only the number of judicial staff but also their duties and responsibilities needed to be revisited. The main objective was and still is to reduce the non-judicial tasks that are entrusted to judges by assigning them to judicial assistants and other court personnel.

The first measures taken were with an aim to transfer to the judicial assistants the judicial tasks and consequently to relief judges from the tasks that do not include judicial decision making. For example, in case of non-judicial decisions the judicial assistants are tasked with preparing non-judicial decisions e.g. on procedural issues such as court fees, bringing this task at the lowest level of competence possible. This enables judges to focus on decision making which can lead to better quality of judicial decisions and also enables the system to be more cost-efficient.

### Duties and Responsibilities

#### Administrative assistants

Administrative assistants in the Slovenian judicial system mainly provide judges with the administrative support. The most typical tasks are related to the case file preparation and assistance provided during the hearing. Furthermore, they also perform duties such as: writing protocols in hearings; correspondence with parties; preparing the official copies of decisions, preparing decisions for publication; collecting statistical data and alike. In this analysis, as mentioned earlier, the focus is put on judicial assistants, as defined by CCJE Opinion 22, or assistants that are supporting the work of judges.

#### Judicial Assistants

The Slovenian judicial system recognizes two sub-categories: judicial assistant (sodniškipomočnik) and judicial adviser (strokovnisodelavec<sup>9</sup>).

Furthermore, there are three posts/grades of judicial assistants according to Article 53 of the Court's Act<sup>10</sup> and they are: judicial assistants, independent judicial assistants and senior judicial assistants. The judicial advisers have two grades: judicial advisers and senior judicial advisers.

Judicial assistants record pleadings and statements of the parties and, upon the order of the judge, perform less demanding work in connection with the preparation for the main hearing or for other acts in the procedure, prepare cost calculation, draft decisions and perform other work<sup>11</sup> in the judicial process following the order of the judge.

<sup>9</sup>they have to have master's degree of law and State bar exam. They are actually main candidates for future judges

<sup>10</sup>"In order to perform legal work, the court has the necessary number of judicial assistants, independent judicial assistants and senior judicial assistants. Judicial Assistant is a clerk, a judicial assistant, an independent advisor in a clerk's office, and a senior advisor in a senior clerk's position." Para 1 Art. 43, Court's Act

<sup>11</sup>Civil Procedure Act

Art. 15/3: "In civil proceedings, judicial assistants may perform only such procedural acts as are specified by the statute."

Art. 163/4:"The decree on refund of costs of the proceeding may be issued by a judicial assistant."

Art. 270:(1) At all times during the preparations until the main hearing is opened the presiding judge shall have power to decide:

1. on entry of a predecessor in the litigation;
2. on intervention;

On the other side independent judicial assistants and senior judicial assistants shall:

- conduct proceedings and decide cases in the court registry,
- conduct enforcement proceedings and issue decisions authorizing enforcement for the recovery of monetary claims,
- decisions authorizing enforcement on the basis of authentic documents, and decisions and orders on advances,
- securities and costs of proceedings, and on court fees,
- decide at the first instance on entries that are not decided by an individual judge of the land registry;
- keep the records in the land registry according to the law governing the land registry, and
- decide on inheritance cases of lawful inheritance in which only movable property is the subject of inheritance and
- other tasks defined by law.

In the period of 2006-2012 in Slovenia judicial assistants were also employed to help reduce the courts' backlogs through short term employments in the framework of the national project "The Lukenda Project - Elimination of Court Backlogs". Furthermore, judicial assistants also conduct legal research, draft memos with a summary of the facts of a case and the relevant law and a suggestion of the judicial assistant how the case should be decided; they discuss the case with the judge and draft complete judgments. Judicial assistants also draft procedural decisions for appointing an expert or deciding on costs of proceedings as explained latter. They also draft press releases or summary of judgments that need to be published.

It should also be noted that an appeal against a decision made by an independent judicial assistant or a senior judicial assistant is always a legal remedy. The remedy shall be decided by a judge of the same court.

One of the challenges that the judiciary is faced with is the division of duties between judicial assistants and other administrative personnel, especially judicial advisers. In 2004, a new civil service post of a justice adviser was introduced (similar to "Rechtspfleger" <sup>12</sup>), while at the same time judicial assistants gained new duties such as to conduct hearings under the guidance of a judge and perform other work by order of a judge.

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- 3. on securing of evidence;
  - 4. on amendment of action;
  - 5. on discontinuation of the proceedings due to withdrawal of action;
  - 6. on suspension and stay of the proceedings;
  - 7. on interlocutory injunctions;
  - 8. on joinder and severance of claims;
  - 9. on determination and prolongation of time periods specified by the court;
  - 10. on fixing and adjournment of hearings;
  - 11. on reinstatement due to delays;
  - 12. on exemption of a party from payment of the costs of proceedings;
  - 13. on security for costs of proceedings;
  - 14. on advancement for costs of specific acts of procedure;
  - 15. on appointment of an expert;
  - 16. on appointment of a representative ad litem;
  - 17. on service of process;
  - 18. on measures for correction of pleadings;
  - 19. on validity of power of attorney;
  - 20. on all other issues referring to the direction of the proceedings.

(2) Acts referred to in clauses 3, 9, 10, 12, 13, 14, 15, 16, 17 and 18 may be performed by a judicial assistant.

<sup>12</sup> Definition CEPEJ – COE- "the "Rechtspfleger" function, which is inspired by the Austrian and German systems, is, according to the European Union of *Rechtspfleger* (EUR), an independent judicial body, anchored in the constitution and performing the tasks assigned to it by law; the *Rechtspfleger* does not assist the judge, but works alongside the latter and may carry out various legal tasks, for example in the areas of family or succession law; he/she also has the competence to make judicial decisions independently on the granting of nationality, payment orders, execution of court decisions, auctions of immovable goods, criminal cases, and enforcement of judgments in criminal matters; he/she is finally competent to undertake administrative judicial tasks. The *Rechtspfleger*, to a certain extent, falls between judges and non-judge staff, such as registrars;"

Judicial advisers perform a wide range of tasks, which differ to some degree depending on the court or court division. According para 2 Article 54 of the Court's Act "(2) *Judicial adviser, in particular cases outside hearings, shall perform work connected with the hearing of parties, witnesses and experts, perform more complex preparatory work for hearings, report at panel meetings, draft decisions, conduct hearings under the guidance of a judge and perform other work by order of a judge.*"

Judicial advisers can autonomously conduct hearings and decide simple cases concerning enforcement, or simple commercial or criminal cases. However, a judge has to approve the decision. In cases concerning enforcement judicial assistants also have some autonomous competence given by the law and their decisions can be subject to appeal.<sup>13</sup>

As elaborated above, the judicial assistants in Slovenian judicial system have a wide range of duties, from very routine tasks, such as working out the costs of proceedings, to highly intellectual tasks as research and drafting of the complete reasoning of the judgment. Finally, judges take the final decision and also bear the responsibility for the decision made. In practice, the duties of judicial assistants vary per court. Moreover, it can be argued that the duties of judicial assistants are heavily influenced by factors such as their knowledge and experience. More knowledgeable and more experienced judicial assistants receive more complex tasks. The level of trust established between the judicial assistant and the judge is equally important.

### **Pre-trial stage**

Judicial assistants in first-instance courts have an important role in the pre-trial stage. Some courts have a special "triage office" composed of a triage judge, judicial and administrative assistants.

The triage office reacts as soon as a new case is filed with the court, analyses the case and adopts all necessary procedural decisions such as decisions for court fees, incomplete applications etc. All required drafts procedural decisions are prepared by judicial assistants. Triage judge gives the final approval of the decision as/when required by law.

The cases that are not resolved by the triage office are distributed to judges to decide upon the merits of the case. This proved to be an efficient way to disburden judges of tasks that are not real judicial decision-making tasks.

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<sup>13</sup>Claim Enforcement and Security Act

Art. 6:

(2) Legal secretaries and judicial assistants may do the following:

- conduct enforcement proceedings and decide on enforcement proposals for recovery of monetary claims, proposals for the recovery of monetary claims by means of other or additional instruments or objects of enforcement;

- issue decisions and orders on advance payments, caution monies, legal costs, court fees, termination of proceedings and other interim procedural decisions;

- perform specific activities outside the hearing and

- carry out specific actions outside the hearing and also decide on objections to enforcement orders on the basis of authentic instruments.

(3) Judicial assistants may decide in enforcement proceedings on the basis of an authentic document and executive instrument on the following matters:

- appeals lodged after expiry of the time limit;

- third party appeals;

- objections to a decision to continue enforcement with a new creditor or debtor

- objections to a decision to continue enforcement with a new creditor or debtor;

- applications to suspend enforcement;

- invalidation of certificates of finality and enforceability;

- requests for remedying irregularities in the enforcement action;

- motion for restitution;

- requests for calculating remuneration and reimbursement of expenses to bailiffs; and

- requests for calculation of the claim and distribution of purchase monies received for the property sold to creditors.

(4) Judicial assistants may conduct hearings on the order of a judge, except hearings for a public auction."

Judicial assistants also prepare decisions on all procedural issues such as appointing an expert or deciding on costs of proceedings. Some decisions can be made autonomously by a judicial assistant, but the majority of decisions have to be approved and signed by a judge as already stated above.

### **Hearing**

At some first instance courts judicial assistants examine witnesses outside the main hearings, that is a case mostly in criminal proceedings and they can also conduct the main hearings usually in inheritance proceedings, simple criminal cases and simple commercial cases<sup>14</sup>. The idea behind this is that easier cases are conducted by the judicial assistants under supervision of a judge, who also approves the final decision. As mentioned, in some first instance courts judicial assistants can also conduct main hearings under supervision of a judge. When they do so they have the same duties/rights as judges.

At the high courts and the Supreme Court judicial assistants' main duties are legal research and preparing a reasoning of a judgment.

### **Deliberations**

In the high courts and in the Supreme Court judicial assistants are present during deliberations. They usually present the case to the panel/senate of judges by stating the facts of the case, key issues and proposing a decision. The presentation of the case is followed by a discussion, in which judges weigh the options and confront their arguments. They may invite the judicial assistant to participate in the debate, while the final decision is made by the panel of judges.

### **Drafting judgment**

The steps of the drafting process for judicial assistant are not laid down in legislation. However, usually in practice judicial assistant studies the case and conducts case-law analysis. Sometimes a written report on the case at hand is prepared for respective judge in which the assistant elaborates the arguments of the parties and pertinent legal issues. Assistant can also discuss key issues with the judge who also provides guidelines as to the reasoning of a judgment. The judicial assistant finally prepares parts of the draft judgment or completes the whole judgment. The draft judgement is then proof-read and edited by the judge on the case.

The judicial assistants work at courts mainly because they want to proceed their careers as a judge and are interested in duties that are closer to decision-making process (drafting decisions, conducting hearings), and less for other duties for which they are also overqualified.

In this way the judicial assistants contribute to the quality of the judicial decisions. Moreover, judicial assistants are often seen as candidates for future judges. Consequently, working as a judicial assistant enables candidates to gain valuable

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<sup>14</sup>Financial Operations, Insolvency Proceedings and Compulsory Dissolution Act  
Art. 53:

"(3) An independent judicial assistant and judicial adviser may independently decide on all issues within bankruptcy proceedings, exception the following:

1. the commencement and conclusion of the proceedings,
2. interim decisions,
3. testing of claims,
4. disposal of assets the value of which exceeds EUR 100,000,
5. distribution of the bankrupt's estate, and
6. issues in debt-write-off proceedings.

(4) An objection may be lodged against the decision of the independent judicial assistant and judicial adviser."

experience in this field. And this experience although not requested as mandatory experience is most valued and practiced for becoming a judge or a prosecutor.

### Organisation of judicial assistants

Judges are supported by judicial assistants at all courts, first and second instance courts, the Supreme Court, as well as the Constitutional Court, though their categories and duties might vary as a result on the court level.

Some courts have panels of professional and lay judges as it is the case in labour and social courts, district criminal courts. However, in those courts lay judges are not supported by judicial assistants. Some judicial assistants also work in supporting services, such as public relations, human resources, service for free legal aid, court management, etc.

Having in mind the very small number of judicial assistants, they could not be assigned to one judge individually. Judicial assistants are usually assigned by heads of department. They are usually organized as a pool of assistants and assigned to a panel of judges. The current judicial assistants per judge ratio in local courts is 0,51 assistant per judge, in district courts 0,81, in high courts 0,52. On the other hand in the Supreme Court the ration is 1,47, meaning that each judge has one and some even two judicial assistants. The current non-judge staff per judge ratio is 3,67, while the current judicial assistants per judge ratio is 0,66.<sup>15</sup>

From the three countries presented in this analysis, Slovenian ratio of the non-judge staff per judge is the highest, 3.67 non-judge staff per one judge. On the other side the ratio between the non-judge staff per judge in the Portuguese judicial system is quite high, with 4.33 non-judge staff per judge<sup>16</sup>

### Recruitment, Status and Career

All judicial assistants have a law degree and have passed a lawyer's state exam. Judicial assistants are required to have at least two years of legal work experience. They can have different legal experience as lawyers, trainees, judicial trainees etc.

The recruitment procedure is in the hands of the judiciary namely in the hands of the court which recruits the judicial assistant. The recruitment procedure follows a usual process of hiring in the public sector. Candidates are selected through an interview accompanied by practical tests, organised by a respective court president or by a recruitment commission.

The law governing the position of the civil servants applies *mutatis mutandis* to the judicial assistant posts in terms to the conditions for appointment, salary scale, promotion and evaluation.

There is an internal staff mobilisation. Judicial assistants are often internally transferred to another court, usually from lower instance courts to high courts or the Supreme Court, which are also considered as promotions in the career of a judicial

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<sup>15</sup> This indicator includes all support personnel: administrative assistants (typists, registrars, judicial advisors), technical assistants (human resources management, finance, accountant etc.), technical staff (IT staff, cleaners etc.) and judicial assistants. Source: the Supreme Court of Slovenia

<sup>16</sup> Although in Portugal non-judge staff supporting judges and prosecutors is the same, here the separation is made only for comparative purposes.

assistant. Sometimes judicial assistants are selected from the pool of judicial trainees that passed the lawyer's state exam.

In the past, working as a judicial assistant was seen as a starting point for a judicial career. It was a short-term job, usually lasting a few years, until the judicial assistant fulfilled qualifications for a judge. Though working as judicial assistant is not a necessary part of the legal education in Slovenia, neither a prerequisite for becoming a judge, still, the majority of newly selected judges come from the pool of judicial assistants.

However, having in mind that the number of judges needs to be decreased further<sup>17</sup>, presently there are rare openings for a judge position. For example, in 2016 there were 23 vacant positions, in 2017 there were 28 vacant positions<sup>18</sup>. Consequently, the transition to a judge's career became quite difficult and the judicial assistant' career is nowadays becoming a reality.

The promotions are possible in salary grade and title, every three years. It is also possible to be transferred to the civil service post of justice councillor II and justice councillor I. There are also internal transfers from lower to high courts or the Supreme court which are also seen as career promotions, although if keeping the same grade, the salary might remain the same. While most of judicial assistants are employed on indefinite contractual bases, working as a judicial assistant is not yet perceived as a permanent career. This frequent turnover of staff is seen as problematic, the court is lacking skilled staff and valuable resources on training and coaching. This non-existent career system forces most of the judicial assistants after gaining sufficient legal experience to leave the judicial service for better job opportunities as lawyers, prosecutors or state attorneys.

There are no special rules concerning the independence and impartiality of judicial assistants. However, states that the provisions on disqualification of a judge and lay judge shall apply, as appropriate, also to the challenging of judicial assistants. The motion for disqualification of a judicial assistant shall be decided upon by the judge. A relationship between a judge and a judicial assistant is a very personal one. It is based on mutual trust and respect, competence, loyalty, discretion and confidentiality. There are no regulations governing the relation between a judge and a judicial assistant.

All judicial assistants are part of the public sector in general, which means they are civil servants and to them apply regulation regarding civil service. The same as in the Netherlands and France judicial assistant are part of the civil service though Slovenian judicial assistants do not swear an oath nor wear gowns like. Judicial assistants fall under three civil service categories: senior justice adviser, justice councillor II and justice councillor I. The difference among these categories is the level of difficulty of the tasks entrusted to them and the required level of experience<sup>19</sup>.

The vast majority of judicial assistants perform their duties in civil service posts as senior justice advisers. The remuneration varies from about 1700 Euros (for a first salary grade for a senior justice adviser) to 3600 Euros (for a highest salary grade for a Justice Councillor I). The proportion between the salaries of judges and assistants depends on the position of the judicial assistant and judge as well as the number of their promotions. For example, the proportion between the salaries of a local court

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<sup>17</sup> Slovenia has the highest ratio of judges per capita

<sup>18</sup>Source: the Supreme Court of Slovenia Annual Report 2017

<sup>19</sup>Two years for senior justice adviser, 6 years for justice councillor II and 7 years for justice councillor I

judge and a senior justice adviser (both in min. salary grades) is 1 : 1,5, while the difference in salary of a senior justice adviser in max. salary grade and a local court judge in min. salary grade is just 102,91 EUR. The proportion between the salaries of a judge and senior justice adviser (in min. salary grades) is the highest at the Supreme Court, namely 1 : 2,6.

Furthermore, it is debated whether working as a judicial assistant should become a permanent career with proper opportunities for advancement (e.g. from lower instance courts to high courts/the Supreme court and to more demanding posts).

### Training

The Judicial Training Centre (JTC) is responsible for the continuous training of judges, state prosecutors, state attorneys as well as for training of other court personnel. The JTC is under the umbrella of the Ministry of Justice and has a big portfolio.

The training is performed mainly in the form of lectures, seminars and workshops. JTC also implements bar examinations, examinations for court interpreters, court experts, appraisers and others whose work is closely related to judicial system.

As for the initial training, there is no fixed initial training curricula offered to the newly employed court staff. Courses and modules that are part of the annual continuous professional development programme are open to all court staff, consequently to the new court personnel. The main training is taking place during the traineeship of a trainee for a judge or in the course of work in a form of on-the-job training. A traineeship for a judicial assistant lasts nine months and a traineeship for an independent judicial assistant - one year. It is implemented in the courts that have the status of county and district courts.

The trainee is formally employed in a court following the procedure for appointment for the position of a civil servant. The total number of traineeships for judicial assistants and independent judicial assistants is determined annually by the Minister of Justice, based on the identified staffing needs previously obtained from the presidents of the county and district courts. The state exam for judicial assistant is done after the traineeship is completed.

The assistant judge or the independent judge assistant is obliged to remain in the employment relationship with the court for at least 9 months for assistant judge and 12 months for independent judge assistant according to the duration of their traineeship, unless that is not possible for reasons on the court's side. If the judicial assistant or the independent judicial assistant does not want to stay employed in court after passing the exam, he/she shall be obliged to reimburse the education costs in the amount of salaries and other remuneration during the traineeship.

The Slovenian model of training institution is the most similar to the Portuguese DGAJ Training Centre. The difference is with regard to the portfolio. While the Slovenian JTC embraces all the members of the judiciary, DGAJ Training Centre is focused solely on the court administration.

In terms of initial training one could also say that there are some similarities in the schooling part hence there are no standard initial training curricula for the schooling part. However, in terms of initial training court practice the Slovenian system requires traineeship of 9-12 months. Furthermore, the traineeship is focused on preparing



judicial assistants to become judges. At the same time, in the Portuguese system there is no fixed duration for the internship part yet. The training happens after the appointment in a form of on-the-job training and the schooling part organized by the DGAJ Training Centre lasts 4-5 days, for the candidates with general educational background. There is a plan to increase the initial training, however having in mind scarce resources of the Centre, this might not be feasible in the near future.

The status of the DGAJ Training Centre is the same as Slovenian JTC under the Ministry of Justice. Training of Magistrates is under the Centro De Estudos Judiciarios (CEJ) which is an independent institution. A merger with the CEJ is not envisaged as a possibility, nor cooperation between the two centres is practiced in terms of joint trainings. This distance is replicated from the CEJ towards judges and prosecutors and judiciary as a whole and the relations between the judicial staff and magistrates are made further distant. Therefore, judges are even more reluctant to transfer pure administrative task to clerks, because of this persistent mistrust.

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The duties of judicial assistants related to the decision-making process are very actual and debated in light of the legitimacy of their involvement in judicial decision-making process. There is an increasing reliance on judicial assistants in Slovenian courts and therefore the fear that their work can affect judicial decision-making is justified especially bearing in mind that the key judicial assistants' tasks are legal research and case-law analysis as well as drafting judgments. The law appoints judges with the responsibility to adjudicate, and their independence and impartiality in decision making is safeguarded by law. Consequently, people expect that judicial decisions are taken under their sole authority. When it turns out that judicial assistants are regularly highly involved in the decision-making, this raises questions about the legitimacy of their involvement in this process. Ideally, a judge and a judicial assistant in the workplace should work together and the judge should not become someone who just edits the judicial assistant's draft. In Slovenia, most judges only limitedly rely on the advice of assistants and they are largely personally in control of the decision-making as stated in the reply to the questionnaire for the preparation of the CCJE Opinion 22. But this rule is not without exceptions, like anywhere else in Europe where these competencies are in the hands of judicial assistants the possibilities of judicial assistants' influence in the judicial decision-making process exist.

### III. The Netherlands

Different types/categories of judicial assistants are part of the Dutch judiciary. The Dutch judiciary has a long-standing tradition of hiring court clerks. However, the roles of these different judicial assistants present in the judiciary today, differ significantly. The Netherlands is divided into 5 courts of appeal and 19 district court jurisdiction areas. The district court generally consists of a subdistrict sector, a criminal law sector, a civil/family law sector, and an administrative law sector. One has to note that judicial assistant models at the criminal and the civil Courts of Appeal are in many ways rather similar to the models at trial courts. On the other hand, the administrative Courts of Appeal and the Dutch Supreme Court are organised fairly differently and therefore the role of the assistants there differ. Therefore, in this study the most common ones, primarily judicial staff who are appointed to trial courts or “juridisch medewerker” are presented.

The Dutch judiciary system is based on the French model, consequently, the court clerk<sup>20</sup> position was the main way towards becoming a judge. To become judges, newly graduated lawyers were appointed to the clerking positions first. This was not a precondition, however the most common path of becoming a judge. After a few years of practice in the courts, they were becoming judges. This practice changed in 1957, when a special internal training to become a judge was introduced. With the introduction of this new judicial initial training, judicial assistants evolved into a separate position for which a law degree was no longer required. The judicial assistants developed from performers of purely administrative tasks, to court secretaries with more complex duties and responsibilities by attending a special training. In 1960-1980, judicial assistants functioned separately from judges with little social interaction between the two positions.

The duties of assistants have become more challenging and opportunities to enter judicial profession as a judge significantly reduced. As a result, the judicial assistant positions have become popular among law school graduates. Although the minimum educational requirement for new judicial assistants is a degree from an institute of higher professional education, still most of the applicants to judicial assistant positions possess a law degree. Bearing in mind that the career perspectives in the judiciary are limited, various judicial assistants only work at the court at the beginning of their career to gain necessary legal experience.

In the Netherlands judges are supported by two categories of judicial assistants:

- assistants with purely administrative and secretarial tasks, which are mostly supporting the judge with administrative tasks and preparation of cases, so the judge can focus on preparing for the hearing and revising the judgment;
- and assistants with advisory and decision-making duties, which are directly involved the content of the judicial decision-making.

Not many European countries regulate the judicial assistants' position, as also stated in CCJE Opinion 22. Correspondingly, Dutch legislation only regulates the judicial assistants' function as recorders at hearings and emphasizes their administrative duties. Furthermore, the “Judiciary Organization Act” (2008) has several provisions for judicial assistants. Firstly, Article 13 asks judicial assistants “*not divulge information which comes to their attention in the course of their work and which they know – or can reasonably be expected to know – to be of a confidential nature, except in so far*

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<sup>20</sup>The profession of a “griffier”-register, dates back to Napoleonic times, when the Netherlands adopted the French legal system.

as they are legally obliged to communicate it or their position makes it necessary for them to communicate it.” Secondly, Article 14 of the same Act elaborates that judicial assistants should be appointed by the management board of a court to perform duties prescribed by the statute and are required to take an oath prior to their appointment. No other issues about judicial assistants are codified.

As for the secondary legislation, two documents define the duties of judicial assistants. In 2005, the organization of the judiciary was altered which re-distributed the workload between judges and assistants. In 2007, job descriptions for judicial assistants were introduced which define the key duties and competencies of judicial assistants. The new financing structure also inspired several courts to create additional guidelines that delineate the division of labour and the time spent on cases by regulating the competencies of the judicial assistants on a court level.

It should also be noted that the code of judicial conduct of the Dutch Council for the Judiciary (2010) is *mutatis mutandis* applicable to judicial assistants. This code emphasizes the values independence, impartiality, integrity and professionalism within judiciary.

### Organisation of judicial assistants

According to “Judiciary Organisation Act”, the Council of the Judiciary (centralised body responsible for organization of the judiciary), is among other also responsible for the recruitment selection and training of the court staff.

“The Council is responsible for:

- a) preparing the budget for the Council and the courts jointly;
- b) allocating budgets from the central government budget to the courts;
- c) supporting operations at the courts;
- d) supervising the implementation of the budget by the courts;
- e) supervising operations at the courts;
- f) ***nationwide activities relating to the recruitment, selection, appointment and training of court staff.*** “

However, also according to article 114 para 4, “*The management board of a court may appoint as an external clerk of the court/registrars persons other than judicial officers responsible for the administration of justice, court officials, trainee judicial officers and court legal assistants. They may be called upon in this capacity by the management board to perform duties with which the clerk of the court/registrars is charged by or pursuant to statute. Paragraph 3, second sentence, applies mutatis mutandis. Before being called upon for the first time they must take an oath or make an affirmation in the presence of the management board. The wording of the oath or affirmation must be adopted – and further rules about their swearing-in may be laid down – by or pursuant to order in council. They receive a fee set in accordance with rules to be laid down by or pursuant to order in council.*”

The judicial assistants in the Netherlands are not assigned to a particular judge; they are part of a pool of assistants on a court level. They are assigned to a team of judges in a specific field of law. Instead, they are associated with specific cases with which they assist the judges from the beginning up to the writing of the judgment.

The ratio of judicial assistants to judges is approximately 1,5 - 2 judicial assistants per judge in one team. The court, in which a judicial assistant works, pays their salaries, having in mind the new public management approach in the Netherlands.

The ratio of judges to assistants varies marginally between different courts and court divisions. From the latest data available from the COE CEPEJ<sup>21</sup> data base (2016) there are 7317 non judge staff in the Netherlands. The number of judges for the same year is 2331 judges which leads to approximately 3.14 non-judge staff per one judge (in 2012 the same source states that there were 2.59 non-judges per judge and in 2014 3.15 non-judges staff per judges in the Netherlands) One could conclude, that the relation regarding the numbers of judges and non-judge staff remains quite stable in the last 10 years.

Trial courts employ slightly more judicial assistants than Courts of Appeal; on average 1.3 assistants per judge in the year 2013. Civil and criminal Courts of Appeal employ 0.8 assistant per judge, according to a dataset provided by the Dutch Council for the Judiciary. <sup>22</sup>This number includes only staff members who assist judges in the judicial content of their work. Assistants who perform administrative duties are excluded, from this but included in the overall calculation of non-judge staff mentioned above in the text.

### Duties and Responsibilities

One of the main characteristics of the Dutch judicial assistants at trial courts is that they perform duties at all stages of the judicial process. Originally, their primarily duty was to record the court hearings and they still conduct this duty. However, generally speaking, judicial assistants perform different duties in different courts, subject to the case and the judge involved.

In certain divisions a judicial assistant is the first one to prepare a case. They put tags on important pages, write a memo that includes facts, summary of standpoints of all parties involved, relevant law, decisions by other courts (case-law), suggestion of how the case should be decided, suggestion for questions that could be asked at the hearing. The judicial assistants take part in the deliberations. If need be, they also discuss the case with a judge prior to the hearing. Often times they also discuss any major changes between the draft and the final judgment.

They are also involved in drafting complete judgments, in cases in which a hearing has been held but also in cases that are dealt without an oral hearing. They also are involved in proofreading of decisions, including discussing certain points with the judge.

Below there is a description of some typical specific tasks of judicial assistants according to the stages of the judicial process.

### **Pre-trial stage**

Judicial assistants regularly play an important role in the phase prior to the hearing. Their key task is to prepare a document called “memo”. Dependent on the field of law their input is less frequent in civil cases, while in administrative law cases they almost always draft memos with a summary of the facts of a case and the relevant law, but

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<sup>21</sup> COE CEPEJ – Council of Europe European Commission for the Efficiency of Justice

<sup>22</sup>Source: Netherlands answers to the questionnaire for the preparation of the CCJE Opinion 22.

not including a suggestion if a case should be accepted for appeal or constitutional review. This stage includes legal research work. Ideally, this memo summarizes all important information in one case, such as the facts, legal questions, and relevant law. At times, the document also includes relevant case law and a preliminary view on the merits of the case. The memo can function as a basis for discussion at the later stage during deliberations. These memos sometimes reveal the views of the judicial assistants, but more often, these documents are primarily neutral summaries of the case files.

They are responsible for all the correspondence, they contact parties, by telephone or they draft letters, when a case is not complete or to inform parties if they should prepare for certain questions on formalities of the case.

Judicial assistants also make some preliminary procedural decisions. In those cases where procedural decisions have to be made prior to a hearing, (as in some administrative cases) the issue if a case should be handled without a hearing or whether a case is assigned to one judge or a panel, the preliminary decisions are made by the judicial assistants under guidance of a judge.

### **The hearing**

Judicial assistants are present during hearings. Their duties consist primarily of making court record and providing administrative assistance. They take notes, not word for word, but the essence of what's being said. It is a combined responsibility of the judicial assistant and the judge to provide a correct transcript of the hearing. This task requires significant judicial knowledge, as the assistant has to decide what statements are relevant to the case at hand.

Judicial assistants' involvement may influence what occurs during the hearings. It's getting more and more common for judicial assistants to actually ask questions, especially when there's only one judge presiding over the case and mostly in administrative cases. Judges are cautious about the involvement of assistants during the hearing. Some assistants are also satisfied with a more limited role during the hearings.

They also keep an eye on their memo to check if all the important questions are being asked. During the hearing, the judicial assistants also regard it as their duty to monitor whether the judges apply the procedural rules correctly. If they spot an error, they may subtly point this out to the judge.

One of the reasons why judges and assistants often have complex relationships, is the fact that the regulation about the proper contribution of the assistants to the hearings are ambiguous and frequently unclear to assistants and judges. This opens the door for various executions and practices.

### **Deliberations**

The greatest amount of dialogue regarding cases happens during deliberations. Nowadays is regarded as normal that judicial assistants participate in the deliberation process, although they do not have an official vote during deliberations. Unlike judicial assistants in many other (particularly common law) judiciaries, Dutch judicial assistants are present during deliberations. In administrative law cases, single sitting judges regularly plan a meeting to discuss a case solely with the assistant.

Moreover, most judges and assistants regard it as a duty of assistants to contribute to the discussion. As deliberations essentially consist of an exchange of arguments, a well-presented argument by the assistant can influence the decision-making. Particularly when judges are unsure how to deal with a certain issue or disagree with each other, the views and arguments of assistants can and do steer the decisions that are made. Especially in panels with less-experienced judges, the contribution of certain highly respected judicial assistants can be crucial.

Because judicial assistants do not have an official vote during deliberations, it remains unclear what is precisely expected of them in the process of discussing cases and reaching decisions. This lack of clarity on their required level of participation in deliberation and the boundaries of their involvement makes them hesitant to reveal their views and to participate in deliberations. In addition, some judges do not provide assistants with opportunities to become involved in the discussion.

The reason more of attending deliberations is also to collect information for writing the draft-judgment. This is even stipulated in the function-profiles of some courts. However, as stated earlier judicial assistants do not participate in the discussions at all times.

### **Drafting the judgment**

In certain court divisions judgments are still completely written by judges, but in most cases, assistants produce a first draft of judgments. These drafts can then be adjusted by the judges as they see fit. This is likely to increase the productivity of the courts. Assistants are often allowed a large amount of autonomy in writing judgments.

The judge and judicial assistant deliberate about the outcome of a case. That can be an extensive deliberation (especially when three judges preside over a case), but it can be as short as: draft the judgment along the lines of the memo written previously by the assistant. As the decision is normally already made during deliberations, assistants mostly wield influence on the reasoning behind a decision. It is expected of judicial assistants to stay critical when writing a draft judgment.

When the involvement of judicial assistants goes beyond the legal reasoning, in that case the writing of the draft judgment results in reassessing certain parts of a judgment or sometimes in altering the judicial decision. In some cases, judges leave very little room for assistants' contributions. This is particularly the situation when judges heavily alter draft judgments to precisely resemble their own views. While the altering occasionally involves the key elements of the judgment, it mostly is in regard to less important elements, such as the choice of words. Substantial alterations of draft judgments predominantly occur when judges feel that the performance of assistants falls short. However, in most of the cases this seems to be related to the character of the judges.

### **Administrative tasks**

In addition to tasks mentioned above, judicial assistants may also perform administrative duties such as: writing protocols in hearings (as mentioned in the stage of hearings); organisation of files in case when it comes to preparing the case and doing a final check to see if all the necessary documents are available. Also, when it comes to making sure that all judges receive a copy of the case file (there is only one case file, so the judicial assistants are responsible for providing copies when three

judges are presiding over a case) and correspondence with parties in case when it comes to drafting letters that are not part of the normal administrative process (like asking specific questions so that parties can better prepare for a hearing). But they are not involved when it comes to actually sending the letters or drafting/printing out standard letters like invitations to the hearing.

Portuguese judicial assistants are mainly tasked with administrative duties. Though they have three categories of judicial clerks in this sense they are categorised: for example, one category is for the assistants working in the registry, one category for assistants working in the technical departments and one category supporting the work of judges (see also the notes made under chapter France, Clerks).

### Additional tasks

Judicial assistants also perform several additional duties, which are largely informally outlined. Judicial assistant's involvement in drafting press releases depends whether the judgment will be available to the public. Some judgments are selected by the judge and judicial assistant to be 'published' or made available to the public through special court/judicial website. Also, all cases that have three judges presiding are mandatory to be published on that website. The judicial assistant drafts a summary of the case, which will be added on the website. Drafting press releases are usually done by the communication department.

They also draft procedural decisions and decide about procedural issues such as appointing an expert or deciding on costs of proceedings. Though this is more joint work, before appointing an expert on a case this issue is discussed between the judge and the judicial assistant. The cost of an appeal is determined by law and the administrative assistant will just identify the costs for each case.

Judicial assistants are though not involved in conducting hearings and deciding simple cases autonomously, for example concerning enforcement, or simple criminal cases.

### Recruitment, career and status

The prerequisite for the judicial assistants is to have university degree, though in the reality majority of judicial assistants have university degree in law. Their selection process includes written test and an interview. After they are recruited, internal training is organized including mandatory and optional courses which are at the same time fixed and flexible to meet the needs of working clerk.

There is no judicial assistants' career since there is only one level of judicial assistant, horizontally they can climb the ladder, but they can only climb the salary scale. There are not many opportunities to grow 'vertically' in the organization unless they want to become court managers. Some assistants are employed by the courts for decades; some of the assistants stay their whole professional work in the courts, some leave after few years to apply for judges' position or to join law firm.

Since judicial assistants are not assigned to an individual judge, a large part of the selection and recruitment of assistants is completed by court managers rather than judges. In the past, a large number of judicial assistants were internal transfers; currently, the majority of new assistants are entrees from outside the judiciary. The

experience that they get as judicial assistants is very valuable for those that want to pursue career in the legal field. Assistants can change from one field of law to another. In this way mobilization within judiciary is a common practice.

Though there is no institutionalized career development system, employment as a judicial assistant is not a temporary position. Judicial Assistant position in Netherlands can be a lifelong career. During the period of their employment, these assistants obtain more experience in court operations than most judges.

A senior judge earns about 1.000-euro net more per month than judicial assistant. Also, there are salary discrepancies between the judicial assistants in the court and as judicial assistants earn at the departments of the central government in favour of the latter. This also contributes to decision of judicial assistants to leave the position they hold at courts.

Judicial assistants are civil servants and therefore the Civil Servants Law is applicable to them. They swear an oath and during hearings they wear a gown.

Though there are some informal rules governing the relationship between judge and judicial assistants they vary from court to court.

## Training

Training and Study Centre for the Judiciary or SSR (Studiecentrum Rechtspleging) is the joint training institute of the Dutch judicial system and the Public Prosecution Service, operating independently from the Ministry of Justice since its establishment in 1960. Besides its main office, which has been located in Utrecht since the end of 2012, SSR also facilitates local training sites at court buildings and public prosecutor's offices in Amsterdam, Rotterdam, Den Bosch and Zwolle.

Further to initial training programmes, SSR also offers continuous education for judges, public prosecutors and legal staff, based on the principle that learning and continuous education remain essential throughout judicial careers. Annually, a total of 25,000 students are enrolled in their programmes and training courses, which are increasingly based on innovative methods, and online learning environment.

Judicial assistants come from all 'directions' of law. Some have been lawyers/attorneys, some have just graduated, others have worked as legal staff for a company. That is why the offer of SSR for training of judicial assistants is individually tailored, addressing new competencies based on the previous experience.

The learning path "Starting legal assistant" prepares Dutch legal assistants in about six months to get started. SSR offers a learning programme for all law subject areas: administrative law, civil law, commercial law and criminal law and it includes compulsory and optional learning modules. In this way, the training fits in better with the necessity of the work of the assistant. In addition to a number of compulsory learning modules, there are also optional learning modules. The learning pathways consist of learning activities that SSR also offers in its continuing training programme. In this way the assistants can choose activities that are of particular interest to them and that fit well with their professional work. Afterwards they receive a "proof of participation" for each learning activity they participated in.



For each area of law SSR defines the compulsory and optional courses. The table below presents course currently offered to judicial assistants by SSR.

Administrative law - compulsory	Administrative law - optional
<p>Review and dispute settlement by the administrative court  Writing an administrative decision for legal assistants</p>	<p>Scope of the dispute  Rules of proof in administrative law, basic  Provisional provision, basic  Policy rules  Immigration law, asylum  Immigration law, regular  Deprivation of liberty - detention of aliens, introduction  Employee Insurance Laws, introduction  Participation Act, introduction  Environmental law, basic  Construction and environmental law, basic  Enforcement  Personal effectiveness for legal staff  Social Support Act</p>
Civil law – Including family and commercial - compulsory	Civil law – Including family and commercial - compulsory
<p>Civil procedural law and default &amp; references, introduction  Evidence for legal employees, basic  Civil judgment for legal assistants Family room, introduction  Family Procedural Law, Part I  Making decisions in family law, basic</p>	<p>Rent law, basic  Employment law for legal employees  Contract law, basic  Unlawful act and damage  Personal effectiveness for legal staff  The civil decision model  Interim relief for legal assistants  Civil procedural law, e-learning module  Civil law, Persons in family law  Family room, introduction  Family Procedural Law, Part I  Making decisions in family law, basic  IPR, family law person  Maintenance law and arithmetic, basic  Youth protection, basic  Relationship / matrimonial property law, basic  Personal effectiveness for legal staff  Inheritance law, basic</p>
Criminal - compulsory	Criminal - optional
<p>From the learning line Criminal judgment: 348/350 Sv, promised criminal judgment  From or learning line Criminal judgment: From evidence  From the learning line Penal judgment: Responding to defences  Investigation at the hearing</p>	<p>From the learning line Criminal judgment: Written argumentation in criminal cases  From the learning line Criminal judgment: From criminal motivation  From the learning line Penal judgment: Writing skills  Debt set-up, forms of participation, unfinished offenses  Defence in criminal law  Personal effectiveness for legal staff</p>

The "Legal Assistant" learning pathways are offered throughout the year. Potential participants register through the link of the SSR. When registering, they need to specify both the desired field and the desired choice and format of learning. SSR then makes a proposal for the learning activities to be followed based on availability and the learning activities already planned.

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The issue of the “ownership” of the judgment as well as the legitimacy of the judicial assistants’ involvement in the judicial decision-making process is presently discussed in the scientific circles in the Netherlands. Though the influence of judicial assistants exists, the final saying is still in the hands of judges. However, in light of the recommendations CCJE Opinion 22 especially in terms of further regulation in order to ensure the rights of the parties under Article 6 of the ECHR, the dilemmas are present in the Dutch judicial society. As stated by Nina Holvast<sup>23</sup> *“This reflection on the reliance on judicial assistants in Dutch courts and its consequences establishes that judicial assistants can be substantially contributory to upholding high-quality judgments, especially because judges are under pressure to enhance the efficiency of decision-making. Nevertheless, relying on judicial assistants also comes with certain risks. The findings indicate the importance of expanding our understanding and gaining further knowledge of the role that judicial assistants play in practice. Furthermore, it highlights the necessity of critically evaluating judicial systems, to determine whether alterations to institutional safeguards and the decision-making process are required.”*

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<sup>23</sup>Considering the Consequences of Increased Reliance on Judicial Assistants: A Study on Dutch Courts by Nina Holvast

## Literature

- CCJE Opinion No. 22 (2019) THE ROLE OF JUDICIAL ASSISTANTS
- “Recommendation No. R (86) 12, concerning measures to prevent and reduce the excessive workload in the courts” of the Council of Europe, Committee of Ministers,
- <https://rm.coe.int/16807482bf>
- <https://www.coe.int/en/web/ccje/opinion-no.-22-on-the-role-of-court-clerks-and-legal-assistants-within-the-courts-and-their-relationships-with-judges>
- Green Paper for a European Rechtspfleger
- STATUTE OF OFFICIALS – Portugal;
- LAW OF THE JUDICIAL SYSTEM ORGANIZATION – Portugal;
- Judiciary Organization Act – The Netherlands;
- Court’s Act -Slovenia;
- Financial Operations, Insolvency Proceedings and Compulsory Dissolution Act – Slovenia;
- Claim Enforcement and Security Act – Slovenia;
- Civil Procedure Act – Slovenia;
- Court Organization
- Considering the Consequences of Increased Reliance on Judicial Assistants: A Study on Dutch Courts by Nina Holvast;
- The Power of the Judicial Assistant/Law Clerk: Looking Behind the Scenes at Courts in the United States, England and Wales, and the Netherlands by Nina Holvast;
- In the Shadow of the Judge: The Involvement of Judicial Assistants in Dutch District Courts by Nina Holvast;
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- <https://www.coe.int/en/web/cepej>
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