

Joint Project on
"Strengthening the Court Management System in Turkey"
(JP COMASYT)

Exploratory study on the position of: Court President, Court Manager, Judicial Assistant, and Media Spokespersons in Selected Council of Europe Member States

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Introduction

This work is an exploratory study on four working positions in courts, namely the President of the court, the Court manager, the Judicial assistant, and the court Media spokesperson, in ten European countries. The participating countries are: the Czech Republic, Denmark, Finland, France, Germany, Italy, Lithuania, the Netherlands, Poland, and Switzerland. These countries have been selected on both the inputs of the Council of Europe experts in Turkey and the Turkish authorities.

The goal of this exploratory study is to supply updated information on the four positions mentioned above in the selected European countries for the benefit of the process of judicial reform that is taking place in Turkey.

Due to time and resources constraints, the information presented here has been collected during a workshop that took place at the Council of Europe (COE) in Strasbourg the 15 and 16 of May, where experts of the participating countries discussed the four positions with the three researchers entrusted with the study, and COE personnel. The discussion was based on a list of questions prepared by the researchers, which will also be used as a frame for this report.

The discussion was organized around the annexed agenda.

The national experts provided updated information about the four positions in their national context through slide presentations and written explanations further requested by the researchers.

It goes without saying that without the kind and very positive contribution of the national experts this study could not be undertaken. I thank them very much for their availability and sincere interest in this study.¹

I have to underline that this is an exploratory study. The time constraints did not allow us to analyze more in depth the interesting issues at stake. However, the study offers a quite rich overview of the four positions in the ten countries considered, and several hints for the policy makers. It goes without saying that it would be great if some additional resources would allow us to dig more on the four subjects.

¹ The national experts were: Ivana Borzova (Czech Republic), Jesper Wittrup (Denmark), Pettri Saukko (Finland), Gilles Accomando (France), Anitta Hipper (Germany), Francesco Contini (Italy), Virgilijus Valancius (Lithuania), Bert Maan (The Netherlands), Jakub Michalski (Poland), Jacques Buehler (Switzerland). I would also like to mention judge Johannes Riedel of the Court of Appeal of Koln, Germany, who was not able to attend the meeting in person, but he was very kind to answer the questions.

It was also clear from the beginning that the information available on the court president and the court manager were far more than the ones available for the judicial assistant and the media spokesperson. As a consequence, this report will be a little unbalanced on the number of pages dedicated to each of the four subjects.

It is also worth mentioning that the information presented should be framed within the judicial systems of each participating country. The four positions described in this study have not been developed in a vacuum, and to be better understood their features should be seen in the context of the general setting and governance of each judicial system. This is a task above the scope of this study, but useful information about the general setting of each justice system can be found in the CEPEJ Evaluation Exercise edition 2012, and in other works of the Commission for the Efficiency of Justice of the Council of Europe.

As mentioned, this comparative report will be organized in four chapters: President of the court, Court manager, Judicial assistant, and Media spokesperson. It will be a summary of the information previously assembled by the two researchers who have been carried out with me this project: Francesco Contini and Jesper Wittrup. More detailed information about the four position can be found in their reports (annex n. 4 and n. 5).

Each chapter has been structured around the questions that were used to organize the discussion at the workshop in Strasbourg, and that are reported at the beginning of each chapter for the sake of the reader. Only the President of court's chapter has been further divided into some more sections due to the amount of information available.

This is a "technical report", so it is quite harsh to read, but the goal is to give clear and factual based information to be used within the project "Strengthening the Court Management System in Turkey".

President of the court

Institutional background

- ❑ *Has the President of the court always been present in your justice system?*
- ❑ *Do all the courts have a Court President?*
- ❑ *How many court presidents are there in your country?*

All the countries in this study have the position of President of the court at different levels (local, regional, district, appeal etc.). Only some courts of limited jurisdiction with non professional judges, it is the case of the Justice of the peace in Italy, do not have a real President but a Coordinator chosen among the justices.

Therefore, the number of Presidents depends on the number of courts of each country, which generally speaking depends on the size of the country. For the sake of the reader, below there are some very brief hints about the number of courts and the court structure of the participating countries.

The judicial system in the **Czech Republic** is composed of 86 District courts, 8 Regional courts (but there are several branches of regional courts because the judicial division of the country does not correspond to the administrative division), 2 High courts (the Supreme Court and the

Supreme Administrative Court), and the Constitutional court.

There are 29 courts in **Denmark** (1 Supreme court, 2 Courts of appeal, 1 commercial court, 1 Land registration court, and 24 District courts).

The court system in **Finland** has courts of general jurisdiction and administrative courts. The courts of general jurisdictions are: the Supreme Court, 6 Court of appeals and 27 District courts. Administrative courts include the Supreme Administrative Court (1) and Administrative courts (8+1 administrative judge in an island). There are also three special courts to provide specific expertise in Commercial, Labor, and Insurance matter, plus some special boards (taxes, etc.).

The jurisdiction in **France** is based on the classical three-tier system: Tribunals (165), Courts of appeal (36), and the Court of Cassation (1). The French justice system is also featured by specialized courts dealing with commercial (*Tribunaux de commerce*), labor and welfare disputes (*Conseil de prud'hommes*), and courts of limited jurisdiction *Juge de proximité*. Judges and presidents of the *Conseil de prud'hommes* and of the *Tribunaux de commerce* are not professional judges but they are elected by their peers (respectively business community, employers and employees), these latter will not be dealt with in this study.

The federal judicial system in **Germany** entails three types of courts: "Ordinary", Specialized (administrative, labor, social, fiscal, and patent law), and the Constitutional court. The "ordinary courts", the only ones dealt with in this study, are organized in four-tier: Local courts (687), Regional courts (116), *Länder* appellate courts (24), and the Federal Court of Justice (1).

The courts in **Italy** are organized in a three-tier structure with at the top the Court of cassation, 26 Courts of appeal (plus 3 detached section), and 165 Courts of general jurisdictions (*Tribunali*) dealing with civil and criminal cases. There are also 29 Juveniles courts, handling cases involving minors. All these courts have a Court President. There are also more than 840 Justice of the peace offices with limited jurisdiction, in which cases are dealt with by non-professional judges with a legal background. In addition, there are administrative, tax, military and public account courts, which are not considered in this study. A recent reform that should come into effect in September 2013 will decrease the number of court of general jurisdiction to 134, and will dramatically cut the justice of the peace down to less than 200.

In **Lithuania** there are about 750 judges, among which 550 in the first instance courts. The court structure is composed by the Supreme Court, the Court of Appeal of Lithuania, 5 Regional courts, and 49 District courts. The administrative jurisdiction is dealt with by the Supreme Administrative Court of Lithuania and by 5 Regional administrative courts.

In the **Netherlands**, after a recent court consolidation reform, there are 11 Courts of first instance and 4 Courts of appeal, and 1 Supreme Court of Cassation. All the courts deal with civil, criminal and administrative matters.

Poland has 1 Supreme Court, 11 Appellate Courts, 45 Regional Courts with first or second instance jurisdiction and 242 District courts. In total there are 298 courts with a Court president. The president of the regional court has also supervisory functions over the district courts.

Switzerland has a strong federal structure of the State that does also affect the judiciary, whose structure and features vary significantly from a Canton (State) to another. The Federal State is composed of 26 Cantons, each one with its own Constitution, legal system, government, legislature and courts. At the federal level, there is the Federal Supreme Court and three first instance courts, the Federal Criminal Court, the Federal Administrative Court, and the Federal

Patent Court. Their jurisdiction entails the application of Swiss federal law, and only for the Federal Supreme Court also of cantonal law.

Selection and appointment

- ❑ *Who does select them?*
- ❑ *How are they selected?*
- ❑ *Do they get any kind of “confidence vote” from the other judges of the court?*

The selection and appointment of the Presidents of the courts in our sample of countries is made by Parliament, Head of the State, Judicial Councils, Ministers of justice, Head of Superior courts, and *ad hoc* appointment commissions, with a selection process that may involve sometimes more than just one institution. The process can also be different on the basis of the level of the court for which the President has to be selected.

In several countries the selection and appointment of the President of the Supreme Court (Court of cassation) follows some special rules that are not always reported here.

In the **Czech Republic** after a competitive selection procedure, the Presidents of the regional courts make a suggestion to the Minister of Justice which makes the appointment.

In **Denmark**, the selection process of a district court (court of general jurisdiction) is an open competition dealt with by an *ad hoc* Judicial Appointments Council, whose members are 3 judges, 1 lawyer, and 2 members of the civil society. One judge is selected by the Supreme Court, another one by the high courts, the third is selected by the Association of Judges and has to be from a District court. The lawyer is selected by the Association of lawyers. The two members from civil society are chosen by the Association of local Governments (KL) and by an Association of Adult Liberal Education. Curricula vitae of candidates are assessed by the assembly of the judges of the court and then by the President of the court of appeal. The assessments are sent to the Judicial Appointment Council which makes additional interviews and then selects a candidate, who is then formally appointed by the Queen.

In **Finland**, Presidents are selected through a competition among judges managed by the “Judges selection committee”, which is composed by 12 members (with a majority of judges and representatives of prosecutors, lawyers and law professors) for a five year term. The Committee is appointed by the Finnish Government, but the chairman of the Committee is appointed by the Supreme Court and the vice-chairman by the Supreme Administrative Court. The formal appointment is made by the Head of the State (President of the Republic). As far as the Supreme Court and the Supreme Administrative courts are concerned, the selection is made by the judges’ assembly of the court (the plenum, about 20 judges,) who makes the recommendation to the Head of State.

In **France**, Presidents of courts are selected by the Judicial Council after a competition among judges who applied for the position. The competition is based on the analysis of the curricula and interviews of the candidates. The formal appointment is made by the head of State (President of the Republic). It is worth mentioning that judges cannot participate in the selection process to appoint the President of the court in which they work. The idea is that the judge of the same court cannot lead a group of peers where they have practiced for quite a few years. So they have to apply to become President in other courts, which also may help to

broaden their experience.

In **Germany**, the Presidents of the courts are appointed by the local government. In all the *Länder*, a judicial staff council (*Präsidialrat*) has to be heard before the government decides on the appointment; however, the government can overrule the vote of the staff council. In a substantial number (about half) of *Länder*, also the consent of a parliamentary committee is required (usually on the basis of a proposal of the Ministry of Justice). Usually, concurring votes of the committee and the Ministry of Justice are necessary although, in some of the *Länder* where parliamentary committees are involved, the committee may elect the candidate from among the applicants and the government must appoint the person elected. However, even though the process seems very political, the selection is largely based on merit (i.e. the individual evaluations occurred during the years, experience in court administration). Decisions on appointments are subject to judicial review, although, in case of a vote of a parliamentary committee, it is in practice difficult to challenge it.

In **Italy**, Presidents are selected by the Judicial Council. Formally the name selected must have the consent of the Ministry of Justice but, after a Constitutional Court decision, the final decision in case of conflict is in the hands of the Council. Vacancies are advertised by the Judicial Council with an open call for all the magistrates (judges and prosecutors) with a given seniority. In addition, applicants should have at least 4 years before statutory limits for retirement, positive professional evaluations (carried out periodically by the Council), previous court managerial experiences (e.g. head of a section within a court), some managerial training. To apply for the presidency of the Court of Cassation judges must report some working experiences within the court. An ad hoc commission within the Judicial Council evaluates the applications and rank them based on three criteria: aptitude to managerial functions, merit, and seniority. The rank, the written reasons justifying the rank, and a proposal for appointment are then transmitted to the Minister of Justice for the formal approval.

In **Lithuania**, a Judicial Evaluation Commission, whose member are in majority judges, makes the first screening of the curricula of judges who applied to gain the vacant position of court president. Then, a Judicial Selection Commission, whose members are in majority not judges, makes a more in depth scrutiny and submits a rank to the Head of State (President of the Republic) from which, usually, the first judge is selected. This name is sent for the needed consent to the Judicial Council for the final word. If the candidate does not get the approval of the Judicial Council, the President must submit a new name from the list until the Judicial Council's consent is granted.

In the **Netherlands**, each vacancy for court president is published by the Judicial Council, and judges who apply are invited to undergo an assessment on the basis of a given profile, drafted by the Judicial Council, carried out by an external evaluation consultant firm. The advices are given by the Management Board of the court after having interviewed the candidates that is looking for a new President, by the delegation of the court judges, and by the so called "work council" of the court. The candidates are then interviewed by a committee of three court Presidents that sends a proposal, preferably with three names, to the Judicial Council, who decides and sends it to the Ministry of Justice and the King for the formal appointment.

In **Poland**, the President of the appellate court selects and appoints the district court Presidents (242 first instance courts), after the consent of the General assembly of the judges of the court. In case of conflict the proposal is brought to the National Judicial Council for a binding opinion. For both the regional courts (they are 45) and the appellate courts (they are 11), the procedure is the same but the selection and proposal to the general assembly is in charge of

the Ministry of Justice.

Switzerland is a federal state for antonomasia with 26 Cantons and 26 different court systems. Therefore each Canton has its own way to select and appoint the President of the courts. It can be said that, generally speaking, at the levels of the Court of appeal and of the Supreme court, Presidents are elected by the Parliament (of the Canton, for the court of appeal, and the federal one for the Supreme court), after a proposal submitted by the judges of the court in which the President has to be appointed. In the small Cantons, Presidents can also be elected directly by the citizens. Presidents of first instance courts are selected through 3 different systems. They can be directly elected by the citizens, appointed by the appeal court (generally by a commission with judges of the appeal court), and in Cantons with a High Council of the judiciary, with the involvement of the Council itself.

No country considered here reported a “confidence vote” for the Court President from the other judges of the court, even if it is self-evident that the President of the court must have some respect and trust by the other court judges to manage the organization.

Training and length of service

☐ *Is education/training in management a requirement for becoming court president?*

☐ *How long do they hold the position?*

Generally speaking, to be appointed as President of a court education, specific training in management, or experience in coordinating working groups are not formally required, even if they can be considered as a point of attention in the selection procedure. These experiences seem getting more and more importance in all the countries, but in particular in France, Germany, and Italy.

The President of the Supreme Court is appointed for 10 years in the **Czech Republic**, the Presidents of all the other courts hold the office for 7 years. According to a decision of the Constitutional Court, Presidents cannot be reappointed at the same court for a second term, but they can be appointed to another court after passing a new competitive selection procedure.

In **Denmark**, training in management is not a formal requirement, but it is beyond doubt that the Appointments Council will take it into accounts. However, since 2006 the Judicial Appointments Council requires applicants for court President to take a test aiming to identify their managerial skills. The court Presidents may hold their position until retirement (no later than by the age of 70).

In **Finland**, Presidents hold the office for their entire career once appointed. They retire when they are between 63 and 68 years old. The heads of court divisions are selected and appointed by the President of the court, while the heads of the divisions of the Courts of Appeal are permanent appointments made by the judges selection committee.

In **France**, the Presidents of the courts hold the position for 7 years. They cannot be re-appointed to the same court, but they can move to a different one.

In **Germany**, once appointed, Presidents of the courts hold the position until retirement. It is worth mentioning that, generally speaking, they get appointed when they are about 55 years old, so they still have about 10 years of office before retirement.

In **Italy**, Presidents hold the position for 4 years, they can be reappointed in the same court for just another term. After 8 years in the same position, they may apply for another presidency in another court. Some managerial training (usually carried out by the Judicial School of the Council) is considered a requirement to apply for President of a court.

In **Lithuania**, Presidents are appointed for a 5 year term, which can be extended for just one more term, making the total of 10 years.

In the **Netherlands**, Presidents are appointed for 6 years, which can be renewed. They could hold the same position until retirement, even if it happens regularly that Presidents are appointed in the same position in another court.

In **Poland**, Presidents of district courts are appointed for 4 years and they can be reappointed for just another term. Presidents of the regional courts and the appellate courts are appointed for 6 years and they cannot be reappointed in the same court.

In **Switzerland**, Presidents of the Federal Supreme Court and, generally, of the cantonal Court of appeal hold the office for just 1 or 2 years to guarantee a constant turn over in the position.

Role, functions, responsibilities

Managerial functions

- ☐ *Do they prepare a court budget?*
- ☐ *Do they manage a court budget?*
- ☐ *Do they manage the court space and layout?*
- ☐ *Do they recruit judges and/or administrative personnel?*
- ☐ *Can they fire judges and/or administrative personnel?*
- ☐ *Can they give any fringe benefits to the other judges and/or administrative personnel?*
- ☐ *Are they in charge of Information and Communication Technology (ICT) in the court?*
- ☐ *Do they set timeframe for the pace of litigation?*
- ☐ *Do they have a disciplinary power against the judges and/or administrative personnel?*

In **Czech Republic**, Presidents do not prepare the court budget, they do not deal with the court space and layout, they do not have any function in personnel recruitment or benefits, which are managed by the Ministry of Justice and allocate to the various courts. They are not in charge of ICT in the courts. Presidents manage the professional training of trainees, determine the number of lay judges and some other functions related to expert witnesses. They have a general role of supervising the correct functioning of the court, using also statistics and court databases, but they do not define timeframes for court proceedings. They deal with all the complaints, and they can issue a reprimand or a warning to judges. In more serious cases, they

can start a disciplinary proceeding, along with the Ministry of Justice, which is then dealt with by a special panel of the Supreme Administrative Court.

In **Denmark**, the budget is prepared and mainly managed by the Courts Administration, an autonomous agency. Presidents do negotiate the budget as well as the court space and layout with the Courts Administration. They are in charge of human resources and ICT in the courts, but in practice many tasks will be taken care of by the Courts Administration and the court manager. Presidents, based also on the yearly report, can set targets for court productivity, including timeframes for the length of the proceedings. They have disciplinary power against the administrative personnel and a limited power on judges, since they can only issue a warning. More severe sanctions have to be decided by a Special Court of Indictment.

In **Finland**, the budget is a negotiating process between the President of the court and the Ministry of Justice. Then the President has to manage it, even though the budget lines are quite strict and there is not a large span of maneuver. There is a tendency to specialization of judges in some judicial matters to improve efficiency and speed of justice. Presidents can fire administrative personnel accordingly to the labor legislation. They do not set timeframes, neither can define fringe benefit, nor they are in charge of ICT, which is dealt with by the Ministry of justice.

In **France**, the budget is planned and managed by the Ministry of Justice, the Presidents have to manage, with a very limited discretion, what it has been given to their courts. It is worth mentioning that the administration of justice in the various regions is managed by a “diarchy”, composed by the President of the Court of appeal and the Prosecutor general. Within the court, the President assigns cases to judges based on specializations after the recommendations of the “General assembly of the court judges”. Presidents also establish panel of judges when it is needed. If the size of the court is big, the President does not carry out judicial proceedings but only managerial duties. In medium and small size courts, Presidents do still perform some judicial work (from 20% to 60% of their time, depending on the size of the court). Presidents manage, along with the so called Secretary general in the large courts, the court space and layout. They cannot fire court personnel, but they can give salaries incentives to the judges after an assessment. This system was introduced in 2003. The statutory criteria to award the salary incentive is “the contribution of the judge for the proper functioning of the judiciary”. The assessment is made every two years and it is based on statistics and judges’ behavior, for example their availability to take more tasks or to substitute a colleague, the numbers of appeals reversals (limited to controls to errors of law or manifest error of assessment). In practice, and with few exceptions, the amount of this premium is around 12% of the gross salary. The proposals are made by the Presidents of the courts to the President of the court of appeal, who makes the final decision, which can be appealed by the judges. They are not in charge of ICT and they do not set timeframes. They have limited disciplinary powers, which are assigned to the Judicial Council.

The Ministry of justice of each *Länder* in **Germany** is responsible for finance and administration in the justice field. Presidents prepare the court budget, submit it to the President of the court of appeal, who sends it to the Ministry of justice. Since Germany is a federal state, some *Länder* grant some more discretion to the Presidents of the court of appeal whose budget is directly allocated by the Parliament to the court through the Ministry of Finance. Again, in some *Länder*, Presidents do manage court space, while in some other is the Ministry of justice in charge of it. In general, Presidents do not recruit judges or administrative personnel and do not have the power to fire them. In some *Länder* the President of the court of appeal makes the selection process for young judges and support staff such as *Rechtspfleger* (a particular kind of

clerk of court with limited judicial functions). Fringe benefits allocated by the Presidents have been introduced, but they also have been discontinued. They do not set timeframes, they are in charge of the use of ICT in their courts, but the technical decisions on investments are made by the Ministry of justice. They have some limited disciplinary powers and sanctions such as reprimands and warnings. Higher sanctions can be imposed by the Judicial Service Court or by the Administrative court.

In **Italy**, the budget is planned and managed centrally by the Ministry of Justice, Presidents have a very limited court budget for minor office expenses. They do manage space and layout within the court, while court locations and buildings are negotiated with the local government or, depends on the city, with the Ministry of Justice. They do not have any function in selection and recruitment of court personnel, which is made by the Judicial Council as far as the judges is concerned, and by the Ministry of justice for the administrative personnel. They cannot fire administrative personnel and they do not have possibility to give fringe benefit. They are not in charge of ICT in the courts, which is dealt with by the Ministry of Justice, but they can have a role to promote it among the judges. They may set timeframes as a goal to pursue a better quality of justice in their court. Every year they have to prepare a working plan to fix goals, but it is a matter of fact that they can use only moral suasion to push the other judges of the court to reach those goals. They do not have disciplinary powers on judges, but they can file a complaint to the Ministry of justice and the General public prosecutor, who are in charge of starting a disciplinary proceeding.

In **Lithuania**, the National Court Administration, an independent organization established by law in 2002, is in charge of the budget. This agency “provides services to the courts in pursuance of ensuring the efficiency of the court system, its government and organisation of work, as well as the independence of judges and autonomy of courts”. The Ministry of justice is in charge of prison, notaries, bailiffs, various public registries, but not of the judiciary. In the courts where a court manager is in post, Presidents do not manage the budget and they are not in charge of ICT, even if the Court manager always consults the President in such areas. They do not recruit the personnel and they do not have discretion in assigning additional benefits, which are typical functions of the court manager. Presidents had some disciplinary power in the past, nowadays they do not, in such a case they have to inform the Commission of Ethic and discipline of judges.

In the **Netherlands**, the budget is prepared by the Management Board of the court on the basis of a prognosis of the workload discussed with the Judicial Council. Then, the Judicial Council presents the proposed budget for the judiciary to the Ministry of Justice. The Ministry of Justice can make amendments to the proposed budget, but they have to be motivated before the Parliament. Justice have to m The court receives the final approved budget and it has a quite large discretion in its allocation. It is worth mentioning that the courts in the Netherlands use a quite sophisticated workload system (called *Lamicie*) to calculate the time and the resources need to deal with the court caseload. Presidents manage the court along with the Court Management Board, whose members, until recently, were the judges head of “sector” or “section” (i.e. civil, criminal, administrative) and a court manager appointed by the Judicial Council. Presently, members of the Management Board are only the President of the court, one senior judge, and the court manager. The Board, presided over by the President of the court, selects and recruit both judicial and administrative personnel. However, as far as the judges is concerned, they make a proposal to the Judicial Council, which has the last word, even though most of the time it entrusts the court’s decision. The Board can also fire the administrative personnel according to the law for civil servants. It can also give some minor fringe benefits only to the administrative personnel. ICT is in charge of the Judicial Council.

The President is in charge of its implementation in the court. They can, through and with the agreement of the heads of the court sectors, fix timeframes for the pace of litigation within their managerial functions, based on acceptable standards. Presidents have a limited disciplinary power over judges, since they can give only a formal warning. Only the Supreme court of cassation, on the proposal of the Prosecutor general, can dismiss a judge, but in many years it has happened just once.

In **Poland**, Presidents are the head of the court organization. They do not deal with the budget, which is a responsibility of the Ministry of Justice and the court managers. They do not manage space and layout. They do not play a role in the recruitment of judges and administrative personnel, but they have a general supervision on their activity. They do select and they can hire *rechtspfleger* and judicial assistant. They do not have resource available for fringe benefit, and they are not in charge of ICT in the courts.

In **Switzerland**, the Government or the Parliament of the Federal State or of the cantons are in charge of the allocation of resources in the courts. The allocation is often base on the proposals of a Judicial, or sometimes Financial, Commission. The organization and composition of the Commission varies from Canton to Canton.

Judicial functions

- ☐ *Do they assign cases to the other judges?*
- ☐ *Can they influence the composition of judge panels?*
- ☐ *Can they retrieve a case from a judge?*
- ☐ *Do they hear cases or their role is only a “managerial one”?*
- ☐ *Do they set priorities in the cases to be handled by the judges?*
- ☐ *Do they set up local rules of practice?*
- ☐ *Do they play a role to guarantee the consistent interpretation of the law within the court?*

In **Czech Republic**, Presidents set up the yearly schedule of the court, including its panels, and automatic mechanisms to assign cases to individual judges. They have a limited role in setting priorities and rules of practice, and they do not have specific tools to guarantee the uniform interpretation of the law in their courts. However, they can check the length of judicial proceedings and supervise court hearings.

In **Denmark**, case assignment is a negotiating process between the court Presidents and the judges. Presidents still perform judicial works along with their managerial functions. They do have a general role of supervising the court judicial functioning, set priorities, and draft local rules of practice, but this may vary very much from court to court.

Presidents in **Finland** have to undertake a leading role in their court. They assign cases based on fairness of the caseload, but they can also retrieve them, even though most of the time is the head of each section or chamber that does the case assignment. They may affect the composition of the panel but they rarely do it. Formally, they do not set priorities, but they can informally affect local rules of practice, and they do not play a role in promoting the consistency of the jurisprudence of the court. The formal duty of court presidents is to control the correct

application of the law and the consistency in its interpretation.

Presidents in **France** pre-establish case assignment rules after the consultation of the General assembly of the judges of the court. Then Presidents cannot affect the case assignment procedure, they cannot retrieve a case, but for special circumstances, and they do not affect the composition of panels. They do not set priorities in the case roster. Usually they do not issue court rules, and they do not make particular effort for the consistent interpretation of the law within the court, but they may organize meetings to discuss the new jurisprudence trends.

Germany enjoys the law provision of the so-called “legal judge” system to guarantee the impartiality of the decision and avoid “judge shopping”. Each case is assigned to a judge, or to a panel, based on pre-established criteria. Presidents, in cooperation with the *Presidium* (group of court judges), prepare the criteria of assignment at the beginning of every year. Presidents can retrieve a case only in really exceptional circumstances. Presidents still perform some judicial functions, even though the managerial role is the large part of their activity. Presidents do not set priorities of cases to be dealt with, which is considered an individual responsibility of each judge, they may set rules of practice along with all the judges of the court. Consistent interpretation within the court can only be encouraged promoting common discussion among the court judges.

In **Italy**, the Constitutional principle of “legal judge” does not allow Presidents to assign discretionarily case to the judges. They have to prepare the so-called “tables” or “organizational schemata”, in which are reported the names of the judges and the composition of panels to pre-establish the assignment of the case filed. These schemata are prepared every three years. Presidents must follow a very detailed list of written prescriptions, drafted by the National Judicial Council. These schemata go for comments to the local Judicial Council and they also have to be approved by the National Judicial Council. Therefore, Presidents cannot really affect the composition of panels. As a general rule they cannot retrieve a case from a judge, they cannot set priorities in case handling, even if some general recommendations can be included in the schemata (e.g. cases with defendants in jail should have a priority, or cases that are getting close to be disposed because of the statute of limitation). They do not have a real power to set up local rules of practice, but these rules can be negotiated with the judges and the lawyers, always within the framework of the codes of civil and criminal procedure. They may organize meetings to discuss about the jurisprudence trends in their office, but this is not mandatory, so it may be just part of the President’s style in managing the office. Usually, Presidents still serve on the bench, but the amount of time really depends on the size of the court. In a big court this may happen very rarely.

In **Lithuania**, Presidents allocate judges in the different divisions and establish the overall structure of the court. The cases are assigned randomly by computer. Presidents in particular situations (i.e. sick leave, business trip of a judge etc.) can discretionarily assign the case, but this event should be justified and recorded in the data-base. Judges cannot be forced to move from one division to another without their consent. Presidents usually cannot retrieve case from judges but are in charge of the composition of judicial panels. There is a trend however that the judicial panels are composed in advance for a certain period of time (6 months, 12 months etc.) The independence of each judge does not allow the President to set priorities or timeframes. They still deal with cases but it depends on the size of the court, since their managerial position, in the courts where a court manager is not in post, can take most of the time. They promote consistency and quality of judgment through meetings and the participation in court hearings.

In the **Netherlands**, Presidents (or the Management Board of the court on the proposal of the President) do assign cases to the sector. They determine which kind of cases will be handled by which sector based on the specialization of cases by sector. Then, the head of the sector assigns cases to the judges. They may affect the panel composition but this is very rare. Generally speaking about 80% of their time is dedicated to managerial activity and 20% to judicial ones. They can set priorities as a general rule not for specific judge's roster. They can promote the set up of local rules of practice and the guarantee of consistent interpretation of the law.

Presidents of court in **Poland** are in charge of case assignment, workload analysis and, general speaking, effectiveness of the court functioning. They affect the composition of judge's panel and they can move judges from one division to another, but only with the judges' consent. They cannot retrieve cases from the assigning judge. They appoint the head of each court division. Presidents are not considered full time managerial position and they still deal with some cases. They neither set priorities for cases, nor local rules of practice. Generally speaking, courts Presidents also have the function to promote the consistency of court jurisprudence.

In first instance courts in **Switzerland**, Presidents of the courts are still sit in court to decide cases by themselves or with lay judges. Generally speaking, they do not have management tasks. The functions of Court President in the Federal Supreme Court and in the largest number of the Cantonal Appeal Courts are carried out within collegial bodies. The *Court plenary* is the general assembly of all the judges of the court. It can deal with jurisprudential issues, and setting up rules of practice. The *Conference of Court Presidents* (i.e. Presidents of sections within the court - *Conference des president*) assigns cases and promotes the consistency of the court jurisprudence. *The Administrative commission* - composed by the Court president, the Vice president and a third judge - has administrative and managerial functions. The allocation of judges among the court sections is proposed by the Administrative commission and approved by the Court plenary. If more than one judge is interested in a position, the Plenary decides by majority after having heard the candidates. Also probably due to this collegial organizational setting, Presidents still handle cases up to 80% of their working time.

Performance evaluation

- ❑ *Are the performance evaluated during their service as court president?*
- ❑ *How does this performance evaluation take place?*
- ❑ *Are they accountable before any other body (e.g. Court board, Ministry of Justice, Judicial Council etc..)?*
- ❑ *How are they accountable (e.g. removal, salary increase or cut, possibility to apply for other presidency etc.)?*

In **Czech Republic**, Presidents do not have a specific performance assessment but a general supervision by the Ministry of justice, which is also in charge of disciplinary powers.

In **Denmark**, all managers within the court system, including court Presidents, with at least 5 subordinates are evaluated by their subordinates approximately every third year. Court performance is evaluated in annual court reports. In addition, user surveys and employee satisfaction surveys are carried out.

In **Finland**, there is not an official and formal performance evaluation of court presidents; however there are many informal meetings between the Presidents and the Ministry of justice to check and negotiate court performance.

The presidents of the courts of appeal in **France** evaluate all the Presidents of the lower courts in the territorial jurisdiction of the court of appeal.

In **Germany**, individual evaluation of judges end at the age of 55, and since Presidents get their position at about that age, their evaluation do not take place. However, there is a general supervision of the President of the court of appeal and of the Ministry of justice on the work of courts Presidents.

A structured evaluation system to assess Presidents is not in place in **Italy**, however the Judicial Council has to supervise their activity and may not appoint them for a second term.

The Judicial Council of **Lithuania** is in charge to check the performance of court Presidents. In case of serious problems it has to involve the Head of the State, who has the power to dismiss the President before the regular 5 year term.

In the **Netherlands**, Presidents are evaluated by the Judicial Council through the so called “360 degrees” approach. It means that the Council collects information about the President’s work from 10 “expert witnesses” (i.e. president of the BAR association, chief prosecutors etc.). Then Presidents discuss the findings with two judges of the Judicial Council, and a common assessment of the President’s activity is done. This assessment may lead to a gentle pressure towards the President to resign. The Judicial Council is also in charge of the evaluation of the whole Court Management Board.

The presidents of the Court of Appeal in **Poland** have a general function of policy direction for the courts within its jurisdiction. They can also make visits and more formal inspections to check the functioning of the court. An yearly report is also due to the Ministry of Justice. If the report is rejected for two years in a row, it is considered as a professional misconduct and it can be a reason to dismiss a judge from the position of court president.

Relationship with key players

- ☐ *Which are the relationships with other Presidents of courts?*
- ☐ *Which are the relationships with the Chief prosecutor?*
- ☐ *Which are the relationships with the senior judges/head of chambers or department?*
- ☐ *Which are the relationships with the other governance bodies (Ministry of Justice, judicial council, etc.)?*

This section is probably the one which has the less amount of information from the countries’ experts, because most of the information has already been dealt with in the previous chapters. So, generally speaking almost all the courts report meetings among the Court presidents and with the Ministry of justice, the Judicial Council, Courts administration, and local government, particularly for office space.

It is worth mentioning the peculiar “diarchy” in **France**, where the President of the court of appeal and the General public prosecutor together have an important role in the administration of justice in their territorial jurisdiction.

In **Italy**, due to the severe budget cutbacks, Presidents are quite vivid in looking for extra resources from the local, which may raise some problems of external independence to be carefully checked. In the last years, and depending on the court, meetings between the Court President, the Court Manager and the Bar representative are more frequent, acknowledging that the administration of justice requires a regular tuning between the Court and the Bar association.

Critical issues

- ❑ *Are there any critical issues currently debated about the role and functions of the Court president?*

In **Czech Republic, Denmark**, and the **Netherlands** none critical issue have been reported.

In **Finland**, it was mentioned the pressure for efficiency which can rise some concern about judicial independence. There are trends to merge courts, to use more and more electronic document exchange and hearings via teleconferences.

In **France**, there is a debate on the merging of the specialized courts in just one comprehensive court, and on the need to establish some kind of evaluation not only of judges, made by the president of the court of appeal, but also for the whole court as an organization. This evaluation may be done through the establishment of local judicial councils. The managerial issue is also at stake. The Ministry is thinking to establish an “interregional level” to manage the budget and the court services, as well as the establishment of a “real” court manager to carry out the managerial tasks within the courts.

In **Germany**, it is debated, from time to time, if the Presidents should serve for a limited number of years instead until retirement.

In **Italy**, the appointment of Presidents is still affected by the ties of the judges with the different fractions of the powerful national association of judges, which plays a major role in the Judicial Council. Even though the appointment is formally based on seniority and professional qualification, this “political issue” is still very strong during the election of Presidents by the Judicial Council.

Lithuania, as it is happening in several other countries in Europe, is now facing the merging of first instance district courts that should decrease from 49 to 12. However, judges are not supposed to move from a different location, since the small courts will be considered branches of the so-called “coordinating court”.

In **Poland** the new establishment of the court manager supervised by the Ministry of Justice may generate some tensions and conflicts, but it is too early to make any assessment.

Court manager

Institutional background

- ❑ *If such a position exists, when was it established?*

- ☐ Do all the courts have a Court manager?
- ☐ Is there a similar role in the prosecutor office?
- ☐ How many court managers are there in your country?

The “Court manager” in the **Czech Republic** is known as “Director of administration”, and it is based on Act. N. 6/2002, the same act that regulates judges. All the courts do have a Director as they do have a President of the court and a chief prosecutor.

In **Denmark**, the position of Court manager was established in 2007, within a major court reform that also decreased their number from 82 to 24. The agency in charge of court organization, the “Courts Administration”, issued guidelines in which the position of Court manager was recommended, and nowadays only one small court does not have it. The guidelines also suggested a kind of management team made of three people: the President, the Manager and the Head of the legal/judicial secretariat to support the President on legal matters.

Court managers are in post in the superior courts of **Finland** (Supreme, Court of appeals), and in only 4 out of 27 District courts. These positions are not in place in the prosecutor’s office. Their duties, tasks, and official name can vary from court to court.

In **France** the role of Court manager can be in somehow associated to the one of *Greffier*, even though the functions of the “*Directeur de greffe*” (“Director of administration”) are more related to the various administrative tasks that take place in a court, rather than to the broader tasks of a court manager.

Germany does not really know the position of Court manager, however the German courts do have the position of General Manager (*Geschäftsleiter*) in every court, which was established many years ago.

In **Italy**, the functions similar to the ones usually featured by court managers are carried out by civil servants, similar to the French *Greffier*. Generally speaking, all the major judicial offices, both courts and prosecutor’s office, have “Court managers” (about 300), who can also serve in two smaller courts at the same time. If the Court manager is not in post, all the functions are taking care by the President of the Court.

The first court managers were recruited in **Lithuania** in 2005 and, as of today, only the higher courts and the largest ones have this position in place. Art. 106 and 107/2004 of the law dealing with court states that “The Court manager (CM) is a career civil servant, responsible (subordinate) to the President of the court. The CM is leading the internal administrative structures of the court [...] The Court manager, in accordance with the model adopted by the Judicial Council, approves the structure of internal units of the court”. Currently Court managers are employed just in bigger courts. It is believed that after the merger of courts is completed all courts will have Court managers.

In 1988 the **Netherlands** established the position of Director of Judicial Support, acting for courts and prosecutors offices as far as the different functions are concerned. In 1996 was introduced the Court manager only for courts. Before that the head of the administrative activity was a Chief clerk, very similar to the “*Directeur de Greffe*” in France.

A Court director position was established in **Poland** in 2001 only for financial matters. Then in January 2013, there was a substantial enlargement of the functions of Court directors which made them closer to a court manager. As of the time of this writing, there are 15 Court

directors in post and many applications to increase their number in the various courts.

As mentioned, the federal structure of the State in **Switzerland** also affects the setting of the judiciary and court managers do have different names and different functions depending on the Canton (e.g. First clerk, chief clerk, first *greffier*, *greffier en chef* etc.). However, general speaking, all of them are subordinate to the Administrative commission, and their functions have been seen as a relief for judges to the cumbersome administrative and managerial tasks.

Selection and appointment

- ❑ *Who does select them?*
- ❑ *How are they selected?*
- ❑ *What kind of professional background do the court managers have?*
- ❑ *How long do they hold the position?*
- ❑ *Do they get any kind of “confidence vote” from the Court president or the judges of the court?*

Directors of administration in the **Czech Republic** are appointed, and eventually removed, by the Presidents of the courts. The selection is based on a competitive examination, it is a permanent position hold for undetermined time. A law degree is not requested and most of them have a background in economics.

In **Denmark**, the hiring process is in general handled by the courts in cooperation with the Courts Administration. Several court managers do not have a degree in law, but they may have a Master of science in administration etc. It is up to the court President to define qualification requirements.

In **Finland** the selection process and the length of their office as court managers are different from court to court. Generally speaking, they do not have a background in management but they are lawyers who can aim to become judges. Presidents have a significant discretion in the way they select and hire the court manager.

The Directors of administration in **France** are civil servants and they are regulated as such. So the Presidents do not play any role in their selection and recruitment process, which takes place following the national rules for public hiring. They usually have a legal background.

General managers in **Germany** are appointed by the Presidents of the courts, after a selection process based on merit, they have the status of civil servants. The position can be hold until retirement. Usually, general managers come from the position of *rechtspfleger*, and in smaller courts they perform both functions. They do not go through a confidence vote of the court judges but they need to be tuned with the Presidents and the court as a whole.

In **Italy**, court managers are civil servants who passed a public examination and followed some training at the National School of Public Administration. Usually, the appointment is made by the Ministry of Justice for 4 years, with the possibility to be constantly renewed for the same office. The court managers are allocated to each court or prosecutor's office by the Ministry of justice. Formally, Presidents of the courts do not have any function in the appointment process. Sometimes, they could have some informal say, but this is very rare. They do not get

any confidence vote and their background is usually in law, even though a limited number of court managers have made some study in economics.

The court managers in **Lithuania** are selected by the Presidents of the courts through a public competition. They have to have quite a few expertise among which: a university degree, not necessarily in law, at least 5 years experience in management, IT literacy, the knowledge of one foreign language. There is not a formal confidence vote from the courts' judges, but they have to serve in a context in which it is a must. They can work as court managers in the court until they retired.

In 2002 the courts in the **Netherlands** became "autonomous organizations" and this brought about the need to acquire management expertise: the court manager. It is worth mentioning that similar positions also are in post in the prosecutor's office. The selection process to hire a court manager is primarily in the hands of each court, but the final word is by the Judicial Council. Selection is a public competition, sometimes with more than 200 applicants. Generally speaking, candidates come from the courts, other public administrations, or law firms. They usually have a background in public management. The position in the court is for 6 years. There is not the need for a formal confidence vote, but mutual cooperation must be pursued.

Appointment of Court directors in **Poland** is made by the Ministry of Justice after a public competition carried out by a commission for each court, whose members are employees and judges. Among the criteria for selection, applicants must have a university degree and 5 years of professional experience with at least 2 years in management. The selection process entails a knowledge test, a psychology test, and an interview.

Even though there are differences among the 26 Cantons, in **Switzerland** the typical selection and appointment procedure for court managers take place with a public advertisement of the post in a newspaper. A selection committee, made by the President and other court judges, makes the examination of the candidates and recruits the manager. Usually, they have to have a good knowledge of courts and public administration in general. They can be former clerks or people with more managerial experience, which seems to be the latest trend.

Role, functions, responsibilities

- ☐ *Do they prepare a court budget?*
- ☐ *Do they manage a court budget?*
- ☐ *Do they manage the court space and layout?*
- ☐ *Do they recruit administrative personnel?*
- ☐ *Can they fire administrative personnel?*
- ☐ *Can they give any fringe benefits to the administrative personnel?*
- ☐ *Do they assign cases to the judges?*
- ☐ *Can they retrieve a case from a judge?*
- ☐ *Do they set priorities in the cases to be handled by the judges?*
- ☐ *Do they set timeframe for the pace of litigation?*

- ☐ *Do they set up local rules of practice?*
- ☐ *Do they have a disciplinary power against the administrative personnel?*
- ☐ *Do they represent the court in any institutional body?*
- ☐ *Are they in charge of Information and Communication Technology (ICT) in the court?*

In the **Czech Republic** Directors of administration do not prepare the budget but they manage the court budget allocated by the Ministry of Justice. They do not manage the court space and layout, neither have functions such as recruitment, fringe benefit assignments, and disciplinary power as far as administrative staff is concerned. They have no role in case assignment, procedural timeframes and priorities definition, or setting rules of practice. They are in charge of the day-to-day operation of the court, including information and communication technology (ICT).

Court managers' functions in **Denmark** can vary from court to court, but generally speaking they manage human resources, ICT, facility management, and the court budget, even though most of it is managed centrally by the Courts Administration agency.

In **Finland**, functions and responsibility of court managers depend on every court. In particular, in the Supreme court of general jurisdiction and in the Administrative one they really serve as the "right hand" of the President. In the courts of appeal, court managers are, according to legislation, in charge of the court functioning, including the budget, they act as spokespersons and they deal with personnel training. In practice, they act in cooperation with the Presidents and the duties of the court managers of the courts of appeal are very similar to the other courts.

The Directors of administration (*Directeur de greffe*) in **France** give their support to the Presidents in managing all the court functioning such as: hearing scheduling, supervising court registers, budgeting, facility management, administrative personnel management. However, it is clear that the head of the office is the President of the court who supervises and has the last say on the Directors' activity. They also have some limited judicial functions stated by the law, which make them quite similar to the German *rechtspfleger*.

In **Germany**, the "general managers" are in charge of the non-judicial staff and all the related activities. They deal with the day-to-day operations, with the budget of the court, with ICT as far as the court is concerned, since the general policy is in the hands of the Ministry of Justice. They cannot have a say in case assignment, case priorities, and court rules. Disciplinary powers are held by the Presidents. The general managers of the regional courts have supervision and hierarchical powers over the non-judicial personnel of the local courts within their territorial jurisdiction. This hierarchical structure also applies to the general managers of the courts of appeal who have supervision over the regional and local courts.

The budget in **Italy** is allocated from the Ministry of Justice, there is just a very limited space for both the President and the court manager to play with it. Therefore, court managers do not prepare the budget. They may deal with space and layout, but only under the supervision of the President. As civil servants, they do not select or recruit the administrative personnel of the office, but they can manage them within the office. They do not have any function as far as the judges' work is concerned, but they are in charge of the allocation of administrative personnel within the court and the organization of the court administrative procedure (i.e.

registers, archives, business hours, recording of the hearings etc.). They do enjoy some disciplinary powers on the administrative personnel, but none fringe benefits can be given. They may have some informal role in the deployment of ICT in the courts, but within their general function of running the court business.

In **Lithuania**, the court managers have the responsibility to organize the internal structure of the court along the lines set up by the Judicial Council. As civil servants, they are in charge of the activity related to the well functioning of the judges' work and court's services, as well as dealing with administrative human resources. However, all these activity have to be dealt with the agreement of the President of the courts who is the head of the organization. They draft the court budget, defend it before the Judicial Council, and then manage it. They can appoint and dismiss court employees, manage their training, allocate personnel within the office, deal with health and security policies. They also have disciplinary powers for court administrative personnel. They do not have any organizational task related to the judges' work (i.e. case assignment, priorities etc.). They handle ICT in close consultation with the court President.

The Court manager in the **Netherlands** is a member of the Management Board and as such performs a bunch of managerial activities in collaboration with the President and the other board members. For example, they prepare and manage the budget for the court, deal with human resources (hiring, removal, discipline, and fringe benefits), court facilities and security. ICT is dealt with by the Judicial Council as a general policy, but the local hardware and maintenance is in charge of the court manager. They do not have a direct function on case assignment and court case priorities, but through the "*Lamicie*" tool they can have a clear idea of court performance and timeframes.

The Court directors in **Poland** are in charge of the budget (planning, management, and reporting), human resources for administrative staff (supervision, allocation, training), and all the court operations that do not interfere with the judicial procedure. So they do not have any role in case assignment, prioritization of cases, timeframe settings, rules of practice. They manage space and court layout along with the Court Presidents. Also, there is a kind of shared competence on ICT. Court directors of the higher court have some hierarchical powers over the directors of the lower courts. They can make inspection, and the Court director of the court of appeal prepares a yearly report for all the courts of that district.

Financial and human resources are the main functions of court managers in **Switzerland**. They plan and manage the budget, as well as, they supervise the financial matters of the court. They do not support the judge in legal issues, so they do not assign case, or set priorities, but they deal with all managerial functions such as: statistics, administrative court services, court facilities, ICT, public relations, selection and career of administrative staff, relations with the Administrative commission about the court functioning.

Performance evaluation

- ☐ *Are their performance evaluated during their service?*
- ☐ *How does this performance evaluation take place?*
- ☐ *What kinds of criteria are used?*

What are the consequences of the evaluation process?

In the **Czech Republic** is not reported a specific performance evaluation program for directors of administration of the courts. They are liable as civil servants.

In **Denmark**, all managers within the court system, including court managers, with at least 5 subordinates are evaluated by their subordinates approximately every third year. However, there is not a standard performance appraisal procedure.

Also in **Finland** are not reported standardized procedures to evaluate the court managers, however the evaluation takes place yearly, and it is under the discretion of the President of the court.

There is a dedicated evaluation process for the Director of administration in **France**. The Presidents of the courts carry out the evaluation, which is formalized by the Presidents of the Courts of Appeal. The result of this evaluation affects the career path of the Director of Administration.

General managers in **Germany** are evaluated, as well as all the personnel of the public sector, through a comprehensive grid of skills that must be assessed. Good evaluations are a typical step to apply for better paid positions in the higher courts.

Court managers in **Italy** have to prepare a yearly plan that is the basis for their evaluation made by their Presidents, who can also collect information about the court managers' performance from different stakeholders. The evaluation, which is by the way common for all the managers of the public sector, affects a percentage of the court manager salary.




President of the courts in **Lithuania** evaluate the court managers every year. A poor evaluation may force the court managers to lose the position.

In the **Netherlands**, court managers are evaluated by the court President plus a member of the Judicial Council. There is a standardized performance grid (competence profile) made of 9 criteria. If 6 out of 9 have good scores the evaluation is positive. However, if there is a general perception within the courts that the court managers are not doing well, they will be induced to leave notwithstanding the formal evaluation.

The court General assembly in **Poland** can propose to the Ministry of justice to dismiss a court director because of poor performance. If this is the case, the General assembly sends the proposal to the Court director of the court of appeal that sends the file to the Ministry of Justice for the final decision. However, the Ministry of Justice is entitled to dismiss a court director even though the court has not asked for it.

Generally speaking, in **Switzerland** the annual evaluation of the Court manager is done by the President of the court. The evaluation affects both the career path and the salary of the court manager up to a fixed salary ceiling. In some Cantons, where judges are elected by the Parliament, the re-election of the judge can bring the re-appointment of the court manager in the same court.

Relationship with key players

-  Which are the relationships with the President of court?
-  Which are the relationships with the senior judges/head of chambers or department?
-  Which are the relationships with the other governance bodies (Ministry of Justice,

judicial council, etc.)?

In the **Czech Republic**, the fact that the President can remove the Director does affect the relationship between them. Presidents can also retain some managerial functions just for themselves.

Even in **Denmark** the Court managers are subordinate to the President, and they can, in principle, be removed by the President.

The most important relationship in **Finland** is between the President, the Court manager and the Ministry of Justice during the negotiation process for the court budget appropriation.

In **France**, the *Greffiers*, as civil servants, cannot be removed by the President even though they are under the President's authority.

The relationship between the General manager and the court President in **Germany** is very tight, and a trustful cooperation is necessary. Judges often approach the General manager rather than the President in matters of day-to-day business. As a custom, the General manager would not communicate directly with the Ministry of Justice, which is normally done through the Court of Appeal administrative department. Experienced General managers are often recruited for positions within the Ministry of Justice, and are quite often consulted by the Ministry of Justice.

In **Italy**, the relationship between the Presidents and the court managers is a point of attention since there may be some tensions due to the sometimes overlapping functions and allocation of administrative staff within the court.

The Court manager and the President of the court in **Lithuania** should work as a team within the court. There are not really clear provisions about the two spheres of activity, however the court manager must find a good balance and always take into consideration the judges' needs.

The more sensitive relationship also in the **Netherlands** is with the President of the court, with whom it is necessary to establish a team approach.

The court director in **Poland** must deal with the Ministry of Justice and the President of the court and this relationship may sometimes be strained due to different expectations.

In **Switzerland** a key issue for the court manager is to have a good relationship with all the stakeholders.

Critical issues

- ❓ *Are there any critical issues currently debated about the role and functions of the Court manager?*

No critical issues have been mentioned in the **Czech Republic**, **Lithuania**, the **Netherlands**, and in **Switzerland** about the position of court managers.

In **Denmark**, some court managers have found it difficult to manage the two still very distinct groups of clerks and judges within the court.

The most critical issue in **Finland** seems to be the lack of specific professional background of the court managers. There are no dedicated training programs, and most of the court

managers are just holding the position with the aim of becoming judges.

It is a matter of debate in **France** if the role of the Director of administration should be more managerial. This debate is part of a broader approach to bring a more managerial perspective to the justice system.

There is a trend in **Germany** to employ fully trained court managers, however it is still considered preferable to recruit them from the *rechtspfleger*, who have already developed a court experience and who thus know court operations.

Also in **Italy** the relationship between the President and the Court manager can lead to some tensions to the detriment of the court functioning. Very much depends on the personality of the President and the Court manager, and their will to establish a collaborative approach.

The new more powerful position of court directors in **Poland** may cause some tensions with the President due to the different goals and responsibilities.

Judicial assistant

As mentioned in the introduction, the information available for the position of judicial assistant is far more limited in comparison to the position of President of the court and Court manager. In addition, the role itself may be slightly misleading, due to the different meanings that such a position can have. As a general indication for the sake of this exploratory research, “judicial assistants” support judges in the handling of their cases, such as an apprentice, intern (law graduates) at the European Court of Justice. Then, in this study judicial assistants should not be confused with the position of: part-time judges, lay judges, “honorary” judges, arbitrators, mediators, court administrative staff, court register, or *rechtspfleger*. However, one of the goal of this study is to give as much information as possible, for this reason all the data kindly supply by the national experts have been included, even though they do not always match the definition of judicial assistant proposed.

Institutional background

- ☐ *Do you have a position as such, or similar, in the courts?*
- ☐ *If you do not have it, is it an issue at stake in your country?*
- ☐ *Are these position established in all court jurisdictions (e.g. first instance up to court of cassation or supreme court)?*
- ☐ *Do you have a national policy or law that established and rule them?*
- ☐ *Are these positions in somehow established only in some courts?*
- ☐ *Is there a similar position in the prosecutor office?*
- ☐ *Do these assistants have a legal background?*
- ☐ *Does this position help them to become judge?*

In the **Czech Republic**, the position of judicial assistant is based on Act No. 6/2002 (section

36a). Judicial assistants may be appointed to assist the judges of high, regional or district court, however at least one judicial assistant should be appointed to each judge of the Supreme Court. Due to their functions they can be considered *rechtspfleger*.

In **Denmark** there is not the position of judicial assistant. The Danish judiciary knows a position similar to the *rechtspfleger* in Germany called “deputy judge”.

In **Finland**, there are two main roles that may be referred as judicial assistants: 1) “*referendaries*”, who work in the higher courts and administrative courts (it has to be noticed that the names and the salaries of the court officials working as *referendaries* vary in the different courts), who will assist the judges with preparing hearings or drafting decisions. 2) Trainees in the district courts, who handle different kind of court matters during a 12-month period, 50% of which may take part in an administrative court. There are also few permanent or fixed-term judicial assistants in the district courts. Their status and functions are similar to trainees. In addition, in all the courts there are few “notaries”, whose duties are similar to the ones performed by *referendaries* with some more administrative tasks. Then some university students can work in the courts but only with administrative duties.

In **France**, the position of judicial assistant is not in place. Some larger courts may have just one trainee who can be also employed as judicial assistant. Originally the *greffier* (clerk of court) were supposed to assist the judge in the legal matters but this has not happen. In the Supreme Court (Court of cassation), young judges are employed for the preparation of the case and the drafting of the decisions.

Germany does not have the position of judicial assistant as defined in this work. However, in local, regional, and higher regional courts there is a system of trainees, “*Rechtsreferendar*” (*Ref. iur.*), as a part and one of several stages within the general practical process for legal education. The trainees spend a few months in courts trained by a judge, to whom, to a certain extent, they give some assistance. In addition, even though they cannot also be considered judicial assistant according to the definition applied in this study, in the Constitutional court and Federal supreme courts, younger judges (with 5 to 10 years of experience) are assigned to prepare cases and draft decisions.

Italy has a court position called “*assistente giudiziario*”, literally judicial assistant, who does not have anything to do with the definition of this study. The *assistente giudiziario* is a clerk who does administrative work. The position of judicial assistant is not in place in Italy. However, in the last ten years, there have been an ongoing debate about the establishment of this position, and a growing number of courts have put in place traineeship programs for law graduated students to assist judges in legal search and judicial drafting. The 15th of June 2013, the Council of Minister approved a decree that should established, after the parliament vote, a mandatory court training program for law graduates before applying for the BAR exam. The same decree has also entailed the secondment of 30 young judges at the Supreme Court of Cassation as judges’ assistants in the attempt to increase the court’s productivity.

According to the legislation in **Lithuania**, every judge should have a judicial assistant. In practice this is true only for the higher courts, while in the lower courts of general jurisdiction, due to budgetary constraints, there is approximately 1 judicial assistant for every 2 judges. The position of judicial assistant is quite popular due to the fact that the experience gained in such a position is considered to be beneficial for the future career.

The courts in the **Netherlands** established the judicial assistant position in the 1950s. Initially judges were quite reluctant about this position, but they change their mind quite rapidly. As of

today, judicial assistants are perceived as extremely useful for increasing the court productivity and thereby the efficiency of justice. Moreover the experienced judicial assistance in each specialized sector guarantee a constant know-how within the sector.

The position of judicial assistant in **Poland** was introduced in 2001. After the 2009 reform that established the National School for Judges and Prosecutors, being a judicial assistant has been considered a fundamental step for applying for judgeship. As of today, there are 2876 judicial assistants out of 3282 posts. The gap is due to the fact that to become judicial assistants, candidates must have completed two years of training at the National School for Judges and Prosecutors, and there are not enough candidates to apply for the position.

In **Switzerland**, there is not really a position of judicial assistant as it has been drafted for the sake of this study. However, judges are supported in their judicial activities by the clerks (*Greffier*). The same term, *Greffier*, can identify different functions depending on the court. In some court the *Greffier* (i.e. clerk of court) has typical administrative functions such as taking minutes and statements during the hearing. In some other courts and in the higher courts the *Greffier* gives more legal support to the judges.

Selection and appointment

- ❑ *Are these positions part time or full time?*
- ❑ *Who does select them?*
- ❑ *How are they selected?*
- ❑ *How long do they hold the position?*
- ❑ *Can a judge fire them?*
- ❑ *Are they paid for their work?*

In the **Czech Republic**, judicial assistants have to be graduated in law. They are appointed by the President of the court after the judge's proposal. They can be fired by the President of the court or dismissed if their judge resigns or retires.

In **Denmark**, there is not the position of judicial assistant but the one of deputy judge. They are selected by the Courts Administration and generally speaking after 2-3 years they will move to a different court. It can be a permanent job, but every 3 years they have to pass an exam.

In **Finland**, permanent *referendaries* and *trainees* positions are publicly advertised. The selection is an open competition. *Referendaries* hold the position for a variable fixed term or a permanent one, while the trainees are in post for just 12 months.

France does not have the position of judicial assistant.

In **Germany**, the trainees (*Rechtsreferendar*) who may be considered judicial assistants are law graduates who have to spend 2 years in courts as part of their mandatory training. Applications have to be addressed to the respective higher regional court of the candidate's choice. It is mandatory part of the law education, the State guarantees a training position and also a stage in court, but not necessarily at the court of the candidate's choice. They are selected based on qualification (in particular grades), special social engagement, etc.

The selection of the trainees in **Italy**, who may be considered “judicial assistants”, are carried out at the various courts along with the local university, and the agency that finances the training. The selection is a public competition based on merit (mainly university grades). The training period is different from court to court, as are the working hours and the (small) salary. This training is not taking into consideration if the trainee runs to become judge or prosecutor.

Judicial assistant in **Lithuania** are required to have a Master’s degree in law. Judicial assistants are selected by each court (the Appointment Commission is composed by Court managers) after the public competition. The judicial assistant position is not formally considered in the application to become judges; however, it has been reported, that judicial assistants tend to perform better than the other candidates. Usually, they hold the post for 5 to 7 years before taking other jobs, including judgeship.

In the **Netherlands**, judicial assistants are selected by the Court Management Board after a public competition. Most of them do have a law degree but some do not.

Judicial assistants in **Poland** are appointed by the Ministry of Justice but they are selected through a public competition organized by the court that is going to employ them. The requirements to apply are a law degree, to have completed two years at the National School, and being at least 24 years old.

In **Switzerland**, *Greffier* - who do not really match the definition of judicial assistant of this study but whose information are considered useful - are appointed by the court after a public competition based on merit. *Greffier* in the first instance and appeal courts do use this position as a springboard for other positions, such as judge or *Greffier* at the Federal Supreme Courts.

Role, functions, responsibilities

- ❑ *In which functions do they assist the judge (legal search, legal writing, court reporting, court scheduling etc.)?*
- ❑ *Are there any other functions that they may perform?*
- ❑ *Is each assistant assigned to one particular judge (or a group of judges), or do they provide assistance to all judges in the court?*

In the **Czech Republic** the functions of judicial assistant are taken care of by *rechtspfleger*, who are entitled to participate in the decision making process and deal with some specific court proceedings such as: payment orders, care for minors in court, grant of permission to accept or hold a person in the medical or special treatment institution, enforcement of a decision, elimination of mistakes in the court filings, court fees, appointment of an expert or interpreter, witness’ fee, expert’s fee and interpreter’s fee.”

Deputy judges in **Denmark** have their own cases and they can preside over both civil and criminal hearing for minor cases. In the higher courts they may assist judges in their case analysis.

The *referendaries* in **Finland** do not work for a single judge but for a chamber of a section of the court. They assist the judge in the case law analysis and in any other legal matters related to the case procedure. *Referendaries* also prepare draft decisions for the chamber. It is worth noting that the opinion of the *referendaries* are mentioned in the judgment, even though they do not signed it. These positions are seen as a good experience in view of applying for a judgeship.

France does not have the position of judicial assistant.

The trainees in **Germany** prepare the case, make legal research, write summaries, drafting decisions, and express opinions. They also may lead the hearing under the supervision of the judge as a part of their training.

The trainees program in **Italy** are locally based, so the functions carried out by these young judicial assistants vary from court to court, and they also depend on the knowledge of the trainee. Generally speaking they give a general assistance to the judge.

In **Lithuania**, judicial assistants help the judges in the preparation and drafting of judgments, legal research and other legal matters related to their job.

The courts in the **Netherlands** are organized in sectors (or sections), the judicial assistants are then assigned to one of these sectors, so they are not assigned to a particular judge. In this way judicial assistants are inclined to specialize in one branch of the law, and they also help to keep the sector jurisprudence more consistent. Judicial assistants support the judges in the preparation of judgments, in researching the case law, they take minutes during the hearing, and after the hearing they draft judgments under the responsibility and the supervision of the judge.

Judicial assistants in **Poland** support the judges in several ways, for example, in the analysis and preparation of the case and drafting court decisions.

Greffier in **Switzerland** support the legal work of judges. For example, they make legal search, draft facts and reasoning in judge's decisions, draft court decisions. In the higher courts, they enrich the judges' decision with some data and do prepare a summary for the court data base and the media. Depending on the court organization, *Greffier* can be assigned specifically to a judge or to a division of the court with several judges. It may also happen that for a complicated case a *Greffier* is assigned to a single judge to deal with that particular case.

Performance evaluation

❑ *Are their performance evaluated during their service?*

❑ *Who does this evaluation?*

Most of the participating countries have not reported specific performance evaluation systems to assess judicial assistants. Just few countries have reported some more detailed information.

France and **Switzerland** that do not have the position of judicial assistant, have not reported information on the evaluation of *Greffier*.

In **Denmark**, where the judicial assistant position is not in place, deputy judges are evaluated during their first 3 years, and end that period with having to pass an oral exam. After 6 years they are invited to have an evaluation/career talk with the Courts Administration. A commission is currently working to come up with proposals for how deputy judges are to be evaluated in the future.

In **Finland**, *referendaries* are evaluated every year by the Court president, or the head of division. There are different salary levels for *referendaries* depending on the court jurisdiction. A positive evaluation allows the *referendary* to apply for a similar position but with a better

salary.

In **Germany**, the trainees are graded by their supervision as part of their curriculum.

Judicial assistants in **Lithuania** are evaluated annually by the judge assigned to supervise their work. In cases of very bad or excellent evaluation the court's Evaluation Commission has also a say. The evaluation procedure is finalized by a formal decision of the Court manager.

In the **Netherlands** judicial assistants are evaluated every year on the basis of the information provided for by 2-3 judges of the sector.

Relationship with key players and critical issues

- ❑ *Which are the relationships with the President of court?*
- ❑ *Which are the relationships with the senior judges/head of chambers or department?*
- ❑ *Which are the relationships with the other governance bodies of the court?*

The experts of the participating countries have not reported information on the issue.

Critical issues

- ❑ *Are there any critical issues currently debated about the role and functions of the Judicial assistant?*

Just some countries have indicated some critical issues on this position.

In **Finland**, is debated if the *referendaries* should not be considered a permanent position, and if they should work just for a judge and not for the chamber or a section as a whole.

In **Germany**, it **was** argued that the requirement of a mandatory training as *Referendariat* is very costly and further extends the already long time process for law education. The court training was also focused on judgeship, even though only about 10 % of the trainees become judges, while the majority become attorneys. Since a reform in 2002, more emphasis is put on practical training for private practice, which is underlined by the fact that a stage of nine months in private practice is obligatory.

In **Lithuania**, there is the trend to increase the number of judicial assistants as a positive tool to raise the number of cases disposed. It is worth noting that at the beginning judges were quite skeptical about the role of judicial assistants, but they have then changed their mind.

In **Poland**, the law should be amended to open the applications for judicial assistants also to law graduates who have not been attending the National School for Judges and Prosecutors. Some commentators also argue that judicial assistant sometimes are focusing more on becoming judges than on the tasks that they have to perform.

Court media spokesperson

Institutional background

- ❑ *Do you have a position as such, or similar, in the courts?*
- ❑ *If you do not have it, is it an issue at stake in your country?*
- ❑ *Do you have a position as such, or similar, in the prosecutor's office?*
- ❑ *If such a position exists in courts and prosecutor's offices, when was it established?*
- ❑ *Is there a national or a local policy to establish such a position?*
- ❑ *If there is not such a professional spokesperson, how do the courts deal with the media?*
- ❑ *Are these positions established in all court jurisdictions (e.g. first instance up to court of cassation or supreme court)?*
- ❑ *What were the main reasons to establish the positions as spokesperson?*
- ❑ *What are perceived to be the most serious issues courts have with regard to the media?*

Media spokespersons in the **Czech Republic** are judges appointed by the President of the court, or the Presidents themselves. There is not a national regulation on court spokespersons.

In **Denmark**, all the courts have a media spokesperson, after a positive pilot project carried out in 2009 in half of the courts.

In **Finland**, there are only three full time media spokespersons who work at the two Supreme Courts (general jurisdiction and administrative), and in the Helsinki district court, the largest one in the country. A full time media spokesperson also is in post at the Office of the Prosecutor General. According to the law, each court should have a communication plan.

In **France**, in each Court of appeal there is a judge in charge of communication with the media and the public in general, who is selected by the Head of Information Department of the Ministry of Justice.

The media spokesperson position in the courts in **Germany** was established more than 30 years ago. All the big courts have such a position, while in the smaller ones it is the President of the court who deal with the media.

Italy does not know the role of media spokesperson in the courts of general jurisdiction and in the appeal ones, while there is a press office at the Supreme Court of Cassation.

In **Lithuania**, there are professional spokespersons in all the larger courts. Sometimes the President's assistance may act as media spokesperson.

The **Netherlands** has "press judges" since the 1970s. Today every court has at least two of them. The idea is that judges should not speak with the media or the public about their own case, therefore the "press judges" were established. They are also supported by *communication advisors* who are professionals in communication who deal with internal communication and public information. The national Judicial Council can also provide for information about a sensitive case.

In **Poland**, the role of court media spokesperson was established in 1987. Generally, in the first instance courts the President is in charge of these functions, while in the higher courts the President can appoint a judge.

In **Switzerland**, in the Federal Supreme Court and in the Cantonal Appeal courts of largest cantons there is a public relations staff "*chargé des relations publiques*".

Selection and appointment

- ❑ *Are these positions part time or full time?*
- ❑ *If the spokespersons are not judges, what kind of professional background do they have?*
- ❑ *Who does select them?*
- ❑ *How are they selected?*
- ❑ *How long do they hold the position?*

In the **Czech Republic**, the judges who are appointed as media spokespersons usually are volunteers and the appointment is made by the President of the court.

Presidents of courts in **Denmark** designate a media spokesperson among the court judges or they can take themselves this task.

The three full time media spokespersons in **Finland** are not judges but professionals in communication hired by the courts.

In **France**, there is not the position of media spokesperson, therefore information on the selection process have not been reported.

In **Germany**, the media spokesperson are always court judges who carry out this function besides their judicial work. Presidents of the courts select the media spokesperson among the court judges at their own discretion. The position is held until the President decides to appoint a new judge.

The press office at the Court of Cassation of **Italy** is a Supreme court judge without any other support staff, but also single judges from time to time make interviews and deal with the media.

In **Lithuania**, the professional media spokespersons are selected by the Court manager in close consultation with the President through a public competition. They can be removed through the same procedure as the other court personnel.

"Press judges" in the **Netherlands** are selected by the Court Management Board. They do not receive any extra salary or benefit, and they carry out this function along with their regular judicial work.

In the higher courts in **Poland**, where the President can appoint a judge as media spokesperson, the selection must take into consideration the opinion of the Court Board (i.e. Judges' assembly). Judges will not receive any extra salary or benefit for this function.

The selection in **Switzerland** of the person in charge of Public relation can be made by the Court plenary, by the Administrative Commission, or by the Court Manger .

Role, functions, responsibilities

- ☐ *When do the spokespersons communicate with the media (e.g. only for sensitive cases, to give the correct interpretation of a court decision, to close the gap between the courts and the users etc.)?*
- ☐ *What kind of media do they use (e.g. press notice, web site, you tube etc.)?*
- ☐ *Is there a national policy/guideline for how spokesperson's can comment on cases and court decisions?*
- ☐ *Can spokespersons comment on specific ongoing cases?*
- ☐ *If yes, what kind of information can they provide?*
- ☐ *What do they do in order to avoid criticism for interference?*
- ☐ *Can spokespersons comment on specific court decisions?*
- ☐ *If yes, what kind of information can they provide?*

Generally speaking, the participating countries reported that the court media spokesperson give general information about the functioning of the court such as court procedures and rules, hearing schedules. The most sensitive issue is the kind of information that can be given about a case. As a general trend, court's spokespersons can explain a court decision, this may happen in sensitive cases, but they are not supposed to express an opinion or comment on the case. So they are limited to the description of facts and law applied in the case.

They seem to use traditional press releases, press conference and interviews, other media tools for communication are not reported by the participating countries.

Guidelines to deal with the media have not been reported but in the Netherlands and in Germany, where several *Bundesländer* have established guidelines for media spokespersons.

Performance evaluation

- ☐ *Are their performance evaluated during their service?*
- ☐ *Do they perform their activity under the supervision of the President of the court or any other institution (e.g. Ministry of justice)?*

It has been reported by the countries' experts that some kind of performance evaluation of the court spokesperson are taking place only in **Germany**, where the judges in charge of it can also be answerable to the Press department of the Ministry of justice; and in **Lithuania**, where the media spokespersons are subordinate to the court manager and their performance are evaluated yearly.

Relationship with key players and critical issues

- ☐ Which are the relationships with the President of court or the Chief prosecutor?
- ☐ Which are the relationships with the senior judges/head of chambers or department?
- ☐ Which are the relationships with the other governance bodies of the court or of the justice system (i.e. Ministry of justice, judicial council)?
- ☐ Are there any critical issues currently debated about the role and functions of the media spokesperson?

On this issue the countries' experts have not reported any information.

Concluding remarks and trends

This exploratory study shows, once again, how justice systems are constantly in search of a balance between judges' independence and some kind of accountability mechanisms to avoid abuses and improve the quality of justice served. A "quality" that entails a fair, law based, decision making process within a reasonable time.

Judges' independence should not be seen either as a privilege nor as an end itself, but a means to pursue the judges' impartiality in their decision making process. Judges' independence can be split in *internal independence* and *external independence*. *Internal independence* is the independence of each single judge from the other judges and, in particular, from the President of the court, the Superior courts, or the Judicial Council. *External independence* is the independence of each single judge from powers and authorities besides the judiciary, such as any other branches of the government (i.e. the executive power).

Most of the responsibilities and functions designed by the various countries for the Presidents of the courts described in this work are mainly affected by these two kinds of independence, by the governance structure of the judiciary (Ministerial, Court agency, Judicial Council), by the level of autonomy of the court, and by the form of the State (central vs. federal). The different combination of these factors generates different court models and different functions of the four working positions explored here.

Each judiciary must find its own solution, which is always deeply affected by its historical roots and political environment; however the case studies presented here identify some trends, which are quite common, and several different models that can be used as examples. These concluding remarks will single out some of these trends and they will focus on some of these examples. Some more hints and further analysis can be found in the annexed reports by Contini and Wittrup.

It is worth noting the increasing importance of managing the courts as a complex organization, which has become even more important due to the cutbacks in public budgets. Courts do have peculiarities in comparisons to other public organizations that must be taken into serious consideration, but even despite of these peculiarities they need to be very well managed. In all the participating countries of this exploratory study, the role of the **President of the court** is getting more managerial. This trend is very much evident in the Netherlands, where courts are considered autonomous organizations and this large managerial responsibility is shared within the Court Management Board, but this is also true in the other judiciaries that have to deal more and more with management problems. National experts reported that, even if

it depends on the size of the courts, most of the working time of the Presidents of courts is dedicated to managerial tasks.

The selection process of Presidents is paying more attention to the managerial attitudes of the candidates, even though it is always quite difficult to evaluate these capacities, and the simple attendance to managerial courses cannot be considered sufficient. The brief, but informative, descriptions of the selection procedures show a wide gamut of choices that should be related to the political context and the background of each justice system.

Only in the Netherlands Presidents of the courts, along with the Management Board, recruit both judges and administrative personnel at the local level based on the available court budget. In all the other courts this hiring function is limited to trainees or similar positions.

In the case studies presented here, Presidents have very limited disciplinary powers on judges. Usually, they can make a reprimand or a warning, but further disciplinary sanctions are taken care of by an external body.

In almost all the countries, Presidents of courts hold the position from 4 up to 12 years, with some exceptions, such as Denmark, Finland, and Germany, where they hold the office until retirement. Another exception is Switzerland, where Presidents of the Federal Supreme Court and of the Cantonal Appeal Courts hold the office for just 1 or 2 years. This is due to the political and institutional context that requires a significant turnover in these positions. It is also worth mentioning that only in France, among the participating countries, judges cannot apply to become Presidents in the court in which they are used to work. The underlying idea is that the judge of the same court cannot lead a well-known group of colleagues.

Presidents play a role in the overall organization of the courts such as the division in sections (sometimes called sectors, divisions, units, or departments), usually on specialized matters of law. Generally speaking, they have limited possibilities to affect the assignment of cases, to strengthen the internal independence and to avoid abuses and judge's shopping. The countries, such as Germany and Italy, that have in their law the principle of "legal judges" have more complicated systems for case assignment, and the role of the President seems to be even more limited.

Also the setting of case priority by the President is not a common practice in the participating countries of this study. Some general recommendations can be done for the sake of timeliness of judicial proceedings, but it looks like Presidents can only base their activity on moral suasion.

Some kind of evaluation of the President's performance is carried out in every country but, based on the information reported, this seems quite weak and not always based on a systematic process. A remarkable exception is the Netherlands, where the President and the whole Management Board are assessed by the Judicial Council through a so called "360 degrees" approach. It is worth mentioning, that the evaluation process should pursue the improvement of the court and its management, and it should not be seen in a punitive way.

There is also a slow trend towards the evaluation of the whole court, which can be done by court reports and different kind of surveys.

Presidents of courts in all the participating countries are still the head of the organization, but the trend in considering courts as complex organizations is also changing - at a different pace depending on the country - the role and functions of the head of the administrative tasks

of the court. In this study it has been used the term “**court manager**” as the general one to identify the head of administration, which has several different names in the various countries (i.e. director of administration, court director, director of Greffier, general manager, secretary general etc.). A full fledged “court manager” is found only in the Netherlands, where the autonomy of the courts needs a professional who can deal with the budget and with all the managerial aspects that have been moved away from the Ministry of Justice and the Judicial Council. The managerial tasks are dealt with by a collegial *integral management* Court Board, which is reported only in the Netherlands among the participating countries.

The other participating countries in this exploratory study have partially changed and enlarged the functions of their administrative heads or “court manager”. This enlargement is more evident in Denmark, Finland, Lithuania, and Poland, while seems less manifest in Czech Republic, France, Germany, and Italy. The key issue here is the budget and how it is allocated to the courts, which brings more or less managerial responsibilities to the court manager and to the President.

“Court managers” usually are the head of the administrative personnel and supervise all the administrative work of the court. Depending on the autonomy of the court governance they can also have some other tasks related to the budget, court facility, and discipline regarding administrative personnel. In France, Germany, and Poland, the court managers of the higher courts have some powers (i.e. inspection, supervision, discipline) over the court managers of the lower courts.

It is worth noting that the selection process for court managers sees a significant participation of the President of the court, with the exception of France, Italy and Poland, where the Ministry of justice still plays the most important role.

As far as the performance evaluation is concerned, in several courts this is done by the Presidents of the courts, but it does not seem to be carried out in a structured way. Once again, the Netherlands are an exception, where it has been reported a quite comprehensive model to assess the work of the court managers. Also in Italy there is a formalized evaluation system in place, but it is quite controversial.

The position of **judicial assistant** in the various participating countries offers a large number of different examples, which are quite difficult to summarize. The general trend is to introduce or to increase the number of judicial assistants as a means to improve the court productivity. Their position can be permanent or temporary. In this latter case, they can be trainees on legal matters (i.e. Czech republic, Germany, Finland, Lithuania, the Netherlands, Poland), or young law graduates who support the judges with legal search and some other paper work.

The selection process of judicial assistants is mainly based on their “future” job. For example, it is limited to people that already have some post-graduate training for the legal profession (i.e. Germany, Poland), while it is left to the discretion of the President of the court (i.e. Czech Republic) along with other stakeholders (i.e. Italy, along with universities) if the period of assistant is not considered formal part of the training to become judges.

Evaluation of judicial assistants is usually carried out by the President or by the judge in the event that the “judicial assistant” is a trainee. The evaluation process is more accurate if, as it is in Germany, it is considered in the application to become judges.

It is also worth mentioning that in some countries the judicial assistants are supposed to work with just one judge, while in some other they are assigned to a section of the court to be a kind

of staff to support all the judges of that section.

Rechtspfleger and *Greffiers* are not considered “judicial assistants”, according to the definition used in this study, but they are a point of attention because they deal with some law matters acting as judges. In this way they decrease the caseload before the professional judges.

The increasing role of courts in society has also brought an increasing interest of the media about courts and their decisions. There is a trend to establish a **court media spokesperson** to deal with the communication issue. Most of them are judges appointed by the Presidents of the court, who perform this function without any specific training. They do not receive any extra salary or other benefit. Only in Lithuania, Finland and Switzerland is the media spokesperson a professional in communication specifically hired for this position just in some courts.

Generally speaking, the media spokespersons give information on the court functioning and procedures, they can describe the court decisions but they do not give comments on the case. They use press releases and interviews, other communications tools have not been reported.

Courts are aware of the importance of the communication issue, however it seems that, in some countries more than others, they still do not pay enough attention to it.

Joint Project on
"Strengthening the Court Management System in Turkey"
(JP COMASYT)

Exploratory study on the position of: Court President, Court Manager, Judicial Assistant, and Media Spokespersons in Selected Council of Europe Member States

Report by Jesper Wittrup
September 2013

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Introduction

This report provides a comparative perspective on two increasingly important positions in the European court systems: judicial assistants and court media spokespersons. While the two positions as such do not have much in common, they share one important aspect: Both judicial assistants and court media spokespersons can help the courts with some of the most important challenges modern court systems are facing.

Many European court systems are facing the combination of increasing court workload (both with regard to the number of cases and complexity of cases) with decreasing or at least non-increasing court budgets. This naturally leads to the pursuit of ideas for how to handle more work with the use of fewer resources. Judicial assistants may provide one important opportunity for making court systems more efficient.

Just as court workload seems to always increase, the same goes for media attention. Handling the media well is crucial to any court system, and having court media spokespersons appears to be essential for courts wanting to do that.

This present study is explorative. It focuses on what has been done in various countries in relation to using judicial assistants and media spokespersons. Only to a very limited extent will the study provide normative guidance as to whether the different approaches adopted by some countries are better or more successful than others. To be able to provide such normative guidance, further analysis will be necessary.

The study covers 10 countries: the Czech Republic, Denmark, Finland, France, Germany, Italy, Lithuania, the Netherlands, Poland, and Switzerland. Information for this project has been gathered from a workshop with experts from the 10 countries that took place at the Council of Europe (COE) in Strasbourg the 15th and 16th of May 2013. The report is primarily based on the discussions at this workshop, as well as written material provided by the experts. Only to a very limited extent has it been possible to find additional research (articles or research reports) providing relevant information on these issues.

The opinions stated in this report are the sole responsibility of the author, and do not necessarily represent the views the country experts or the Council of Europe.

Judicial assistants

Definition

To enable a useful comparative analysis/discussion of the role of and use of judicial assistants, we need to have a common definition of the term “judicial assistant”. It is obvious from this research that there is no common understanding of this term. It has different meanings and connotations in the various countries. In the context of this study we understand judicial assistants to be defined by three main criteria: 1) they are not judges themselves; 2) they have a university degree in law or equivalent; 3) they assist judges with handling their cases.

This definition implies that we can identify two important staff groups as not being judicial assistants from this perspective: 1) The administrative clerks and secretaries without specific legal education who may assist judges with court reporting, typing, summoning parties etc; 2) Legal court staff taking care of certain specific routine cases, but doing so independently or without major interference from the side of the judges. For example, the German “*rechtspfleger*” will fall into this latter group.

Both these groups of staff are obviously providing the judges with assistance in some way. Experienced clerks, even though they do not formally have a degree in law, may because of their experience and acquired knowledge provide invaluable assistance to judges, also in relation to legal matters. The “*rechtspfleger*” and similar legal staff provide assistance to judges in the sense that they relieve the judge from handling various routine cases. However, in order to focus the discussion we have omitted these two groups from being considered as “judicial assistants”.

Furthermore, the definition above excludes judges working as assistants to other judges. In both Germany and France there are younger judges working as assistants in the highest courts. The above definition will be in conflict with common use of term “judicial assistant” in some countries. For example, in the Italian courts there is a functional role called “*assistentegiudiziario*” - literally to be translated as “judicial assistant”. However the Italian “*assistentegiudiziario*” are administrative employees of a relatively low rank that operate within various courts units performing administrative duties and court reporting. On the other hand, some specific positions as court clerks providing assistance to Italian judges require a law degree. Furthermore, a growing number of courts have established traineeship programs for graduated students, also with the goal of supporting judges with legal search and judicial drafting. In sum, we may argue that according to our definition, Italy does have a (limited) number of judicial assistants, but they are not the ones who are actually called “judicial assistants”.

Different approaches to judicial assistants

Looking at the rather heterogeneous group of judicial staff providing assistance to judges, there is substantial variation among the countries considered as part of this study. Approximately half of the countries have a substantial number of judicial assistants, while the other half only has a very limited number (usually only in the higher courts). This reflects different

practices of work for judges. In some countries, e.g. Denmark, the judge works ‘alone’, that is to say the legal work is exclusively or primarily carried out by judges themselves. If assistance is offered to judges, it is purely technical, (making copies of decisions, providing literature, distribution of materials, etc), and particularly only a modest assistance from younger legal colleagues is offered¹. In other countries the professional assistance has great practical importance, and may consist of the production of legal minutes, legal research, opinion drafts or participation in oral deliberations. For example, in the Netherlands judges will only in very rare instances (e.g. in relation to complex commercial cases) draft decisions themselves. They will leave this task to the judicial assistants.

In some countries, there may be a discrepancy between formal system for assistance to judges and actual practice. Since 2002 the “greffier” in France has formally been required to assist the judges with preparing cases and drafting decisions, but in reality they don’t. It seems to mainly be due to “cultural” resistance. The greffier’s consider they have quite enough to do with their other tasks, and judges may also be reluctant to delegate to greffiers.

Another important distinction can be made according to whether the use of judicial assistants is considered primarily as a means to increase court efficiency, or whether they are primarily seen as future judges undergoing training with this in mind. The former perspective seems to be dominant in for example the Netherlands and Lithuania. In Lithuania the court of appeal recently received a substantial increase in the number of judicial assistants to combat heavy backlogs.

In other countries, for example Poland, where judicial assistants tend to be perceived as future judges to receive training, the intake of new judicial assistants is adjusted to reflect the estimated number of future judge positions. In these countries, adding more judicial assistants tend to be seen as costly, since it will imply efforts on training will be wasted upon judicial assistants who will not eventually become judges.

In France, a proposal to introduce a new form of judicial assistants has met resistance exactly because the Ministry of Justice is reluctant to introduce a new form of entry to become a judge. In Germany there is an ongoing discussion about whether to reform the system of judicial assistants (Rechtsreferendar). Critics argue the two year-period of employment is too costly for the court system, especially since 90% of the judicial assistants end up as lawyers, not judges.

Different approaches to judicial assistants		
	Substantial number of judicial assistants	Limited number of/use of judicial assistants
Judicial assistants primarily perceived as a means to increase efficiency	Lithuania, Netherlands, Czechia	France, Italy, Switzerland ¹
Judicial assistants primarily perceived as future judges to receive training	Poland, Germany	Denmark, Finland

1 Zahle, Henrik (1999). Judicial Opinion Writing in the Danish Supreme Court (Højesteret)

The comparative analysis thus reveals markedly different perspectives on judicial assistants: 1) judicial assistants as (in relative terms) low-cost staff who can efficiently relieve judges of part of their work; or 2) judicial assistants as embarked in a costly training program which is only expected to pay off when they eventually become judges. The table above provides an overview of how the 10 countries are located according to these dimensions. The distinction is obviously blurred by the fact that there is an element of both training/recruitment and true assistance in all systems. Many judicial assistants in Lithuania, Netherlands and Czechia eventually end up as judges, and judicial assistants in Poland and Germany do take over work that judges would otherwise have to do.

The attitude towards judicial assistants who do not become judges varies as a consequence of these different perspectives. In the Netherlands, it is accepted that some judicial assistants may prefer to remain judicial assistants. They may not have abilities or interest in the communicative aspects of the work of a judge; they may not like to make decisions; or they may prefer to work part-time as judicial assistants are allowed to do. In some countries, however, judicial assistants who do not become judges tend to be viewed as “failures”. In Finland it is currently debated whether judicial assistants in the higher courts should only be hired for a fixed-term in order to avoid having them linger on, if they fail to become judges. Currently, only Germany and Finland apply term limits for judicial assistants.

Similarly, the two different perspectives have an impact on the procedure for selection (and dismissal) of judicial assistants. When the assumption is that the judicial assistant will eventually become a judge, the process of screening applicants tends to be more thorough and formalized. In Poland only applicants having undergone the two year post graduate training at the National School for judges and prosecutors are eligible to become judicial assistants, and the selection will be based on an open competition. In contrast, in the Czech Republic the court president can hire anybody with a law degree as judicial assistant only based upon the proposal of the judge whom the assistant is to assist.

The present study by itself can obviously not provide a definitive answer as to whether it is better to have a focus on assistance or on recruitment/training. When evaluating the different systems, the costs and benefits listed in the table below should at minimum be taken into account.

Benefits and costs of judicial assistants

	Benefits	Costs
	<p>Efficiency gains from using less expensive staff to support the handling of cases</p> <p>Potential effects on quality from having judicial assistants with specialized knowledge</p> <p>Societal value of training/education received by judicial assistants when they are moving on with their career (as judges or in other occupations).</p>	<p>Costs of providing training to judicial assistants (who may choose to leave the system)</p>

In several countries there have in recent years been a focus on recruiting judges more often from the “outside” (e.g. lawyers, or university professors) in order to avoid the courts becoming too “closed” and inward-looking systems. This trend, allowing many alternative career paths for people wanting to become judges, may in principle allow the courts to have the judicial assistants focus more on providing assistance, and less on training them to become judges. If having been a judicial assistant is no longer the predominant prerequisite for becoming a judge, and if judge positions are no longer “reserved” for judicial assistants and other “insiders”, the logical step is to stress the “assisting” role of judicial assistants.

It can also be argued, however, that such a shift may imply a risk that talented law graduates will no longer want to become judicial assistants. An alternative strategy may then be to provide training of a more general nature to judicial assistants, so that they will not only be skilled to become judges, but can also become qualified to pursue other careers within the legal system.

There is also an important distinction as to whether the judicial assistant is assigned to work only for one particular judge, or not. In Lithuania, Czechia and Germany the judicial assistant is as a rule assigned to work for one particular judge. In Czechia it is even so that the assistant will have to leave, if the post of the respective judge comes to an end. In the other countries, judicial assistants are as a rule not assigned to work for a particular judge, but most often they will be placed in a particular section (e.g. civil, criminal etc.).

In the case of Netherland it is argued that having the judicial assistants working together in teams is a major advantage since it allows for specialization. For example, some judicial assistants will specialize in human trafficking, and since they will learn everything there is to learn about handling such cases they will handle them very efficiently. In addition, working in teams may be seen as way to avoid “simple structures”, implying that judicial assistants working for just one judge may tend to focus too much on adjusting to the specific habits and preferences of that particular judge. This would make the transition to working for another judge difficult, and it might sustain a lack of uniformity in the way similar cases are handled.

In contrast, in the case of Lithuania the feeling among judges is that the one judge- one judicial assistant-system works well. The Supreme Court recently switched to a model with judicial

assistants working in teams, but judges are unhappy with that.

From a theoretical perspective, it appears to be more efficient to allow the judicial assistants to specialize. But again, the choice may be related not only to efficiency, but also to recruitment. If a major purpose with having judicial assistants is to be able to recruit qualified future judges, it may be argued that it is better to let the judicial assistants acquire general experience with the work of a judge.

As mentioned, the primary functions of judicial assistants in most countries are to prepare cases and draft decisions. In some countries, e.g. Lithuania, they have no independent authority, and everything they do need approval/signature by the judge. In other countries, e.g. Czechia, the judicial assistant – just like a “*rechtspfleger*” – has some authority to independently handle simple cases such as regarding payment orders.

Regular performance evaluations of judicial assistants seem to be carried out in all the countries (usually annually). For judicial assistants assigned to a judge, the evaluation will in practice be carried out by the judge. If they are assigned to a section they will be evaluated by the head of the section, but with inputs from a number of judges.

Conclusion

In summary there is substantial variation with regard to the use of judicial assistants in the court systems under study. Some countries rely heavily on judicial assistants to relieve judges of part of their work, while judicial assistants in other countries play only a very limited role. In the latter group of countries judges may work more ‘alone’, but they can also receive assistance from clerks without a formal legal education. Furthermore, the “*rechtspfleger*’s” or similar staff may indirectly “assist” the judge by relieving him from handling various routine cases. Another distinction can be made with regard to the perspective of judicial assistants as either primarily assistants, or alternatively as future judges to receive training. According to the first perspective, increasing the number of judicial assistants may be perceived as a low cost option to increase court efficiency. Seen from the second perspective, increasing the number of judicial assistants may be a costly affair in terms of training, and because the assistants will expect to become judges and expect an adequate number of positions to be available.

Finally, systems of judicial assistants differ according to whether the assistant is working for one specific judge, or rather working in a team with other judicial assistants and allowed to specialize.

Country profiles: Judicial assistants

Country: Czech Republic	
Judicial assistants	
Czech Republic: Judicial assistants	Institutional background
	The basic position of judicial assistants is based on Act No. 6/2002 Sb. on courts and judges (section 36a). According to this law, the judicial assistant may be appointed to the respective judge of high, regional or district court. At least one judicial assistant should be appointed to the judge of the Supreme Court (section 16).
	Selection and appointment
	Judicial assistants are required to have university degree in law. The judicial assistant is appointed by the president of the respective court on the proposal of the respective judge. The president of court may remove the assistant even without any proposal. The post of the assistant is considered cancelled if the post of a respective judge comes to an end. Otherwise the post of a judicial assistant follows the Labour Code.
	Role, function, responsibilities
	<p>The judicial assistant carries out individual acts in court proceeding under the authorisation of a judge. The judicial assistant is entitled to participate in the decision-making activity of court in the extent which is set for “senior judicial officers” (rechtspfleger).</p> <p>According to Act No. 121/2008 Sb. on senior judicial officers and senior officers of the public prosecutor’s offices, he/she can carry out individual acts in the following proceedings concerning:</p> <ul style="list-style-type: none"> payment orders, care of court for minors, grant of permission to accept or hold a person in the medical or special treatment institution, judicial enforcement of a decision. elimination of defects in the filings, deciding on court fees, deciding on the appointment of a representative of the participant in proceeding, deciding on the appointment of an expert or interpreter, deciding on the witness fee, expert’s fee and interpreter’s fee.
	Performance evaluation
	No
	Other/Critical issues
	No

Country: Denmark	
Judicial assistants	
Denmark: Judicial assistants	Institutional background
	<p>In the Danish courts the judge works as a rule 'alone', that is to say the legal work is exclusively or primarily carried out by judges. If assistance is offered to judges, it is purely technical, (making copies of decisions, providing literature, distribution of materials, etc), and particularly only a modest assistance from younger legal colleagues is offered. The position of a deputy judge (dommerfuldmægtig) in Denmark is somewhat similar to the German "rechtspfleger". In the district courts deputy judges do not primarily assist the "full" judges with handling cases. Rather they handle separate cases. Deputy judges in a district court are empowered to handle probate cases as well as notarial acts and matters involving enforcement of judgment procedures. In addition, a deputy judge is, to a certain degree, permitted to preside over civil and criminal cases. According to the definition applied in this study deputy judges in district courts are therefore not judicial assistants.</p> <p>In the higher courts deputy judges may actually assist judges with handling their cases.</p>
	Selection and appointment
	<p>A deputy judge assisting judges in the higher courts need to have completed 3 years of training working as deputy judge in a district court. The Courts Administration selects the deputy judges. It is expected that the deputy judge after 2-3 years with the specific court will apply for another position within the court system.</p>
	Role, function, responsibilities
	<p>In the Supreme Courts deputy judges will primarily work to prepare interlocutory appeal cases, do court reporting and take evidence. Since 2006 deputy judges working in the Supreme Court will for a 6-month period be assigned to work for a specific Supreme Court judge with the aim to prepare cases and draft decisions.</p> <p>In the courts of appeal the deputy judges work to prepare interlocutory appeal cases, and have administrative tasks.</p> <p>In the Commercial Court a deputy judge working with commercial cases (not probate cases) will work in the case preparation department.</p>
	Performance evaluation
	<p>Deputy judges are evaluated during their first three years with the court system, and end that period with having to pass an oral exam. After 6 years they are invited to have an evaluation/career talk with the Court Administration.</p> <p>A commission is currently working to come up with proposals for how deputy judges are to be evaluated in the future.</p>
	Other/Critical issues
	<p>It is considered to be a problem that an increasing number of deputy judges after working many years in the court system will not succeed to become judges. As a response to this, the educational training for deputy judges has recently been modified to focus more on alternative career patterns outside the courts system.</p>

Country: Finland	
Judicial assistants	
Finland: Judicial assistants	Institutional background
	<p>There are two main types of judicial assistants: 1) The higher courts and administrative courts have a number of “referendaries” (The exact titles of the court officials working as referendaries vary in the different courts) who will assist the judges with preparing hearings or drafting decisions. It used to be so, that a referendary only after working for 10-20 years as such would usually be appointed as a judge. This is no longer the case, however. Today, many judges are recruited from outside the court system.</p> <p>2) The district courts have trainees. Trainees handle different kind of matters in the court during a 12-month period. 50% of the training may take part in an administrative (appeal) court. A trainee may act as a judge in simple matters in district courts. After completing the 12-month training period the trainees receive a title “trained at the Bench”. This is perceived as an advance in relation to a career as judge, lawyer, prosecutor, and in general in both the public and private sector. There are also a small number of permanent and fixed term judicial assistant posts in district courts. Their rights, duties and qualifications are pretty much similar as in trainees position.</p> <p>Additionally, there are few officials called “notary” at all court levels. They may perform a lot of similar duties as referendaries, but usually they perform also administrative duties. However, the notary doesn’t have to be lawyer (however, usually they have a lower-level law degree). In the district courts trainees are also referred to as notaries, but they are not the same officials as mentioned above in this paragraph.</p> <p>All the courts in Finland may also employ university students, who can assist only in administrative duties.</p>
	Selection and appointment
	<p>For both types of judicial assistants (permanent referendaries and trainees) positions are advertised. In order to be eligible to work as a judicial assistant, the applicant must have a Master’s degree in law. To become a referendary one must live up to the same formal requirements as those for a judge position (although only the requirements for judge positions are stipulated by law). The notary, mentioned above, without a LL.M degree is not eligible to become a judge. The referendaries (and notaries) may be hired for a fixed term or permanent. Trainees are hired for a 12-month period.</p> <p>The trainees are selected and hired by the court president. The same applies also to permanent judicial assistants/referendaries, but in the Supreme Court + Supreme Administrative Court the judicial assistants are selected by the Court’s plenum. Having completed the 12-month is perceived as a career advantage, not only in the context of the court system – but also for those who want to pursue a career as lawyer or within government.</p>
	Role, function, responsibilities

	<p>The judicial assistants work for a department/chamber, and not as a personal assistant to a specific judge. A referendary is responsible for preparing cases and obtaining relevant information for decision making without unnecessary delays. The memorandum prepared by the referendary contains the actual issues subject to handling, facts, applicable provisions and Acts and a reasoned suggestion for decision. Usually the referendary prepares also a draft decision.</p> <p>The referendaries are independent. A referendary may state an opinion about the outcome of a specific case. This opinion will be mentioned in the judgement/decision but the referendary does not have a vote.</p> <p>A trainee can act as a judge in simple matters (but only in district courts). The trainees perform their training usually at a district court. Many of the cases tried at a district court are solved by a single judge. However, certain cases must be solved by three judges. The purpose of the training is in practice, to familiarize the trainees with the actual duties of a district court. This means that the trainees work not only as judges, but they (detailed duties depends on a court in question) actually may also help the personnel at the court's reception where they e.g. provide assistance to clients either by phone or in person regarding matters which are tried at a district court and receive official documents (at the beginning of the training) and also they handle certain matters which are based on application.</p> <p>As mentioned, a half of the training period may be performed at an administrative court if the trainee opts to do that. Please note that an administrative court is an appellate court. Thus, trainees are not acting as a judge at an administrative court (where as a rule, a case needs to be solved by 3 judges). In administrative courts the trainees perform duties of a referendary but they also may perform some administrative duties</p>
	Performance evaluation
	<p>Referendaries are evaluated annually by the court president or head of department. A court manager may render decisions concerning referendaries only when the said matter is being decided by a court's board where the court manager is a member. The court president does not, however, have the authority to fire the referendary unless the preconditions for it mentioned in the legislation are being met.</p> <p>Both trainees and referendaries receive fixed salaries according to general standards. Fringe benefits are not possible. There are different salary levels for referendaries (there are 2 salary levels in administrative courts and 3 higher salary levels in both supreme courts). One must apply for a position with a higher salary level, the court president cannot promote the referendary to a higher level without official application. However, e.g. in the administrative courts the court president decides on a promotion (previously it was a plenary meeting of the administrative court as it is still in supreme courts)</p>
	Other/Critical issues
	<p>It is currently debated whether it would be better to eliminate permanent positions for referendaries/judicial assistants. Today some referendaries will retire as referendaries, because they e.g. have not been considered to be capable to become judges or because some referendaries in the supreme courts do not want to pursue for a career as a judge at a lower court, and this is perceived as a problem. It is argued that the position should be seen as a step towards becoming a judge, and not as a permanent position, and that there should be more focus on training, and less on assistance. It is argued that such a shift would make the position more attractive for young talented and devoted law graduates.</p> <p>It is also argued that the number of referendaries should be less and that the number of judges should be higher (especially in the administrative courts. The Supreme administrative court still highlights the importance of the referendary system in the court).</p> <p>Finally, it is debated whether judicial assistants should perform work for particular judges, like US court clerks.</p>

Country: France	
Judicial assistants	
France: Judicial assistants	Institutional background
	<p>There are a very small number of positions officially named as judicial assistants ("assistante justice"). A court with 80 judges may have just one judicial assistant. The judicial assistant work often only part-time and may be a student working to finish his/her thesis.</p> <p>Since 2002 the "greffier" in France has formally been required to assist the judges with preparing cases and drafting decisions, but in reality they don't. It seems to mainly be due to "cultural" resistance. The "greffier's" consider they have quite enough to do with their other tasks, and judges may also be reluctant to delegate to greffiers.</p> <p>In the Supreme courts young judges will assist with preparation of cases and drafting decisions.</p>
	Selection and appointment
	The "assistante justice" is required to have completed at least 4 years of study of law at the university. He/she is hired for a two-year period that may potentially be renewed. The "assistante justice" usually works only 2 days a week.
	Role, function, responsibilities
	According to the "statute de greffier" from 2002 the "greffier" is supposed to provide assistance to the judge, to research documents, and to draft decisions according to instructions from the judge. In reality "greffiers" are, however, not carrying out these tasks.
	Performance evaluation
	No information.
	Other/Critical issues
	There is currently a proposal to establish a system with judicial assistants to support judge's work. One of the obstacles appears to be that the Ministry of Justice is reluctant to create a new type of automatic entry to becoming a judge.

Country: Germany	
Judicial assistants	
Germany: Judicial assistants	Institutional background
	<p>Germany does not have judicial assistants as permanent positions. In local courts, regional courts, and higher regional courts, however, there is a system of trainees, "Rechtsreferendar" (Ref. iur.), as a part of and one of several stages within general practical legal education. The trainees spend a few months in court as a compulsory stage of their legal education and are supervised, trained by, and to a certain extent assists a judge. In order to become a judge or an Attorney at Law according to German law it is required to do a 2 year period as Law Clerk/Rechtsreferendar after passing the university degree (the final university exam is also called 1st state exam).</p> <p>In the constitutional court and federal supreme courts younger judges (with 5 to 10 years of experience) are assigned to prepare cases and draft decisions. As judges they are not considered as judicial assistants according to the definition applied in this study.</p>
	Selection and appointment
	<p>To become a Rechtsreferendar the applicant needs to have a university degree in law. Applications have to be addressed to the respective higher regional court of the candidate's choice; however, as it is mandatory part of the law education-which is also organized by the state, the state guarantees a training position and also a stage in court, although not at the court of the candidate's choice. They are selected based on qualification (in particular grades) and waiting time, special social engagement, etc. only insofar as training capacities are not sufficient for all applicants.</p> <p>With regard to judges working as assistants in the federal Supreme Courts and the Constitutional courts, they are judges with 5-10 years of experience. They are selected by the relevant president and hold the position for about 3 years. They continue to receive their ordinary salary. If they are underperforming, they can be sent back to the court they came from.</p>
	Role, function, responsibilities
	<p>The trainees prepare cases, do legal research, write summaries, draft decisions, assist during trial, and may in certain cases even lead the trial (in presence of the judge/panel). Trainees may join the deliberation and provide their opinion on the case if the judge/presiding judge allows it.</p> <p>Judges working as assistants in the federal constitutional court and the federal supreme courts do legal research and draft decisions. In the federal constitutional court, assignment is to an individual judge, in federal supreme courts it is to a panel</p>
	Performance evaluation
	<p>The assistants (trainees) are given grades for their performance by their supervisor/judge</p> <p>Judges working as assistants in the highest federal courts are evaluated like all other judges.</p>
	Other/Critical issues

	<p>It has been argued that the general requirement of a mandatory clerkship/Referendariat is very costly and extends the already long time for law education. Recently, having a unified legal education for all legal professions enabling them to work with each other at the same level is increasingly seen as an advantage of the German system. In the past, the clerkship was rather focused on the qualification to become a judge, however only about 10 % of the law clerks statistically become judges; the majority become attorneys. Since a reform in 2002, more emphasis is put on practical training for private practice which is underlined by the fact that a stage of nine months in private practice is now obligatory. Further, the clerkship supports the general and broad legal education opposed to early specification.</p> <p>Discussions about reforming the clerkship have been going on for decades, and the idea to have “real” judicial assistants is occasionally raised.</p> <p>Recently the idea has come up to try to employ lawyers or experts in accounting as assistants to help judges go through huge amounts of documents where expertise seems to be necessary to establish the issues (prosecutors do have such specialized assistants, but with judges the question comes up whether some of the original judicial work would be delegated)</p>
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Country: Italy	
Judicial assistants	
Italy: Judi- cial assis- tants	Institutional background
	<p>To avoid the risks of misunderstanding, we have to start with some disambiguation. Indeed, in the Italian court there is a functional role called “assistentegiudiziario” - which literal translation is “judicial assistant”. However the functions performed by the Italian “assistentegiudiziario” have little to do with those performed by judicial assistants. Simply speaking they are administrative employees of a relatively low rank that operate within various courts units performing administrative duties and court reporting. The role of judicial assistant, described as personal assistant of the judge in charge of carrying out a set of secretarial functions, of cooperating with the judge in writing judgments, or in making legal search is not existent in the Italian ordinary courts and prosecutor’s offices.</p> <p>In the last ten years, there have been on-going debates about the establishment of the judicial assistant, a number of draft laws, including a new one just proposed by the government and not yet approved by the Parliament. Some more details about this governmental proposal will be given in the last section.</p> <p>If judicial assistants are formally not existent, some of their functions are performed by court clerks. In addition, a growing number of courts have established traineeship programs for graduated students, also with the goal of supporting judges with legal search and judicial drafting.</p>
	Selection and appointment
	<p>The selection and appointment of Court clerks and administrative employees of the courts is rooted in a national competition with written and oral exams held and organized by the Ministry of Justice. Depending on the rank and on the professional profile, some positions require a degree in law, economics or political sciences, others just secondary studies. Once appointed, clerks and administrative employees get the status of civil servants (or public employees) and hold permanent the position within the ranks of the Ministry of Justice.</p> <p>The selection of the trainees - that may eventually carry out some of the tasks of judicial assistance as noticed above- are conducted at local level by the courts, the local university and, eventually, by the agency that finance the training. The availability of such position is made public, candidates must file a request for appointment, the selection is carried out by an ad hoc committee and is based on merit. Traineeships positions are open to graduates (or students at the end of their university training) in law, economics and political sciences. Being local initiatives, differences may exist from case to case in terms of duration, number of hours to be spent at the court, qualifications, selection process, and pay. Some of the traineeships are also not paid. So far, work done at the court by graduate in law cannot be qualified as the mandatory on-the-job training (legal practice) required to apply at the bar exam. Last but not least, from a formal point of view this training is irrelevant for the selection of new judges and prosecutors.</p>
	Role, function, responsibilities

	<p>In the Italian courts, judges are organized in court sections. Each section is supported by an administrative office that carries out secretarial functions, keep updated the section registries, and provide some case management functions. Such office, called “cancelleria di sezione” acts as interface between the judges of the sections (or the judges panels), and the other administrative units of the court: the front office, civil and criminal executions, archives, ICT, facility management etc. Also, it can work as interface between the judge and the case parties. This office performs some of the functions of a judicial assistant, in particular the secretarial ones. This is done through a centralized service provided to the entire court section and not as an individual service to a judge. In addition, such office does not make two of the typical functions of the judicial assistant: legal search and support in drafting of judicial decisions.</p> <p>As far as concern the judicial traineeship the situation is quite varied, and depends largely on the quality (background, know how, availability, reliability) of the trainees. In some cases, courts have organized ad hoc professional training, sometimes in collaboration with the local university. Therefore while sometimes the trainees can provide good services in the areas of judicial assistance, in particular in legal search and support in judicial writing, in other they can just perform basic administrative functions.</p>
	Performance evaluation
	<p>Court administrators are in charge of the evaluation of the administrative staff, but given the rules and the structure of the Italian public sector it is largely a ritualistic exercise without consequences. Trainees are not evaluated.</p>
	Relationship with key players
	<p>The clerks working at the support unit of the Court sections have mainly relationships with the President and the judges of the section, or with the Court administrator i.e. their hierarchical supervisor.</p> <p>The trainees have just relationships within the office and with the judge they are working with. The Court President may be involved in selecting the trainees, or in appointing the selection committee. More relevant, is the role of the President in promoting and establishing the agreements with the University and with the financing agency to have a traineeships programs at the Court.</p>
	Other/Critical issues
	<p>The 15th of June 2013, the Council of Ministers has approved a decree that is supposed to affect the situation described in the previous sections. Based on such proposal, the Ministry of Justice will provide a better and more homogeneous framework for the courts traineeships in order to provide a better judicial assistance to the judges. In particular the proposal has established that the law graduates can fulfil at the courts the mandatory on-the-job training required to apply for the bar exam. This should represent a good incentive for having at the courts law graduates with some attitude in judicial proceedings, and capable of providing good judicial assistance to the judges. This is intended to reduce backlog and increase the timeliness of justice.</p> <p>In addition the Government has instituted 30 positions for the function of assistant judge at the Court of cassation. In this case “assistant judges at the Court of Cassation” will be fully-fledged young career judges that will work with Court of Cassation judges to speed up the pace of litigation and reduce the backlog of the Courts.</p> <p>The implementation of the two envisaged changes will require political will, resources, and secondary legislation and therefore time, but it may change the picture we have made in this chapter.</p>

Country: Lithuania	
Judicial assistants	
Lithuania: Judicial assistants	Institutional background
	According to legislation every judge should have a judicial assistant. For the moment, this is only so for judges in the higher courts. In the district courts there may due to budgetary constraints be approximately two judges per one assistant. It is envisioned that every judge will eventually have at least one judicial assistant.
	Selection and appointment
	<p>Judicial assistants are required to have a Master's degree in Law (or comparable university degree in Law).</p> <p>Judicial assistants are selected by each court (the Appointment Commission will be chaired by the Court manager) after a public competition.</p> <p>Judicial assistants do not formally have any advantage over others when applying to become a judge, but they tend to fare better in the exams. On average judicial assistants work for 5-7 years as assistants before becoming judges or moving on to careers outside the court system.</p>
	Role, function, responsibilities
	<p>As a rule the judicial assistant is assigned to work under the supervision of a particular judge. The judge is thus the "boss" of the judicial assistant. The judicial assistant supports the judge in the preparation of judgments, drafting judgments and performing required research. The judicial assistants are also responsible for submitting the relevant data to the electronic data base (LITEKO), anonymization of the names of the parties and other persons involved in the proceedings.</p> <p>While the general rule is that the judicial assistant is assigned to work for one particular judge, judicial assistants in the Supreme Court are instead assigned to work in specialized units, and these units assist all the judges working with this specialization.</p>
	Performance evaluation
	Judicial assistants are evaluated annually by the judge assigned to supervise their work (formally they are evaluated by the court president). When it comes to very bad or excellent evaluations the court's Evaluation Commission may also have a say.
	Other/Critical issues
	<p>According to the experience in Lithuania a judge together with a judicial assistant can accomplish almost the same amount of work as two judges. The court of appeal was recently provided with two judicial assistants for each judge in order to be able to reduce backlogs. This experiment has apparently been a success, and it may lead to a general expansion of the number of judicial assistants. There used to be resistance from judges towards the idea of judicial assistants, but today the use of judicial assistants is generally perceived as a cost effective way to increase court output.</p> <p>The Association of Judicial Assistants argues judicial assistants should be able to work more independently from judges.</p>

Country: Netherlands	
Judicial assistants	
Netherlands: Judicial assistants	Institutional background
	The position as judicial assistant was introduced in the 1950'es. Judges were initially reluctant to accept the judicial assistants, but this resistance was quickly overcome. Today the system of judicial assistants is perceived as being extremely efficient.
	Selection and appointment
	Most judicial assistants have a legal education. There are both part-time and full-time judicial assistants. Vacant positions are advertised. The selection is made by the court board.
	Role, function, responsibilities
	<p>Judicial assistants are assigned to work in sections (and not for a particular judge). In the criminal section the ratio of judicial assistants to judges may be 1:3. In family law it will be 1:1. And in Administrative law 2:1, reflecting that a lot of routine work is involved with handling the cases.</p> <p>The judicial assistant supports the judge in the preparation of the judgment, during the court hearings as acting registrar and after the hearing by drawing up the minutes, drafting judgments and performing required research. With a considerable amount of independence he draws up a draft judgment. The judge is responsible for the legal contents and the substance of the judgment and for the pronouncement of the judgment.</p> <p>Judicial assistants draft all the judgments in criminal and family law cases. The only important exception is commercial cases which may sometimes be drafted by the judge.</p> <p>Among the reasons for not assigning judicial assistants to work for a particular judge are: 1) it allows judicial assistants to specialize; 2) It helps to encourage and maintain uniform standards.</p>
	Performance evaluation
	Annual performance evaluations are of judicial assistants carried out by the administrative director of the respective department on the basis on information provided by 2-3 of the judges in the department.
	Other/Critical issues
	No

Country: Poland	
Judicial assistants	
Poland: Judicial assistants	Institutional background
	<p>The position as judicial assistant was introduced in 2001. Especially since the establishment of the National school for judges and prosecutors in 2009 being a judicial assistant is been considered as a stepping stone on the way to applying for a judge position. Previously, there was another “pre-judge” position, “assessors”. Assessors were supervised by the Ministry of justice, and based on a decision by the constitutional court the assessor-position was eliminated.</p> <p>There are currently 2.876 judicial assistants in Poland. There are 3.282 positions. The large amount of vacant positions is explained by the requirement that in order to become a judicial assistant the applicant will have to have completed training at the National School for judges and prosecutors.</p>
	Selection and appointment
	<p>Judicial assistants will have to:</p> <ul style="list-style-type: none"> have a university degree in law have completed the 2-year training at the National School for judges and prosecutors and subsequent judge training (3 years) be at least 24 years old <p>OR they may have passed the “old” judge’s exam (or lawyer’s exam) before the reform in 2009.</p> <p>Judicial assistants are selected according to an open competition organized by the court. They are appointed by the Ministry of justice.</p> <p>The number of potential judicial assistants is therefore primarily determined by the number of students from the National School for judges and prosecutors. The Ministry regulates the intake of new students according to its estimates for the need for future judges and prosecutors.</p> <p>Judicial assistants can be dismissed according to the same procedure as for other court employees.</p>
	Role, function, responsibilities
	<p>A judicial assistant will be assigned to work for a department, and will not be assigned to work for a specific judge. In practice it may sometimes happen that an assistant is working more or less exclusively for just one judge.</p> <p>Judicial assistants prepare court files; analyze cases; draft court decisions, sentences and justifications; and perform other tasks assigned to them by judges. In Poland, judgments usually contain lengthy purely descriptive parts, and writing these is often the main task for the judicial assistant. If the assistant is skilled enough he/she may be allowed to draft other parts of the justification.</p> <p>Judicial assistants do not independent handle any cases.</p> <p>After working two years as a judicial assistant, the assistant may apply for a judge position.</p>
	Performance evaluation
	No information.
	Other/Critical issues

	<p>There is currently a lack of qualified applicants. An amendment to the law is currently being prepared which will allow people with other people than just those who have passed the exam at the National School for judges and prosecutors to become judicial assistants.</p> <p>Critics claim that judicial assistants focus too much on how to become judges, and too little on how to perform well as judicial assistants. Besides judicial assistants, there is in Poland a separate position as “rechtspfleger”. The rechtspfleger carries out only a certain amount of judicial functions, while the judicial assistant obtains experience working with many fields. For this reason the Judicial Council tends to consider judicial assistants to be better prepared (compared to the rechtspfleger) for applying for judge positions.</p> <p>Critics of the current model also state that Poland may invest a lot of money in the training of judicial assistants who may eventually not end up as judges.</p> <p>Judges argue that they could be more productive if they had more judicial assistants. The Ministry of Justice agrees that this may be true in relation to simple cases, but the ministry argues that the “average” judicial assistant will only provide limited assistance to the handling of complicated cases.</p>
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Country: Switzerland	
Judicial assistants	
Switzerland: Judicial assistants	Institutional background
	<p>In Switzerland the “greffier” will assist judges with preparing cases and drafting decisions. The title “greffier”, in Switzerland, covers 2 categories of staff:</p> <p>1) In 1st instance courts, in the cantonal appeal courts and in the Swiss Federal Supreme Court, greffiers generally have a judicial background (law study - minimum = master of law) and experience as lawyer or member of a juridical staff in a public administration or in a major private company.</p> <p>2) In 1st instance courts, members of the administrative staff (=secretaries) are sometimes involved in the court hearings to write the statements of the parties or of the witnesses under the control of a judge and are called greffiers. They generally have specific training as secretaries: the training goes 3 or 4 years after the school; during the training, secretary trainees are 3 days in their enterprise or public administration and 2 days in a professional school. There is no specific training for the administrative staff of courts. Courts tend to hire secretaries with professional experience from a law firm or in notary office or in other juridical environment.</p>
	Selection and appointment
	<p>Generally, the courts advertise “greffier” positions. Interested persons will apply. They are appointed by the courts.</p> <p>In 1st instance courts, being a greffier is generally perceived as a temporary position to become a judge or a position as greffier on a higher level (cantonal appeal court or Swiss Federal Supreme Court).</p> <p>At the 2nd level (cantonal appeal courts), it is for approximately half of the greffiers a temporary position for individuals wanting to become a judge or reach a position as greffier in the Swiss Federal Supreme Court. For the remaining half of the greffiers, specially for persons which work part time, it is a permanent career position.</p> <p>- On the 3rd level, in the Swiss Federal Supreme Court, the major part of the greffiers are in permanent career position.</p>
	Role, function, responsibilities

	<p>In Switzerland the greffier assists the judges in several ways. There are the following main tasks:</p> <ul style="list-style-type: none"> a) the judge makes a decision, and the greffier is instructed to write the facts and the motivation of the decision; b) the greffier, with or without instructions of the judge, will prepare a draft of the decision (facts and motivation); after that, the judge or the courts makes a decision and the greffiers will revise the draft decision accordingly. c) the greffier does legal research in relation with a case d) sometimes (in particular in the Swiss Federal Supreme Court) for important decisions, the greffier adds some meta data to "his" court decision, like a summary of the decision, keywords, topic legal paragraphs and draft a press statement for decisions with a major media attention. <p>Some greffiers may be assigned to work for a specific judge, while others work for a section of judges. For example, in the Swiss Federal Supreme Court the proportion of greffiers to judges is 3:1. There court has 7 court's divisions with 3 different organization types:</p> <ul style="list-style-type: none"> a) in some divisions, all judges have 3 personal assigned greffiers b) in other divisions, each judge has a personal allocated greffier and the president of the division allocates the other, sometimes very specialized, greffiers to the a judge for a specific case c) Finally in other divisions, all greffiers are in a pool and are allocated by the president of the division to a judge for a specific case.
	Performance evaluation
	No information.
	Other/Critical issues
	No

Media Spokespersons

Reasons for establishing the position

The common traditional approach for courts and judges in all the countries included in this study has been that the court speaks only by means of its verdicts. This view is no longer prevalent, however, and to varying degrees all the countries have taken steps to facilitate communication with the media. In some countries these initiatives started more than 30 years ago, in others only recently. In some countries there has been a major investment in establishment of communication departments, and training of press judges etc. In others the investment has been modest. But all the countries included in the study have at least done something to address the relationship with the media.

Among the reasons for given for abandoning the traditional doctrine of “no additional comments” are:

The realization that the public image of the judiciary forms and important element of public trust. Justice must be done, but must also be seen to be done.

Public surveys in various countries have shown that the public tend to have a very limited understanding about what is going on in a court, and for example they may have very distorted impressions with regard to sentencing practices.

The trend among journalist is also that they tend to become less specialized and knowledgeable about specific subjects. Journalists often have a very poor understanding about how the court system works, and need professional assistance to improve the quality of their reporting about court events.

Lawyers and public prosecutors frequently volunteer to provide their opinions and subjective perspectives with regard to cases handled by the court. There may be a need to provide a counterweight to the portraying of the courts provided by these actors.

Different approaches to handling the media

The different countries seem to be at different stages with regard to developing active strategies for handling the media. Probably, the most limited approach is found in Italy where only the Court of Cassation has a press office. In many countries the move towards more active attempts by courts to handle the media has been quite recent. Sometimes (as in e.g. France²) the development is triggered by specific scandals highlighting the negative consequences of not trying to handle the media. In other countries (e.g. Denmark) the realization among judges about the need to handle the media more actively just seems to have evolved slowly over the years.

In contrast to the recent movers, a few countries, most notably the Netherlands and Germany, have already long ago established positions as court media spokespersons and therefore have decades of experience with it. These countries appear to have a much more developed approach towards media handling, and will have not only a media trained judge at each (or most of them) court as media spokesperson, but also media professionals to advise him/her.

2 Jeuland, Emmanuel & Anastasia Sotiopoulou (2012). The role of communication in the French Judicial System, *International Journal for Court Administration*.

A common experience from all the countries is that what the media wants most of all is “a talking head” providing information that is publicly available anyway, e.g. explaining the law, procedure, the mere facts of a case etc. This implies that the bulk of the job a court media spokesperson has in some way is quite easy, since it is about not handling sensitive or difficult questions, but about stating facts.

Even given this, many judges are uncomfortable with appearing in the media. Our study reveals that countries have chosen different strategies for how to address the issue. Some countries (Lithuania, Finland and Switzerland) have chosen to use a non-judge with a professional media background as media spokesperson. This may provide a more professional handling of the media. It is also argued if the media spokesperson makes a major error it is also an advantage that he/she can in fact be sanctioned/fired.

Most countries, however, have chosen to use judges as media spokespersons. This also appears to be the solution preferred by the media, since more authority are assigned to statements given by judges. The judge media spokespersons will often have received intensive media training and may be supported by communication experts hired by the court. Moreover, the judge will continue to work as judges beside the task as media spokesperson.

Most countries manage the selection of media spokespersons in a decentralized way, so that the individual is designated by the court president or the court board. France is the exception, since the media spokespersons in the French court of Appeals are appointed by the Ministry of Justice.

In countries where the media spokesperson is a non-judge he/she will in general be recruited following the same procedures for non-judge staff. The evaluation procedures for court media spokespersons do not in general seem to be different than for other staff (other judges or other non-judges).

Roles and functions

A general experience for many countries appears to be the importance of national (or sub-national in Federal states) guidelines for media spokespersons. Journalists will always try to push the limits for what they are allowed to – or what kind of information they can expect the court to provide – so it is very important to help the courts and media spokespersons by defining these limits.

In several countries (e.g. the Netherlands and Denmark) it is an important principle that the judge as media spokesperson will never provide information in relation to his/her “own” cases. This makes it easier for the media spokesperson to avoid being dragged into a discussion of details related to the specific case, and it allows him to be able to credibly state he has no information on certain sensible issues. The media spokesperson in this way helps divert media attention from the specific trial judge.

It is different from country to country what kind of questions the media can expect the media spokesperson to answer. In all countries, the general principle is that the media spokesperson

does not “comment” on a case. The spokesperson does not state opinions, but explain facts. What kind of facts may differ from one country to another, and we have not as part of this study been able to uncover all the practices in detail. For example in Denmark, the media spokesperson can:

- Clarify court decisions
- Clarify whether a decision may be considered as having general importance
- Explain what mattered when the court reached its decision
- Inform about jurisprudence
- Tell about rules for suspended sentences

Even though most of the job as media spokesperson is to act as a talking head, more difficult dilemmas may arise. This is especially true, when the press wants further explanations in relation to a judgment. If the judgment is in fact not very easy to understand, the media spokesperson may in consultation with the judge who made the sentence/verdict formulate a press release which will satisfy the demand from the press.

In all the countries, especially those with only recent experience with active handling of the media by judges, errors will happen from time to time. In a recent example, the media spokesperson at a Danish court was asked a question in relation to a case in which a soccer player was accused of domestic violence. He was asked what punishment the accused would likely get, if found guilty. The media spokesperson answered based upon his knowledge of sentencing practices that the soccer player would likely get a suspended sentence of three days imprisonment, and argued that the consideration for the children would likely lead to a mild sentence³. The media spokesperson was heavily criticized for publicly anticipating the outcome of the case. The court president publicly denounced the statement, and the media spokesperson eventually resigned.

In another controversial example (also from Denmark), a court issued a press statement in relation to a jury case in which a “celebrity” member of Hells Angels was acquitted. The press statement mentioned that the accused was acquitted by the jury by only a “narrow vote”. This was criticized by the defense and law professors as giving the impression the court regretted the decision. In this case the court maintained it just stated facts.

The above examples highlight that not all the decisions to be made by the media spokesperson will be trivial and easy. There will be some trial-and-error learning. As mentioned, above, several countries included in this study have developed national guidelines with the aim to define the do’s and don’ts and to ensure a uniform practice.

In addition to handling specific questions in relation to specific cases, the media spokespersons may have an important role in cultivating a working relationship with the press, and in some educate journalists in the field. Because of the limited time available for this study we have not been able to dig further into such additional tasks.

3 But in fact he was sentenced to 30 days of imprisonment with no suspension.

Conclusion

In sum, the recognition of the importance of actively handling the media well is evolving fast among the court systems included in the study. The process has come far in some countries, and less so in others.

In most countries the court media spokesperson is a judge, and that also appears to be what the media want: A judge as a “talking head”. Well specified and well-reasoned common guidelines for what the media spokesperson is supposed to do (and not do) appear to be one of the key factors to a better relationship with the media.

The time and resources available for this study has not allowed for an in-depth analysis of all the types of dilemmas court media spokespersons may face with regard to what information they can – an cannot- provide. A good starting point for such an analysis might be to compare the national guidelines in various countries.

Country profiles: Media spokespersons

Country: Czech Republic	
Media spokespersons	
Czech Republic: Media spokespersons	Institutional background
	The media spokespersons in the Czech courts are judges. Court departments may have their own spokesperson. If the court does not have a specific media spokesperson, the court president or vice president will handle media communication. There is no national regulation regarding the position and role as court media spokesperson.
	Selection and appointment
	The court president selects the media spokesperson among judges who volunteer. There are no specific term limits.
	Role, function, responsibilities
	<p>The task of media spokespersons is to inform, according to the instructions of the president of court, the public through mass media or internet websites about the activity of the court. He/she informs the media especially about cases which are in the spotlight.</p> <p>He/she fulfills the duties according to the Act No. 106/1999 Coll. on free access to information, namely publishes and provides information, processes the annual reports and arranges their publishing.</p> <p>The spokesperson can – with caution – provide information on ongoing cases – e.g. with regard to the merits of the case, the date for next hearing etc. With regard to court decisions, the spokesperson can provide information about the merits of the decision and possible remedies.</p>
	Performance evaluation
	No
	Other/Critical issues
	No

Country: Denmark	
Media spokespersons	
Denmark: Media spokespersons	Institutional background
	In 2009 media spokespersons (judges) were appointed in approximately half of the courts as part of a pilot project. Based on evaluation of the pilot, the system was made permanent and extended to all courts.
	Selection and appointment
	The court president designates the media spokesperson. In some courts, the court president will act as spokesperson.
	Role, function, responsibilities
	To answer questions from the media and public. In relation to specific cases the media spokesperson can: Clarify court decisions Clarify whether a decision may be considered as having general importance Explain what mattered when the court reached its decision Inform about jurisprudence Tell about rules for suspended sentences
	Performance evaluation
	No
	Other/Critical issues
	In a couple of instances media spokespersons have been criticized for commenting on issues they maybe should not have commented upon.

Country: Finland	
Media spokespersons	
Finland: Media spokespersons	Institutional background
	<p>According to the Constitution of Finland documents and recordings in the possession of the authorities are public, unless their publication has for compelling reasons been specifically restricted by an Act. The right to access to documents does not imply, however, that courts very often publish decisions. The court of appeals and the administrative court rarely do so, while the Supreme Courts publish decisions in cases that are considered to be of judicial importance. The idea is to promote uniformity of judicial practice.</p> <p>At the moment there are only designated media spokespersons in the two Supreme Courts and in the largest district court of Finland, Helsinki district court. In the lower courts there are no general rules for who will handle the media, but according to a decree all courts should have a publicity plan (which is very general). It may be the judge handling the case, the court president, or the court administrator, and they usually are very cautious with their statements.</p> <p>The publicity of certain cases / matters is restricted by secrecy Acts in Finland, and under such circumstances they cannot be made public as a whole even if the said case would be interesting to a larger public.</p>
	Selection and appointment
	<p>The designated media spokespersons are not judges (however, the one in Helsinki district court is a notary). They may have a background as media professionals. The positions are established according to internal procedural rules adopted by the courts. They can be hired for a fixed term or permanent.</p>
	Role, function, responsibilities
	<p>Media spokespersons may provide facts related to a decision, which are subject to media interest and may prepare press releases on cases the court anticipates to be subject to public interest. The media and courts may sometimes have conflicts – e.g. related to how much the court allowed to comment a case (subject to secrecy under an Act) when the parties themselves have involved media. In practice media issues are discussed internally with judge(s) before media spokesperson provides facts related to a case / issues press releases due to secrecy rules etc.</p> <p>As mentioned, the courts may publish decisions as such, or shortened versions of decisions or a bulletin of a certain case. The latter is especially meant for media. It is drafted by the media spokesperson in cooperation with the judges. However, only few bulletins have been published so far, at least in the Supreme Courts.</p> <p>In general, the media spokesperson or judge will not say anything the media could not have found out themselves from other sources. They can e.g. confirm that a certain case is pending or that a judgment has been made. The secrecy rules implies that the court in many instances (e.g. cases related to tax issues or mental illness) cannot reveal the names of those involved in a case.</p>
	Performance evaluation
	Is carried out by the court manager.
	Relationship with key players
	Unofficial cooperation by and between e.g. the three media spokespersons, other courts and ministry of justice.
	Other/Critical issues
	Generally, the Finnish courts have a cautious approach to publicity but there are discussions whether they should be more open.

Country: France	
Media spokespersons	
France: Media spokespersons	Institutional background
	<p>In France the public prosecutor is the only one who can legally communicate on a pending criminal case. Judges can communicate on judgments considered to be of particular relevance.</p> <p>In every court of appeal there is a judge in charge of communication.</p> <p>All three supreme courts in France publish a special report (communiqué) explaining the meaning of their judgments.</p> <p>The PR staff at the ministry of Justice may also assist courts with issues related to communication.</p>
	Selection and appointment
	The communication judges are part of a centralized system aiming to assist courts and prosecutor's offices with communication. They are appointed by the Ministry of Justice.
	Role, function, responsibilities
	<p>The communication judges handle all contact with the media. They will focus on "institutional communication", and not on communication related to particular cases. They may e.g. explain general court procedures.</p> <p>Often the media will contact the Ministry of justice, and the ministry will refer the media to contact the communication judge at a particular court of appeal.</p> <p>Furthermore, In relation to sensitive cases one or two judges or prosecutors may be designated to handle the press, e.g. handling accreditations and taking care of the practical matters and demands following media attention.</p>
	Performance evaluation
	Communication judges have to take mandatory training in communication.
	Other/Critical issues
	About 10 years ago court communication was very limited. A few landmark cases, such as the Outreau-case, demonstrated the need for courts to be able to handle the media. ²

Country: Germany	
Media spokespersons	
Germany: Media spokespersons	Institutional background
	<p>The position as media spokesperson in German court was established more than 30 years ago. The position was established in order to increase transparency and public trust in the judiciary. Generally, there is a perceived conflict of interest between courts and the media. Courts want to do their business undisturbed, the media are seeking a thrilling story or looking for a scandal in the judicial system. Therefore, it is essential to provide the media with reliable information, to work towards reliable reports in the media, to communicate procedural law and its function and to create understanding for the difficulties of sometimes understaffed courts.</p> <p>All larger courts will have a judge as a media spokesperson. In smaller courts media relations will be handled by the court director (a judge).</p>
	Selection and appointment
	<p>The court president selects the media spokesperson. They usually hold the position for several years. They may be replaced upon decision by the court president.</p> <p>The media spokesperson will always be a judge who is carrying out this function besides his/her work as a judge. Usually the media spokesperson will have time allocated to deal with media issues (e.g. 60% as judge and 40% as media spokesperson). Media spokes persons will receive training.</p>
	Role, function, responsibilities
	<p>A good media spokesperson should work professionally to establish a trustful relationship with the media, and to avoid media focus on the trial judge.</p> <p>Their responsibility is to keep constant contact with the media, to inform them about cases interesting for the media, to explain judgments and procedure, but also to have more general meetings or press conferences. They will usually release regular (e.g. weekly) newsletters about upcoming events.</p> <p>With regard to ongoing cases they can provide the facts of the case, even the names of the persons involved if that is admissible (e.g. if they are persons of public interest). They never comment upon a case, only explain.</p> <p>All Bundesländer have established guidelines for media spokespersons</p>
	Performance evaluation
	They undergo regular evaluation/assessment like all judges. Their superior is the court president but they are also answerable to the press department of the Ministry of Justice.
	Other/Critical issues
	<p>The recent Zschaepe-trial in Munich has drawn attention to the need to handle the media professionally. In connection with that trial the Munich court's press office was heavily criticized for issuing accreditation on a "first come, first served" basis. As a result, the Turkish newspaper Sabah filed a complaint with the Constitutional Court in Karlsruhe, saying that the Munich court's decision not to guarantee seats to Turkish media had violated its right to equality. The Constitutional Court ruled in favour of Sabah. The Munich Higher Regional Court had to reorganize the accreditation procedure through a lottery system which encountered technical difficulties.</p>

Country: Italy	
Media spokespersons	
Italy: Media spokespersons	Institutional background
	<p>In Italy, the role of court spokesperson is not existent in first instance and appeal court, while a press office has been established at the Court of Cassation.</p> <p>In general terms, Courts and judges usually keep a low profile with the media. This aptitude is not raising any criticisms.</p> <p>At the same time, some prosecutors have a stronger media presence, and have been (or are) accused of an excessive media exposure. This has been described, and harshly criticised, as a “media – judicial circuit”, triggered by information leaks about some high profile investigation, media reports on the investigation, interviews with the prosecutors in charge of the case, new information leaks, etc. The circuit works creating the idea that the accused is guilty before the trial. As a consequence of this situation, and of harsh criticisms, art. 5 of the legislative decree n. 106 of 2006, establishes that the relationship with the media have to be kept exclusively by the Chief Prosecutor or by one specific magistrate delegated by the Chief Prosecutor. In addition, the Chief Prosecutor has the obligation to start a disciplinary procedure in case of violation of the rule.</p> <p>Despite this regulation and its enforcement, even if prosecutors have reduced their media exposure, information leaks are still present. In February 2013, even the President of the Republic - that is also President of the judicial council - made a strong statement criticizing this state of affairs, and asked for a better balancing between the right of information, and the much needed discretion (and sometime secrecy) in the conduct of criminal investigation.</p>
	Selection and appointment
	Not applicable.
	Role, function, responsibilities

	<p>As far as courts are concerned, the relationship with the media two fold. On the one hand the idea is that the Court speaks with its own judicial writing, and that the motivation of sentences is the means through which the Court clarifies and justifies their decisions. Therefore, differently from prosecutors' offices, judges tend not to speak with the media about specific cases. On the other hand, media often criticise openly and sometimes harshly some judicial decisions, in particular those who are politically sensitive. Due to the lack of courts' spokespersons and of media guidelines, courts are not well equipped to reply to such criticisms. In these cases, two things may happen. A first one is an action of the Judicial council, aimed at "defending" the judge(s) and the court involved and the independence of the judiciary. A second one is an action of the same court with a direct explanation to the media of the reasons of the decision.</p> <p>A press office operates just at the Court of Cassation. The office is directed by a Supreme Court Judge (currently with an academic background) and publishes press notices to explain to the journalists and to the general public sentences with a high media profile. The press notices, signed by the Judge responsible of the office, are aimed to give a succinct and correct interpretation of a court decision once the case is closed. Based on our research such press releases are not published on the website of the Supreme Court, but directly communicated to the media.</p> <p>Court of Cassation, in which a press office operates. The office is directed by a Supreme Court Judge (currently with an academic background) and publishes press notices to explain to the journalists and to the general public sentences with a high media profile. The press notices, signed by the Judge responsible of the office, are aimed to give a succinct and correct interpretation of a court decision once the case is closed. Based on our research such press releases are not published on the website of the Supreme Court, but directly communicated to the media.</p> <p>As a consequence of the state of affaires shortly described, there is not a policy guideline to comment on cases and court decisions.</p>
	Performance evaluation
	Given the framework described above it is not surprising that performance is not evaluated.
	Other/Critical issues
	The relationship with the media is an area not developed in the Italian court of first and second instance. The establishment of media spokespersons should be considered as well as the drafting of guidelines for having healthy relationships with the media, and assuring that the decisions of the courts are well explained and understood

Country: Lithuania	
Media spokespersons	
Lithuania: Media spokespersons	Institutional background
	<p>There are media spokespersons in the larger Lithuanian courts. There are about 10 court media spokespersons in the entire country.</p> <p>Media spokespersons are not judges, but media professionals. In some instances the assistant to the court president may act as media spokesperson, without having an educational background in communication.</p>
	Selection and appointment
	<p>The media spokesperson is hired by the Court manager in close consultation with President through a public competition. The spokesperson can be removed by the same procedure as for the other members of the court (non-judge) staff.</p>
	Role, function, responsibilities
	<p>Ongoing cases are as a rule not commented upon. The media spokesperson can only provide limited information on when the hearings are held etc.</p> <p>When a judgment has been made the court may decide to issue a press statement. Press statements etc. will be developed in cooperation with the judge involved in the case and/or the court president.</p> <p>Journalists do in general not criticize the media spokespersons, since they are clearly aware that the spokespersons were not involved in the judicial decision making.</p>
	Performance evaluation
	<p>The media spokesperson is subordinate to the court manager. His performance is evaluated annually.</p>
	Other/Critical issues
	<p>Judges have several times been encouraged to act as “talking heads” in the media, but judges have until now opposed this – probably because judge’s have bad experience with aggressive journalists. It is also considered to be an advantage that if the media spokesperson makes major mistakes and causes damages he/she can as a civil servant be sanctioned/fired, while this would not be the case if the media spokesperson was a judge.</p>

Country: Netherlands	
Media spokespersons	
Netherlands: Media spokespersons	Institutional background
	<p>Media spokespersons (press judges) have been known in Dutch courts since the 1970's. Media spokespersons were introduced at a time when the court system was very inward oriented and the media was feared by the courts. Given that courts are public agencies, funded by public money, and subject to extensive public attention, it was decided that courts should try to become more outward oriented, and the establishment of the role of media spokespersons was perceived as one step in that direction. Today, every court in the Netherlands has at least two media spokespersons. Since a judge will never provide the media with additional information about his own cases, he needs a substitute media spokesperson who can take over when the media is asking questions related to cases handled by the primary media spokesperson as a judge.</p>
	Selection and appointment
	<p>The media spokespersons are officially selected by the court board. In practice the court president will have major influence on the selection. Some boards and presidents have deliberately sought to appoint media spokespersons who do not live up to the public stereo-type image of a judge. so for example, instead of an old, grey or bald man, a younger blond woman has been chosen.</p> <p>The position is generally held for two years, subject to renewal.</p> <p>The media spokespersons fulfill their duties besides their normal work as a judge, and without any additional payment or compensation with regard to caseload. To have been a media spokesperson may be a good career choice, since many former media spokespersons have later become court presidents.</p> <p>The media spokespersons receive media training.</p>
	Role, function, responsibilities
	<p>The press judge responds to questions from the media, and they write press statements. The focus is on responding to questions, since it is not considered to be a task for the court to "call the media and tell them that we have an interesting case". The media spokespersons may provide explanations, but never comments on a case or state opinions.</p> <p>Press releases are issued in sensitive cases, because in relation to sensitive cases it is especially important to have proper and right information about the judgment. When the press release is written using journalistic terms, it will often literally be in the newspaper the next day.</p> <p>The media spokesperson is supported by a small communication department with advisors who are professionals with an education in communication (e.g. former journalists). The National Council for the judiciary may also upon request provide communication advice with regard to sensitive cases.</p> <p>In relation to organizational issues, the court president will be the one who will have contact with the media.</p> <p>There is a national media guideline. It is considered to be very important to have a national guideline, because the media will otherwise always try to push the limits for what they are allowed to do with reference to the practice in other courts.</p>
	Performance evaluation
	No information.
	Other/Critical issues
	No.

Country: Poland	
Media spokespersons	
Poland: Media spokespersons	Institutional background
	<p>The position as media spokesperson was introduced in the Polish courts in 1987. The law states that the court president is responsible for contacts with the media. Presidents in the higher courts may delegate this task to a named judge. It is not mandatory for courts to appoint a media spokesperson, but almost all appellate and regional courts will a media spokesperson selected among the judges. The district courts do not have a designated media spokesperson other than the president. In the district courts, the court president will thus always act as media spokesperson.</p>
	Selection and appointment
	<p>The media spokesperson is selected among the judges. The court president appoints the media spokesperson based on an opinion issued by the court collegium (comprised of 5 judges). The function as media spokesperson is to be done as "over-time". The media spokesperson judge will have to complete the same number of cases as other judges.</p>
	Role, function, responsibilities
	<p>The media spokesperson can inform in general about the law, and about the procedure in court. The spokesperson cannot interpret the law or court decisions.</p>
	Performance evaluation
	No information.
	Other/Critical issues
	No

Country: Switzerland	
Media spokespersons	
Switzerland: Media spokespersons	Institutional background
	<p>The courts in Switzerland have a communications officer (“Chargé des relation publique et des medias”). He/she will be referring to the president of the court. The general principle is that courts communicate by their judgments. The court may, however, choose to issue a press statement in connection with a judgment. In addition, the court can communicate with regard to organizational issues or other court activities (annual reports, visits etc.)</p> <p>The way courts are dealing with the media is regulated by:</p> <p>Procedural rules (general as well as court specific)</p> <p>The court regulations on relations with the media</p> <p>The ethical code for journalist.</p> <p>Sometimes also by specific agreements between the court and the association of journalists focusing on courts.</p>
	Selection and appointment
	<p>The communications officer is not a judge. He/she is appointed by the court board. In general the communications officer is supposed to have:</p> <p>Experience working with PR and the media</p> <p>Good knowledge of the workings of the judiciary</p> <p>If possible, a double education: A degree in law and PR-education</p>
	Role, function, responsibilities
	<p>The main responsibilities of the communications officer are:</p> <p>Internal communication (intranet, court newsletter, internal announcements etc.)</p> <p>External communication: with parties to a case, with the media, and with the public in general</p> <p>Advising the court president (and the presidents of sections) on matters related to communication.</p> <p>Communication with the media will be handled by the communication officer in co-operation with the court president and the sections presidents. Some courts have an accreditation system for the media, letting accredited journalists obtain access to written judgments at the same time as the parties (but with an embargo), and providing reserved seats in the court room).</p> <p>The communications officer will, however, never give official interviews on court activities. Only the president of the section may explain a judgment (and only immediately after it has been announced). The court president may speak with the media about general court activities.</p>
	Performance evaluation
	No information.
	Other/Critical issues
	No

(Footnotes)

1 The categorization of France, Switzerland and Italy is based on not considering court clerks/greffier as judicial assistants.

2 Jeuland, Emmanuel & Anastasia Sotiropoulou (2012).The role of communication in the French Judicial System, International Journal for Court Administration.

Joint Project on
"Strengthening the Court Management System in Turkey"
(JP COMASYT)

**Report on the findings of the research conducted on the judicial functions of
Court President and Court manager in selected Council of Europe member
states**

**Final draft
Francesco Contini
18 September 2013**

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Introduction and acknowledgement

This report, and the annex with the detailed description of the role of Court Presidents and Court Managers are mainly based on the presentations given at the project meeting by the Council of Europe experts (Strasbourg 16 and 17 of May 2013), and on the documentation they provided before and after the meeting. The author of this report wishes to thank all of them for the collaboration⁴. All the experts have been able to provide precise and well-structured information in the two-day meeting. However, the responsibility of the report, and of mistakes or misunderstanding is exclusively of the author.

Executive summary

The report presents a synthesis of the data collected about the roles of Court President and Court Manager in 10 selected member states of the Council of Europe. Their functions are described within the broad institutional context in which they operate. Attention, therefore, has been paid to introduce the key features of judicial governance affecting their role, selection and appointment, the network of relationships of Court president and Court manager, if and how the individual performance are evaluated, and finally if there are critical issues associated with the roles. In addition, all the data collected has been organised in an appendix (field notes) that has been drafted with the goal of gathering all the data made available and collected. A second appendix presents the situation of court spokesperson and judicial assistant as requested by the contract.

Since the report presents a succinct view of the issues at stake in each of the member states, this summary looks across national experiences to introduce some key variables affecting the roles of Court President and Court Manager. Two variables, in particular, seem to be important also when considering the institution of such positions in other member states: the governance structure and its level of centralisation-decentralisation.

1 Information have been provided by the following national experts: Mr Jesper Wittrup (Denmark), Ms Ivana Borzova (Czech Republic), Mr Pettri Saukko (Finland), Mr Gilles Accomando (France), Ms Anitta Hipper (Germany), Mr Virgilijus Valancius (Lithuania), Mr Bert Maan (Netherlands), Mr Jakub Michalski (Poland) and Mr Jacques Buehler (Switzerland). A thanks goes also to Johannes Riedel that, even not having the chance to join the meeting, has provided detailed answer to the questions related to Germany.

The governance structures we have considered in this study can be classified adapting of the proposal made by Lord Justice Thomas in a report prepared for the Consultative Council of European Judges (CCJE) called *“Councils for the Judiciary: States without a High Council, Preliminary report”* (2007)⁵.

Notably we have:

- 1) Countries in which the Ministry of justice provides the administration of the court as in Czech Republic, Finland, Germany;
- 2) Countries in which a Court Administration or a Judicial Council provides the administration for the court as in the Netherlands and Denmark with little or no role of the Ministry of justice;
- 3) Countries in which the administration of the court is jointly provided by the Ministry of justice and by the judicial council as in Poland, France and Italy;
- 4) Systems with distinct features that, as noticed by Lord Justice Thomas (p. 1), are difficult to categorise (Switzerland).

The different institutional architectures, providing a different allocation of powers and functions in the various governance bodies, deeply affects the issues dealt with in this report: the appointment mechanisms of Court president and Court manager, the relationship between the two actors, the tasks associated with their roles, the mechanisms for allocation of human and financial resources, and their accountability and performance evaluation. After a first inquiry, it seems that countries in which a single organisation is in charge of the administration of the court (being a ministry of justice, a judicial council or a court administration – type 1 or 2), offers a simpler solution to the problems of court governance and management to be faced by presidents and court managers. The delegation of authority and powers from the central governance body to the court, and accountability mechanisms are more linear and relatively simple. On the other hand, governance problems require more complex mechanisms when a Judicial council and a Ministry of justice are jointly responsible of the administration of justice. This hypothesis should be further investigated.

In addition, the study considers eight member states with a centralised (or state-wide) judiciary and two (Germany and Switzerland) in which judiciaries are federal. Therefore, in these two countries differences exist between the various regional or cantonal courts and jurisdictions, and some of the information provided by the report have to be considered as general trends.

The second major variable is the level of centralisation-decentralisation of the governance of the judiciary. On one side of the continuum there are jurisdictions that are highly centralised: from the perspective of this study it means that the central governance body, being the Ministry of Justice or the Judicial Council, provides human resources, facilities and equipment to the courts, and sometimes also guidance about how to use the resources available (as in France or Italy). In this case, the governance functions to be carried out at court level are rather limited, as well as the role of the Court President and of the Court Manager. On the other side of the continuum there are jurisdictions in which, simply speaking, the central governance body provides mainly the financial resources and the court has to decide how to use them. The

2 Available at <https://wcd.coe.int/ViewDoc.jsp?id=1187513&Site=COE>

example in this case is the principle of “integral management” in the Netherlands in which, quoting the Dutch expert “each court is a separate organisation with its own budget and the duty to manage the entire business”. This means that the single court has the budget and the duty to select, hire and fire staff administrative staff, clerks and sometimes also judges, and has the freedom to use the financial resources made available to hire one more judge, or alternatively two or three law clerks and so for. In this case, the competences and the know how to be made available at court level is very high. While this model can work well in large courts, it can be inefficient to concentrate governance functions requiring highly qualified know how into small judicial offices.

A third issue is the scale of the jurisdiction. The exploratory study has considered member states with a relatively small number of judges and courts (Finland, Lithuania, the Netherlands, Czech Republic, Denmark), as well as countries with a high number of courts (Poland, France, Italy and Germany). While in the first group the central bodies can have an effective and direct relationship with the courts, in the second group, given the high number of courts, the relationships between the central bodies and the courts may become problematic. In this case some specific solutions have been found. The German judiciary face this issue with its federal organisation. Other member states have faced this issue with the delegation of governance functions (such as supervision, budgeting process, procurement) to intermediate bodies such as courts of appeal or regional courts or local judicial councils.

The report deals also other issues that can be relevant when considering the establishment of such positions in other member states:

The role of collegial bodies: while in some countries the president and the court manager are not supported by any collegial body, other judiciaries makes a systematic use such bodies to support the President and the Court manager, such as the Court plenum (in various member states), the Administrative commission (in Switzerland), or the Management board (in The Netherlands). This approach that is well developed particularly in Swiss courts seems to provide two important advantages. First of all it puts together, in a unique body, the judicial and managerial competences that are needed to run the court. Second it supports the building of a common understanding and shared views about the priorities and the choices to be made. This can be an important means of integration.

What court presidents don't do: the report emphasise what the Court presidents do. It's important also to stress what they don't do. In particular, even if in some cases the legislation gives them some powers, they do not enter (or are very cautious to enter) into two key issues: case assignment, case removal. This is left to automatic mechanisms (assignment), pre-established criteria, or need the consensus of the judge (in case of removal and re-assignment). This is understandable since it touches the core of judicial independence. But Court presidents are not very active also in promoting the quality of the jurisprudence (consistency, judgement writing etc.). While sometimes this is left to the presidents of the sections, we surmise it is an important working area also for the President of the courts.

Evaluation mechanisms: are non-existent or quite weak for the Court presidents, and a more structured for the Court managers. The emerging trend of appointing president just for a given numbers of years, with possible reappointment, can be seen as an evaluation mechanism.

However, more structured evaluation schema, providing feedback to the court presidents, can help their work and some sound appropriate evaluation mechanism should be in place.

Relationship court president – court manager: In the large majority of the judiciaries considered in the study, court managers are clearly subordinated to court presidents. Just in Italy and Poland, this relationship is not formally in place and court managers are subordinated to the Ministry of Justice.

Court manager selection and appointment procedure: this is often carried out by court itself also to enforce the trust between the manager and key judicial and administrative roles within the organisation. This is not the case in few countries, in which the appointment is made by the Ministry of justice with little or no voice by the court itself (France and Italy). It should be explored if informal mechanisms do exist in these two countries.

The professional profile of the Court manager: in some member states the debate is open about the profile of the Court Manager. In some country he/she is still an experienced law clerk with some managerial functions, while in other is a manager with limited (or no) judicial experience.

Czech-Republic: Court President

Background - The Ministry of Justice carries out the court administration of high, regional and district courts either directly or through presidents of these courts. The administration of the Supreme Courts is carried out only through the Presidents of these courts.

There are presidents in each of the 86 district courts, 8 regional courts, 2 high courts, Supreme Administration Court and Supreme Court. One or two vice-presidents (often the vice-presidents are also media spokespersons) usually support each Court president.

Selection is based into a competitive exam. In the case of the district courts, at the end of the competitive selection procedure, the president of the regional court makes a proposal for appointment to the Ministry of justice who appoints the Judge. Similarly the Ministry of justice makes a proposal to the President of the Republic, for the appointment of the presidents of regional, high and Supreme courts. Managerial training is not needed. The appointment is for a term of 10 years (Supreme Courts) or 10 years, for the other courts. They cannot be reappointed for a second term at the same court but they can apply to a competitive selection procedure for being appointed president in another court. Presidents are judges (with a reduction of workload) and at the same time they are representatives of state administration in each court.

Functions - The president, every year, sets up the working schedule of the court for the forthcoming year. In doing this he/she set up judges panels and mechanisms for case allocation. As a rule the president does not assign, or retrieve a case assigned to a judge, and has limited role in setting up priorities.

The Human resources management functions are split between the Ministry of justice and the Presidents of courts. Also in the case of financial management, the functions are carried out by the Ministry of justice and the Presidents of courts. The Presidents of regional court itemize the state budget available for the management of the regional court and district courts in their respective region. As a consequence, the president of the district courts does not prepare the budget, but ensure the functioning of the respective court from the organizational, personal,

economic, financial and educational perspective.

Presidents of courts pursue and evaluate court proceedings only in terms of unreasonable delays.

In general, the President is authorized to deal with the complaints that are directed against his/her court. The Ministry deals with complaints against the Presidents of the High or Regional courts. Court presidents have also some disciplinary functions against judges. In particular the presidents of courts can start a disciplinary proceeding and, in less serious cases, can give minor sanctions (reprimand or warning). The administrative staff are liable according to labour law.

Performance evaluation - Court president are not subject to performance evaluation. However the Ministry of Justice supervises also their work.

Critical issues – Not reported.

Czech-Republic: Court Manager

Background - All the courts and prosecutors' offices have a "director of administration" (court manager). The number is therefore identical to that of court presidents. The court manager is appointed and removed by the president of the respective court. The selection process is based on a competitive exam. The Labour code regulates the employment relationship. As a rule they do not have a legal background, rather they are mainly economists. The position is held without any time limitation.

Functions - The court manager acts on behalf of the court and ensures court operations.

Even if they are not involved in establishing the budget of the court (described in the section of Court presidents) they are in charge of managing the budget allocated to the court. They are also in charge of managing the daily operation of the court, including the use of Information and Communication Technologies provided by the Ministry of Justice.

They do not manage the court space and layout, nor have functions such as recruitment, fringe benefit assignments, and disciplinary power as far as administrative staff is concerned. It is mainly a financial role.

Performance evaluation - There is no performance evaluation mechanism in place. Court managers are simply liable according to the labour law.

Critical issues – Not reported.

Denmark: Court President

Background - In Denmark there are 29 courts (1 Supreme court, 2 courts of appeal, 1 commercial court, 1 land registration court, and 24 district courts) and an equal number of court presidents.

They are (formally) appointed by the Queen but selected and nominated by the Judicial Appointments Council (3 judges 3 non judges). Selection is based on an open competition. Candidates are evaluated by the Assembly of judges of the court (they formulate a statement with regard to the qualifications of each of the applicants). The assembly then forwards the statement to the president of the court of appeal (if it is about a position as president of a district court within the court of appeal jurisdiction) and he/she also provides a statement about qualification. The statements are then sent to the members of the Judicial Appointments Council. Since 2006, also managerial skills are tested. Based upon the statements, tests, and possibly additional interviews with the Council, the Judicial Appointments Council selects and nominates one of the applicants. The President of the Supreme Court is nominated by the

Assembly of judges of the same Court.

The court presidents may hold their position until retirement (no later than by the age of 70)

Functions - the president is responsible for the budgetary and administrative matters delegated to the court, is required to ensure a proper management of the court and to take the necessary steps in order to do so. Several types of decisions have to be made in negotiation with the judges of the court, since the position of the President is that of *primus inter pares*. The president may set targets for timeliness and court productivity.

The major part of the court budget is prepared and managed by the Courts Administration (central level). Decisions regarding court space will be negotiated between the president and the Courts Administration. The president will not hire or have any influence over the salary of judges. Judges are explicitly exempted from the requirement of public officials to receive a salary based on results. Recently pay-for-performance has been introduced for court clerks, but decisions with regard to this will, often have been delegated to the court administrator.

The president does have disciplinary powers in relation to court staff. The most severe sanction the president can apply in relation to judges is, however, to issue a warning. Any further sanctions have to be decided by the Special Court of Indictment.

Most court presidents will also sit in court.

Performance evaluation - There is no formalized evaluation of court presidents as individuals, but courts (as organisation) are evaluated through the annual court reports.

Critical issues - Not reported.

Denmark: Court Manager

Background - In 2007, after a reduction of the number of district courts from 82 to 24, the Courts Administration issued “guidelines” for the internal organization of the courts. It was recommended to establish the position of Court manager. The guidelines are not binding but, with one or two exceptions, all courts today have a court manager. The president defines the qualification requirements. The court, in cooperation with the Courts Administration, handles the hiring process. Several Court managers have managerial studies and background. The court manager is subordinated to the court president, but together with president and the head of the legal secretariat he/she forms the court management team.

Functions - The guidelines for the internal organization of courts, issued by the Courts Administration, recommends a “triangular” management structure with both a court manager and a head of a legal/judicial secretariat to support the court president. The way the court is organized and the role of the court manager differ from one court to another. Typical tasks for the court manager would be: Human resource management; Management of the part of the budget not directly managed by the Courts Administration, ICT and facility management.

Performance – Approximately every three years, any manager within the court system, (including court managers supervising at least five staff units), is evaluated. Such evaluation considers also feedback provided by the court managers’ subordinates. Unlike judges, the court manager may receive a salary based on performance.

Critical Issues - Some court administrator has stated that the traditional court culture, that maintains a sharp distinction between Judges and non-judges (clerks), has made difficult the court administrator tasks.

Finland: Court President

Background - The Finnish Court System is composed of General and Administrative courts. General courts are: the Supreme Court, six Court of appeals and 27 District courts. Adminis-

trative courts consist of the Supreme Administrative Court (1) and Administrative courts (8+1). Each court is presided by a Court president or chief judge (the name varies depending on the type of court). Presidents are selected based on an open competition conducted by the "Judges selection committee": 12 members representing judges, prosecutors, attorneys and law professors appointed for a 5 years term. The Finnish Government appoints the members of committee. The chairman of the committee is appointed by the Supreme Court and the vice-chairman by the Supreme Administrative Court. The President of the Republic formally appoints courts' presidents. At the Supreme Court and at the Supreme Administrative Court is the Judges plenum (an assembly with about 20 judges) that makes a proposal to the President of Finland. There is no specific training requirement.

The appointment is for life; they can retire from 63 up to 68.

Functions: The formal duty of the president of (administrative) court is "to control the application of the principles of law and uniformity in the interpretation of law". Additionally, the president generally leads the court and takes care of the effectiveness and of the management of the court.

The main duty of courts president is to control the application of the rule of law and uniformity in the interpretation of law. The president leads the court and fulfils court duties by promoting the quality of the decisions, of legal reasoning, having cases decided in reasonable time, and creating a feeling of legal protection. The formal duty of the president of the court is

Presidents can assign and retrieve cases. However, the retrieval and reassignment of cases is done by the head of chambers and is very rare. This happened mainly to equalise the distribution of workload among colleagues. Presidents have influence in the composition of judges panel, but usually they do not use such influence. It can be done when there is the need of special judicial expertise, but it is not common. Presidents do not set up rules of practice, even if they influence the rules of practice of the panels in which they work. They cannot give any legal advice about how to decide a case, even if informal discussion may take place. To sum up, Finnish presidents applies some self-restraint in the use of their powers with respect to judges and organisation of the jurisdiction. At first instance level, the President of the court selects and appoints the heads of divisions. At the court of appeal level, the head of division is a permanent post; the is judges selection committee is in charge of the appointment.

The President can hire and fire administrative personnel, within the limits provided by the legislation, including lack of confidence. Presidents can give warnings to judges and administrative personnel.

The Court Budget is established through a negotiation between the Court (Court president and Court manager) and the Ministry of Justice. Budget lines, however, are quite strict and expenditure must follow this budget constraints.

Performance evaluation -Performance evaluation mechanisms are not in place. However, there are informal venues of evaluation, or situations in which court presidents receive feedbacks about their performance. This happens mainly in meetings between the Presidents of the courts and in the yearly budget negotiation with the Ministry of Justice, during which Presidents receive feedback on their results.

Critical Issues - Finnish courts are under pressures for demands on reductions of expenditure and needs to improve competence in certain areas of jurisdiction. Furthermore the management of the court is very difficult in respect to the matter of judicial independence.

Current reforms are addressed to improve working organisation including the use of documents in electronic format, hearings via web based teleconference and court mergers.

Finland: Court Manager

Background - In Finland there is a court manager in superior courts (Supreme, Court of appeal etc.) and in 4 district courts. The position is based on specific statute and legislation, but duties and tasks depend on the court in which they are employed. Court managers are subordinate to the chief judge in managing the Court, but are controlled by the Ministry of Justice.

As a rule, they are not professional managers, but persons holding a master in law and aiming at being judges. **Positions can be for a fixed term (often for budget limitation) or on a permanent bases; selection can be carried out internally or via an open application, depending on the court.** In some courts the tasks depends pretty much by the decision of the President. The duties and tasks vary depending on the Court they are employed at:

The Supreme Court and Supreme Administrative Court;

- The court manager is the “right hand” of the president and his/her duty is to take care of the proper functioning of the Court. They work in strict cooperation
- The Court Manager may have independent powers to manage staff and to appoint officials / handle issues concerning employment and financial management.

Administrative Courts

- Court Managers decides issues addressed to him/her by the President, since they do not have independent powers ruled in the legislations.
- As a rule, they supervise and manage the office work in the court, take care of internal information and of informing to authorities and media (i.e. acting sometimes as media spokes person), organise training for staff, and acts a referendary (i.e. prepares the matter concerning administrative issues to be handled by plenum or president) unless otherwise ordered by the president.

Appellate Courts

- The Court Manager is responsible for the administration of court, prepares the budget and controls it, acts as spokesperson and takes care of training issues

District court

- Functions are largely those carried out within the administrative courts.

Performance evaluation - The Court Manager performance is evaluated yearly, but there are no binding rules about how to make evaluation. There are some markings, and this has influence on the yearly salary. The court president decides about this issue.

Critical Issues - Currently the Court Managers in Finland are not professional managers but, basically, persons aiming to be judges or holding another position at the Court. In Finland there is no specific courses or University training programs for Court managers. Usually court managers have Master’s degree in Law and it is whether Master of Laws is a suitable degree for Court Managers. This is subject to some criticism at general level. The questions are if court managers should have more managerial know-how, and if this could improve court operations. The discussion is at general level, and the current opinion is not that of a widespread lack of managerial know how.

France: Court President

Background: The report deals exclusively with the organisation of civil and criminal jurisdiction (*tribunaux, cour d’appel, Cour de cassation*) i.e. the judicial courts. Following the 2007

reform of the “judicial map” the total number of courts has been reduced from 1,190 to 863. One of the main features of the French judiciary is its “culture of centralization”. In this framework, the ministry of justice is responsible of the budget of all the judicial courts, and the president of the Court of appeal has authority over all the courts of the district.

At the jurisdictional and organisational levels, the governance of the court is based on the principle of diarchy with two head of jurisdiction (Chefs de juridictions): the head of the court and of the prosecutors’ office. They jointly assure the direction and the management of justice in a given geographical area. The First president and the General Prosecutor (at the Court of Appeal) have specific governance and managerial powers.

The judicial council is in charge of the selection and appointment of Court presidents: after an open call the Council makes a short list based on the personal dossiers of the candidates. Then the Council organises hearings to listen the candidates, and makes a choice. The President of the Republic makes the formal appointment. Criteria for selection include training in management of court, coordination of working groups within the court, and managerial aptitude. The appointment is for a 7 years term. The Ministry of justice is not involved anymore in the appointment of the Court president.

Functions - The President represents the Court and is in charge of organising the services of the judges: after having received the advice of the plenary (i.e. the general assembly of the judges) decides which functions have to be carried out. The Court president fixes also the composition of the panels and of hearing with specific needs.

The president is at the same time a judge and a manager.

Every two years, the First president (i.e. President of the Court of appeal) conducts the evaluation of judges based on the reports of the President of the first instance courts of the judicial district. The First president has also the possibility to assign salary incentives to judges (*“prime modulable”*) and to allocate extra judicial resources to courts, based on the request of each President.

The president of the first instance court does not have disciplinary powers. The first president can start disciplinary procedures, and also directly sanction the judge but in a very limited way (warning).

Performance evaluation - The president of the court of appeal is in charge of the evaluation of the Court presidents of the region within a classical hierarchical schema.

Critical Issues - In France there are some discussions about some of the issues introduced above.

First of all a debate is going on about the possibility to unify the current organisation of the jurisdiction, based on 3 different types of court (labour, commercial and tribunal) into a unique court of first instance.

Second, there is a discussion about the establishment of a judicial council at local level also to evaluate the functioning of courts. Indeed, while the First president regularly evaluates Court presidents, and ordinary judges, there is no evaluation mechanism in place at the level of court-organisation.

A third point of discussion is about the need of court managers (i.e. non judges specialists of management). There is a “cultural evolution” in place, affirming that that the management of cases and courts is becoming more and more important, and that should be carried out by non-judges. Also, the judge needs more and more statistical and managerial support. The question is how to integrate the judge (and judicial functions) with in the management of cases, and to design managerial mechanisms not affecting judicial independence.

There are difficulties with specialised judges (family, execution), since they have different practices, and more standardised procedures are needed. Therefore, the judiciary has established “coordinating judges” in charge of harmonising the practices of specialised judges. In this respect, however, the French judiciary is careful in introducing managerial methods and new powers within the jurisdiction. The direction of the court has to be left to the judges.

The Ministry of justice is considering to establish an “interregional level” to manage the budget called the “platform”. This new entity should be in charge of managing the consolidated budget of justice, including also prisons and juvenile services. Until now, the first president of the Court of appeal was responsible for budget, organisation and jurisdiction. The envisaged introduction of the interregional level would change this picture with several first presidents without the power of managing the budget, and with the budget of the court mixed up with the budget of the prisons. There are therefore concerns about the effects of such possible budget reform on judicial independence.

France: Court Manager

Background - The organisation of the “jurisdiction” is the result of different figures: the president of the tribunal, in charge of the organisation of the judges, the chief prosecutor, in charge of the organisation of the other prosecutors, the *directeur de greffe* in charge of the organisation of the services provided by the greffier (*law clerks*).

Appointment - The *directeur de greffe* are public officials of high rank (class A - supervision) and their appointment is based on a national public competition, that can be internal (i.e. open to greffiers of lower rank) or external (open also to non greffiers). In this case a university degree in Political science or law is needed, and the great majority of those who win the competition have a master.

The *directeur de greffe* has fewer functions than a Court Manager: he/she is mainly in charge of organising the services provided by the other law clerks (*greffiers*).

The key functions of the *directeur de greffe* are to administer, manage and supervise the registry and the various services of a court. More in detail, the *directeur de greffe* is in charge of:

- Human resources management;
- Budget preparation, execution and monitoring;
- Coordination of clerks and administrative offices, organization and control of their business, time management work;
- Management of resources, safety and security of buildings, equipment and maintenance;
- Supervision of different registers and directories;
- Exercise of judicial functions conferred by the act and regulations;
- Litigation management issues, monitoring the flow of inputs and outputs, inventory and archiving files;
- Monitoring procedures;
- Assistance to the judge in the judicial proceedings, as provided by the Code of Judicial Organisation, the Labour Code and the specific texts.

The *directeur de greffe* is not directly involved in handling judicial procedures, and just in smaller courts, it may happen the *directeur* has to attend at some hearings to assist the judge. Performance evaluation - The heads of courts exercise their authority and hierarchical control over the Director.

Critical Issues - Within the Ministry of Justice there are working groups about the so called

“XXI century courts”. One of the issues debated is the relationship between the Directeur, the President and the Prosecutor. Is it better to have the current situation in which the Directeur has, first of all a legal and judicial culture, or move towards a court manager model? The discussion is going on, and is connected with broader decisions about the “managerialisation” of justice.

Germany: Court President

Background - The German judicial system comprises three types of courts: Ordinary, Specialized (administrative, labour, social, fiscal, and patent law) and Constitutional courts. The ordinary courts are organized in four tiers, each of increasing importance: local courts, regional courts, *Länder* (regional) appellate courts and the Federal Court of Justice (*Bundesgerichtshof*). The report deals mainly with these courts.

In most of the *Länder*, Court presidents are appointed by the government (cabinet decision). In all the *Länder*, a judicial staff council (*Präsidialrat*) has to be heard before the government decides on the appointment; the government can, however, overrule the vote of the staff council. In a substantial number (about half) of *Länder*, also the consent of a parliamentary committee is required (usually on the basis of a proposal of the Ministry of Justice). As a rule, concurring votes of the committee and the MoJ are necessary although, in some of the *Länder* where parliamentary committees are involved, the committee may elect the candidate from among the applicants and the government, in turn has to appoint the person elected. Decisions and/or proposals are largely based on merits, i.e. the results of individual evaluation and experience in court administration. Education/training in management is not a formal requirement, but in practice are selected persons who have gained significant experience in various fields of court administration. As a rule, presidents hold the position until retirement. Decisions on appointment are subject to judicial review although, in case of a vote of a parliamentary committee, it is in practice difficult to challenge their decision.

Functions - The Ministries of Justice is responsible for finance and administration. The Court presidents prepare the applications for the budget that are then gathered and transmitted to the Ministry of Justice by the president of the court of appeal. In some of the *Länder*, the president of the Court of Appeal has the responsibility to administer the budget allocated by the Ministry of Finance and by the Ministry of Justice.

As a rule, court presidents administer space and layout, function that, in some of the *Länder*, is performed by the Ministry of Justice

As far as recruitment of judges and/or administrative personnel there are differences among the *Länder*. In North-Rhine-Westphalia, the presidents of the Court of Appeal recruit and appoint young career judges and all the support staff (including *rechtspfleger*). Presidents evaluate the work of judges and make suggestions for promotion. Judges can only be dismissed by a decision of the Judicial Service Court.

In the past, the courts made experiments with fringe benefits but such experiences have mostly been discontinued.

Court presidents do not have the power to assign cases; German law requires that an independent body (presiding council – *Präsidium*), consisting of judges elected by their peers, decides on a general yearly plan for assignment of cases – so as to avoid arbitrary assignment. For the same reasons, Court presidents cannot influence the composition of the panels that will deal with specific cases. Due to constitutional principle of the “natural judge” it is never admissible to retrieve a single case from a judge.

Court presidents do not set priorities or timeframes for the pace of litigation since this is an individual responsibility of the judge. The definition of local rules of practice is responsibility of all the judges of a court. Consistent interpretation of the law within the court can only be promoted by encouraging collegial discussions among the judges.

Court presidents are in charge of Information and Communication Technology (ICT). The extent of their competence depends on the respective administrative level (major decisions are made by the Ministry of Justice). The judicial staff works under the authority of the President of the court, but the Ministry of Justice can give directions in relation to the provision of administration (ICT, buildings).

The Court president has some minor disciplinary power. They can issue minor sanctions (like warning or reprimand), while major disciplinary sanctions can only be imposed by decision of the Judicial Service Court or an administrative court.

Performance evaluation: Generally speaking, individual evaluation of judges ends at the age of 50 or 55. Since most court presidents have reached that age when they are appointed, formal individual evaluation does not take place. Voluntary evaluation - as part of general court evaluation (staff satisfaction surveys, court user surveys) - are increasingly common.

Critical Issues - From time to time the question whether court presidents should serve only for a limited period of time, whether they should be elected by their peers and/or whether they should be replaced by judicial councils come up, especially in the wake of discussions at the European (Council of Europe) level. The majority of judges (not surprisingly all those who hold positions in the court administration) support the current system because it combines two advantages: (1) There is almost true self-administration because the president is above all an independent judge who cannot be dismissed or removed from his function that easily. A president of a court of appeal is, therefore, quite an influential if not powerful judicial counterpart to the executive. (2) Because of their training on the job for many years before appointment, the chances to have truly competent and experienced court presidents are high. Indeed, those who do not succeed in this informal elimination process would return to “mere” judicial work. With this institutional and personal background, and thanks to their long time in office (ideally about 10 years), they can bring in their experience. Therefore, they do not have to rely as much on administrative know-how of supporting staff as would be the case if they were not prepared so thoroughly and if they would only serve for a few years.

Germany: Court Manager

Background -The position of a court manager as it is known in the U.S. does not exist in Germany. However, there is the position of a “general manager” (Geschäftsleiter) in every court. The function of the court manager is that of chief of (non-judicial) staff. He/she is responsible for the court business in all its non-judicial aspects, e.g. managing non-judicial staff, assigning work to this staff, preparing evaluations/assessments. Function differs from the court level.

In local courts the Geschäftsleiter manages only the court business of his/her court; he/she is answerable to the Director of the court (i.e. the chief judge) who is invariably a judge. At the regional court level, the Geschäftsleiter is also responsible for managing the courts of the district, i.e. he is assigning and managing staff and business not only for the regional court but also for the court in the district. Geschäftsleiter are never independently acting persons but are subordinates of the Director/President of the court.

Geschäftsleiter come from the ranks of “Rechtspfleger” (greffiers), have undergone training

as Rechtspfleger but usually have received further training in administrative matters (e.g. staff management, budget, statistics etcetera) by way of training on the job and by way of continuing training in seminars and courses. Roughly there are about 1000 Court manager in the Country

The Geschäftsleiter is selected by the director or president of the court. Usually flexibility, versatility and ability to manage staff are decisive elements. The confidence of the court director or president is needed since they appoint the Geschäftsleiter. The function is strictly administrative, so there is no confidence vote by judges although, in practice, the presiding council of the court may be consulted.

Functions - Generally speaking, Geschäftsleiter have all the responsibilities for the running of the court business except for assignment of cases to judges and panels. They handle non-judicial staff, budget, and any other business that may occur. In particular they:

- draft the draft budget application, and in general, they manage the court budget;
- manage space and layout and recruit non-judicial staff, as long as the competence for appointment does not lie with the administration of the superior court;
- can fire the administrative staff (within the limits established by the law). If a fringe benefits schema does exist, and with the consent of the staff council which represents the staff, they can provide benefits to the personnel;
- They are in charge of ICT at the level of daily operation.

Performance evaluation - Geschäftsleiter performance is subject to regular evaluation carried out by the director or by the president of the court. Evaluation is a tool for staff development. Good performance may result in a promotion and / or having better chances to get a better-paid post at a higher court.

Critical Issues - Now and then the idea of employing fully trained court managers like in the U.S. comes up. Prevailing opinion, however, is that it is preferable to recruit them from among the ranks of the Rechtspfleger because they know the judicial work and courts operations, and are expected to receive more acceptance than someone from outside. In addition, differently than in the U.S., the Geschäftsleiter have to be appointed as civil servants. As a consequence it would difficult to dismiss a new court manager who had come from the outside but does not meet expectations.

Italy: Court President

Background - The architecture of the Italian judiciary is a classical three-tier court system with the Court of Cassation, 26 Courts of appeal (plus 3 detached section), and 166 courts of general jurisdictions dealing with civil and criminal cases. There are also 29 Juveniles Courts, handling cases involving minors. All these courts have a Court President. In Italy there are also 849 Justice of the Peace Offices in which cases are handled by non-professional magistrates with a legal background. A “coordinating justice of the peace” heads these offices.

Court presidents are appointed by the Judicial Council with “concerto” (opinion) of the Ministry of justice. Once there is a vacancy, the Judicial Council makes public a call, open to all the magistrates (judges and prosecutors) with a given seniority and some additional qualifications including previous managerial experiences and managerial training. An ad hoc commission at the Judicial council evaluates the applications, and rank the applicants and make a proposal for appointment. The dossier is then transmitted to the Minister of Justice for the concerto. Then, the Plenum of the Judicial council, considers the non binding opinion of the Minister of justice and decides by majority. The President of the Republic makes the formal appointment.

The Court president are appointed for a 4 years term that can be renewed for a second term.

Functions - The Court president represents the court with external parties. As a *primus inter pares* the Court president monitor and coordinate the judges as far as some administrative issues are concerned (leaves, holidays, etc.).

Court Presidents does not have disciplinary powers against judges. However, they have the duty to inform the competent authorities in case of allegedly disciplinary complaints.

Court Presidents have also a key role in the organisation of the jurisdiction that in Italy is based on the so-called “tabelle” that can be understood as the Court’s “organisational schemata”.

Such organisational tools is a document to be prepared every three years establishing:

- The judges allocated to each section;
- The criteria to assign cases to court sections and individual judges based on objective and pre-established criteria and keeping balanced the caseload;
- The days in which hearings have to be held;
- The tabelle should also establish some goals such as programs for the reduction of case-load, or time to disposition.

In doing this, the Court president have to coordinate the judicial part of the organisational schemata with the administrative ones in charge of the Court manager (see below) through an organisational plan.

He/she may also hear cases.

Performance evaluation - In Italy performance evaluation programmes for Court presidents are not in place, but the Judicial council can consider the results achieved in case of request of reappointment or for an appointment as president in a different office.

Critical Issues – The main critical issue is the criteria used for the appointment. Various scholars have made clear that until few years ago the appointment was exclusively based on seniority and on political ties (i.e. the connection between the candidates and the internal groups of the magistrates associations, who are represented within the judicial council). The new criteria have integrated seniority with aptitude and merit, but there is still a lack of reliable information about the “real” managerial capacity of candidates. Last but not least, commentators and scholars still argue that political ties of candidate remain very relevant.

Lastly, court presidents are still not active in the promotion of the quality of the jurisdiction, especially consistency in judicial decision-making. Actions in this field are easily classified as threats to judicial independence, but many courts in Europe have policies to promote consistency that are far from challenging judicial independence.

Italy: Court Manager

Background - In Italy, Court managers are part of the larger group of public managers, a high rank of civil servants.

The role has been established in 1972, and the current framework has been established in 2006.

As a rule, all the major judicial offices should have a Court manager, while at the justice of the peace just the few larger offices have the manager. However various posts are vacant and, in such case, all the most important functions of the court manager are automatically assigned to the Court President.

Appointment – The selection and appointment is based on an open and public competition to enter into the role of court managers, mainly based on written and oral exams. Then, also the appointment to a specific court is based on competition open to court managers. The proce-

ture is handled by the Ministry of Justice. The appointment is for a term that is established by the Ministry of justice, usually of 4 years. Informal talks between the Ministry of justice and the Court president may occur since it would be very problematic to appoint a Court manager without having heard the Court president.

Functions - Courts and court managers are not officially involved in budgeting procedures. They receive and manage the financial and human resources allocated by the Ministry of Justice as well as the equipment.

All these resources have to be managed and organised by the Court manager.

In this respect, the Court Manager is hierarchically the chief of all the administrative departments of the Court (i.e. all the personnel but the judges). From this position he/she:

- Establishes the organisational settings and layout;
- Assigns HR to specific organisational units;
- Controls and supervises staff and units (hierarchical relationship).

These tasks must be carried out within the blueprint provided by the organisational schemata described above, and organised in an annual planning of the Court activities established in cooperation with the President (see performance evaluation).

Court managers cannot hire or fire staff, even if recent legal changes have strengthened their disciplinary powers. Even if the Court president officially represents the Court, the Case manager is entitled to represent their court in specific areas such as layout, maintenance of the building, budgeting, etc.

Performance evaluation - As briefly mentioned, each Court manager, in collaboration with the Court president, must establish a yearly annual plan of activities for the court. This plan, and the results achieved, represents the bases for the annual performance evaluation of Court manager. Performance is assessed by an Evaluation commission appointed by the Ministry of justice and is based on the “360 degrees approach” considering statistical data, self-evaluation, and inputs from stakeholders and from the court president.

Critical Issues - The current organisation is the result of a long debate about functions and relationships of the Court President and of the Court Manager. Even if the President is the head of the office, the CM has a relevant share of functions and responsibility, and is not hierarchical subordinated to the President. This has been described as a double hierarchy.

The interdependences between “organisational schema” and court plan may create various problems. Depending on the court, the mechanism can be well organised and convincing but also a ritualistic exercise without a real impact on court organisation.

Lithuania: Court President

Background – In Lithuania the courts of general jurisdiction are: the Supreme Court of Lithuania (1), the Court of Appeal of Lithuania (1), regional courts (5) and district courts (49). The Supreme Administrative Court of Lithuania (1) and regional administrative courts (5) are courts of special jurisdiction.

Appointment - The Court President is appointed after a complex selection procedure with the involvement of various bodies of the self-government of the judiciary. Once the position of a court president is vacant, an open call is published and every judge from any court of that level may apply. Then there are various stages of scrutiny carried out by different bodies.

The Judicial Evaluation Commission (majority judges) makes the primary evaluation to ascertain if the candidates fulfil certain requirements needed for the leaders of the courts (ability and capability of taking responsibility for the organization, leadership skills etc.). Those who

have successfully passed this first stage are scrutinised by the Judicial Selection Commission (majority non judges). The latter Commission, acting following specific regulations and criteria, rank the candidates and submit the list to the Head of State (President of Lithuania). In most of the cases, the President selects the first candidate, and asks the consent of the Judicial Council for the appointment. Procedures are in place in case of disagreement between the Council and the President of State. All presidents are appointed for a 5 years term, with the possibility to be reappointed for just one more time.

Functions - The Court president is the head of the court. The law states that the Court President, together with vice-president(s) or division presidents, leads (in the broadest sense) the court.

The Court President allocates judges to the respective court divisions (civil or criminal), defines the specialisation of judges, and approves the structure of the court. The composition of the panel is established in advance of 6 – 12 months.

The President of each Court section (civil or criminal) leads the respective divisions. The President of Court section or the vice-president of the Court is also responsible for the field of activities defined by the Court President. The functions carried out by the Court president are as follows:

- Representing the court;
 - Preparation of the agendas of the general meeting of judges and chairing the meeting;
 - Ensure implementation of certain provisions towards legal or judicial part of the court (the part related to the management is run by the Court Manager);
 - Proposing distribution of judges between the different departments (the consent of the judge is needed);
 - Promoting the consistency and quality of judgments;
 - Human resources management for judges, including career steps;
 - Strategy management;
 - External relations with prosecutors, bar, media, other authorities, and Council for the Judiciary;
 - Hearing cases. The time dedicated to this task varies from court to court;
 - Inform the commission of ethic and discipline of judges in case of behavior relevant from such perspective.
-
- The national court administration is responsible for the budget: it addresses the financial needs of each court to the ministry of finances; each single court has a separate line in the state budget. At Court level, if the Court manager is in place, the President is not involved in budgeting.

Performance evaluation - The Judicial Council evaluates Court president and if there is a gross failure they may address this issue to the President of Lithuania to dismiss the judge before the end of the five years term.

Critical Issues - Like in some other European court, a court consolidation reform is in place, with the goal of reducing the number of first instance courts from 50 to 18. This will create some problems, even if no judge will be dismissed. They will continue their performance in the same places as they where used to work. One court will be the “coordinating court”, and the other will be considered as branches.

Lithuania: Court Manager

Background - The Lithuanian law states that “The Court manager is a career civil servant, responsible (subordinate) to the President of the court. The Court manager is leading the internal administrative structures of the court [and that], in accordance with the model adopted by the Judicial Council, approves the structure of internal units of the court”. The position is relatively new, since the first Court managers were hired around 2005. At this writing Court managers are in place just the higher courts and the larger courts of first instance (about 10 in the country).

Appointment - Court managers are selected by the Court president on the bases of an open competition regulated by the common rules in place for all the civil servants of the country (exams, interview etc.). The application is subject to various requirements including a university degree or equivalent education (master in public or in business administration), and at least 5 years of managerial experience.

Even if there is no-confidence vote by judges, trust between Court manager, Court president and judges is important.

Functions – The Court President is focused on managerial issues related to judges, while the Court manager handles the other managerial tasks. In the most important issues the Court manager gets the advice of the Court president. The functions can be of three types: (1) management of assets and maintenance; (2) management of financial and accounting; (3) human resources management. More specifically, the Court manager has the duty to:

- Co-ordinate and control the activities of the various units; ensure that the implementation of the court’s strategic plans for optimal management and use of financial, material, intellectual and information resources;
- Organise the procurement procedures and ensure correct use of the funds allocated to the court;
- Prepare the budget in consultation with the Court president, and defend the budget proposal in front of the council for the judiciary;
- Appoint and dismiss public servants and employees, including disciplinary powers, establish the staff training priorities, develop and implement the staff motivation system, including benefits;
- Ensure the proper organization (schedules) of court meetings, and order in court;
- Set up local rules of practice under the common rules already established by the council for the judiciary.

The Court manager can represent the court in some cases, when for instance facility issues or ICT issues are discussed.

Performance evaluation - The Court president evaluates the Court manager every year: if bad marks are given, the Court manager may be dismissed. However this has not been the case since the establishment of the position.

Critical issues - Not reported.

The Netherlands: Court President

Background - In The Netherlands the Courts of justice have always had a President. At this writing, after a court consolidation policy, there are 11 presidents at first instance courts and 4 at the courts of appeal. All the courts deal with civil, criminal and administrative matters. The Court of cassation has a peculiar organisation and is not discussed in this report.

Appointment – Vacancies are made public, and judges may apply. An external centre evalu-

ates the candidates to get an assessment and discover if they have the competence needed. Inputs from the court are then collected. More precisely, advices are given by the delegation of the court judges, by the so called “work council” and by the Management Board of the court after having interviewed the candidates. After that, a group of 3 court presidents examine the candidates and makes a proposal to the Judicial Council that makes a formal proposal. The proposal is send to the MJ, and from here transmitted to the King for the signature. The appointment is for 6 years that can be extended indefinitely.

There are no formal requirements in terms of education and training. In practice judges who consider court presidency as an interesting career development attend at public administration masters.

Functions - Each court has a management board made of 3 people: the Court president (as president of the board), one senior judge and the Court manager. The powers of the president are largely those of the “president of the board”, i.e.:

- To prepares and mange the court budget;
- To manage court space and layout;
- To be involved in court technology deployment;
- To be involved in the selection of judges. In particular, the board decides if there is a vacancy. The open position is made public, and applications are collected. Then the Court decides and makes a proposal to the judicial council. In most cases the Judicial Council accept the Court’s proposal.
- To employ and dismiss administrative personnel, within the existing legal framework;
- To administer the disciplinary power in respect to the administrative staff, and provide some (minor) fringe benefits to them.
- To determine which types of cases will be handled by each sector (on the bases of sector specialization), while the head of the sector carries out case assignment.

The President’s authority entails some minor disciplinary powers (i.e. formal warning) against the judges that have never been used, and the possibility to influence the composition of judge panels (rarely done).

However, the President has the formal power to investigate the conduct of a judge, a key disciplinary function.

The managerial tasks take about the 80% of Court presidents’ time and the remaining 20% is spent in hearing cases.

The presidents of the court sections take care of other managerial tasks such as rules of practice, calendaring, case assignment, etc.

Performance evaluation - The judicial council evaluate Presidents’ performance through the so-called “360 degrees” approach carried out addressing questions to 10 people working with the Court president (president of the bar association, chief prosecutor, judges in the court, major, king commissioner etc.). Findings are discussed between the President and the two judges who are members of the judicial council.

The Netherlands: Court Manager

Background - The role of Court Manager has been established in 1988 when courts became autonomous organisations. Right now there are 18 court managers. Also Prosecutors’ offices have a similar role.

Appointment - The court is in charge of coordinating the selection procedure. In case of vacancy there is a position opening. After a first evaluation, based on the documents provided by

the candidates, the short-listed ones go to an assessment centre. Once the assessment report is available, the Court makes its own evaluation and decides.

Candidates are mostly court employees having already a high position; sometimes candidates come from outside the judicial branch (prisons, ministries, law firms). The candidates' background is public management. The position is for 6 years, as for the Court president, and they have to closely cooperate.

Functions - As noticed above the Court manager is a member of the Management board of the Court, in which he/she is expected to deal with a number of managerial issues: finance, human resources (for the staff), ICT, building and facility management. More in detail, the Court manager, sometimes individually sometimes as member of the board is involved in:

- Budget preparation and administration;
- Space and layout, in cooperation with the Court president;
- Human resources management: within the existing legal framework they recruit and fire administrative personnel, and decides about fringe benefits. They have also disciplinary powers;
- Rules of practice: the court sections establish the local rules of practice, but the management board – and also the Court manager – has to approve them;
- In some specific venues, like the national meeting of Court manager, they represent the court.

ICT “until the plugs and the servers” is provided at central level. Just the less critical components (printers, PCs) are provided by the Court manager and the management board.

Performance evaluation - The Court manager is evaluated by the Court president and by one of the members of the Judicial Council. Evaluation is based on official forms that help to assess their competence profile.

Critical issues - Not reported.

Poland: Court President

Background - There is one Supreme Court, 11 Appellate Courts, 45 regional Courts with first or second instance jurisdiction and 242 district courts. Each court has a president. Poland has also administrative courts not considered in this report.

Appointment - The Appellate Court President appoints the district court presidents for a 4 years term that can be renewed for another 4 years. The president of the court of appeal makes first proposal to the General assembly of judges, and if the general assembly agree, the judge can be appointed. If there is no agreement the case goes to the National Judicial Council for an opinion that has to be followed by the president of the court of appeal.

The Ministry of justice appoints the regional court presidents and the president of the court of appeal for a 6 years term without the possibility of re-appointment. The procedure is similar to the one just described (proposal made by the Ministry and not by the President of the Court of Appeal). There are no specific criteria for selection, but being a judge.

Functions – The president runs and represents the court. The functions can be organised in three main groups:

Judicial functions: they entail a specific court president authority over the proceeding of the cases (see the appendix).

- Management of judicial officers (judges, judges' assistants, and *rechtspfleger*):
- Supervision of judicial officers: the President has the duty to hire, fire and supervise *rechtspfleger* and judicial assistants; at the same time he/she is a *primus inter pares*

- among judges;
- Responsible for the effectiveness of the court, for case allocation, and balancing the workload;
- Sets the composition of the division, also moving judges with their consent;
- Runs the motions and complaints in court (through a special procedure);
- Appoints the heads of divisions.

Internal supervision of court functioning in the judicial field:

Appellate Court Presidents are responsible for the courts of the district. He/she coordinates the process of internal supervision issuing, once a year, the general directions of internal supervision within the region. The directions entail mainly areas related to effectiveness, and workload management. In addition to the direction, the Court president can conduct visitation or inspections;

The Ministry of justice, the Appellate court president and regional court presidents can supervise courts through visitations and inspections that are focused not on the aspects of law, but deal with the application of art. 6 of the ECHR, and in particular with timeliness;

The president of court may “points out” the negative behaviour of the judge, but this is just “a warning” and there are no other disciplinary tools;

There is a disciplinary ombudsman selected among the judges, but the presidents can just file a complaint asking to consider a disciplinary complaint.

The president of the regional court has supervisory functions over the district courts.

Performance evaluation - After a recent reform (2012), Court presidents are subject to a supervision of the presidents of the higher courts and of the Minister of Justice. In particular, the president of the court of appeal is responsible for the courts of its judicial district (regional and district courts). Court presidents must submit the yearly report to the supervising authority (ministry or court of appeal). If the ministry of justice twice refuses to approve the report, the President will be dismissed for gross failure. Other performance evaluation mechanisms have not been mentioned.

Critical Issues - The new relationship between Court president and court manager is becoming a critical issue. Indeed, the Minister of justice supervises the Court manager and the president has no authority over him/her. This is a consequence of the new institutional setting, and so far, there are no information about how this is working in practice.

The internal assignment of a judge to a given position/division to face specific caseload problems is one of the most serious issues, since the consensus of the judge is needed and, if the judge does not agree, the president does not have the authority to force the judge to take the new internal position. Therefore the president can ask for an extrajudicial post at the Ministry of Justice, or ask to another judge to take the post. He/she may change the number of clerks and of judicial assistants but internal transfer may be a problem.

Poland Court Manager

Background - The law on Common Courts of 2001 introduced the role of court director in charge exclusively of financial matters. Since January 2013 a new role of court director has been established with stronger managerial functions. The idea that motivated the reform is to leave all the non-judicial functions to court managers and allow the presidents to get focused in judicial matters. At the time of writing, there are 242 Court Directors.

Appointment - is based on an open competition regulated and carried out by a commission

that is working by the court (i.e. with court employees and judges). A university degree (better if in economics) and previous managerial experience is needed. At the end of the selection, the commission makes a proposal and the Ministry makes the appointment.

Functions - The Court manager has various financial and human resources functions:

- Budget and financial planning;
- Budget administration, control and reporting; supervision of the court finance;
- Hierarchical supervision of non-judiciary staff (but for judicial assistants and *rechtspfleger*) that can hire and fire, some ruling power, and is responsible of training;
- Runs and represent the court in all the administrative aspects and is responsible for the court in any non-judicial aspects.

Performance evaluation - The Court manager is not subject to the formal supervision of the President, but he/she can be dismissed if the general assembly of judges gives a negative opinion on an annual report or if the MJ decides so.

As Court Presidents, also Court managers working in the higher courts exercise some control (mainly on administrative issues and on the length of proceedings) on the lower courts. This is done through visits and inspections. The Court manager at the court of appeal is responsible for making an annual report for the entire court of appeal district.

Critical Issues - As noticed above, the Court manager is subject to the supervision of Minister of Justice and the risk of having “two powers” within the court is clearly perceived. If there is cooperation it may work very well, but it is very difficult to deal with conflicts.

Another critical issue relates with the supervision of the registries of the court sections. Discussions exist about who is supervising it, if the Court manager or the president of the section.

Swiss: Court President

Background – The Swiss judiciary is based on 26 cantonal courts systems and a federal jurisdiction. Each judicial organisation has its own peculiarity and the information provided have to be considered as general trends.

The court organisation has three levels of jurisdictions: first instance, appeal and the Federal Supreme Court as court of cassation (and Council of State). Courts’ organisation also depends on their size: there are small courts (less than 10 judges and 50 employees), medium courts (less than 30 judges and 100 employees) and large courts more than 30 judges and 100 employees). Table 2 in the appendix describes how the changes of the scale of the court affects internal organisation.

Appointment - At the level of the Court of appeal and Supreme Court, the President is usually elected by the Parliament (Cantons’ parliaments for the court of appeal, Federal parliament for the Supreme Court) based on a proposal of the plenum of the same court. Presidents are directly elected by the citizens just in some small Cantons. There is not mandatory training in management. The appointment is for a short term. Presidents of the Federal Supreme Court and generally of the cantonal court of appeal (2nd instance) hold the office for just 1 or 2 years.

Functions - The functions of Court president at the Federal Supreme Court and in the greatest part of the cantonal appeal courts are largely carried out within collegial bodies: The Court plenary is the general assembly of all the judges of the court. It can deal with jurisprudential issues mainly of procedural nature. The Conference of Court Presidents (i.e. presidents of sections Conference des president) has the task of allocation of cases and coordination of the jurisprudence.

The Administrative commission - composed by the Court president, the Vice president and a third judge - has a much broader set of functions. In medium-large courts, the presidents perform a mix of judicial functions (as ordinary judge or president of a chamber for a share of 50/80% of their working time), organisational functions (as president of the Plenary of the Court 5% of working time), and administrative functions (as president of the Administrative Commission 15/45% of working time).

At the court of appeal level, the main tasks of the administrative commissions are:

- Defend the budget with the Parliament or the Ministry of justice depending on the organisation of the different cantons. The budget is established as service agreements ("convention de prestation"). More precisely, the governments or the parliaments of the Federal State or of the cantons, often based on the proposals of has a Judicial or sometimes a Financial Commission are in charge of the allocation of resources to the courts of first instance.
- Keep the relationships with the Ministry of Justice and with the Parliament;
- Appoints the first instance courts' judges;
- Perform the (administrative) supervision of first instance courts, including budget allocation based on service agreements and case-flows;
- The supervision of the bodies (independent) in charge of executive procedures;

All the administrative commission are also involved in:

- The approval of the budget;
- The allocation of resources within the court;
- Public relations, including the "representation" of the Court;
- Organisation, assignment and promotion of the greffiers;
- Approval of the court strategies in areas like ICT, performance of court sections, judges and greffiers.

The assignment of judges is proposed by the administrative commission and approved by the Court Plenary. If more than one judge is interested at a specific position, the Plenary decides by majority after having heard the candidates.

In each court of first and second instance, the Administrative commission evaluates the performance of sections, judges and administrative staff (greffiers).

At the same time the Administrative commission does not have any duty in the area of case assignment and composition of court sections. Case assignment is carried out by the Presidents of the court sections or by automatic systems.

In first instance courts, the presidents of the courts are generally in charge as single judge or with lay judges to decide cases. They have generally no management tasks.

Performance evaluation - Given the short duration of the appointment, performance evaluation is not carried out.

Critical issues - Not reported.

Swiss: Court Manager

Background - The different cantons use different names for Court Manager: it can be first clerk, chief clerk, or secretary general (premier greffier, greffier en chef, secretaire general). In some cases the Court manager can be a member of the administrative commission with consultative functions. The Court manager is usually subordinated to the Administrative commission. The institution of Court managers is addressed to relief the judges from administrative and managerial duties.

Appointment - Even if there can be differences in the 26 cantons, the selection and appointment procedure works as follows. The post to be filled is published in the newspaper, and interested persons apply. A selection committee composed of the President and other judges with managerial assignments carry out the evaluation process. Sometimes the candidates have to pass a specific assessment.

Usually the court manager has the profile of a jurist with experience in management; in the past the courts have often selected experienced court clerks. A new tendency is to select court managers with an economic or a managerial university background.

Functions - Court managers are not involved in case related activities, or in the allocation of cases. Their main functions are:

- Secretary of the governing bodies, in particular the Administrative Commission. This includes the preparation of documents for the commission;
- Budget Preparation and control;
- Supervising and controlling the collection of Statistical data, with the goal of monitoring the functioning of the court;
- Selection and promotion of administrative staff;
- Management of court services;
- Public Relation and media (monitoring, pulse);
- Representation of the court in administrative matters;

The tasks require good knowledge of the judiciary and of public administration. Often the Court managers are experienced clerks, even if sometimes they have a background in economic or post graduate studies in public administration.

Performance evaluation – Generally speaking, the annual evaluation of the Court Manager is a duty of the President of the court. Such evaluation can have consequences on the salary or on the speed of the progression of the salary until the foreseen maximum is reached.

In some cantons, another venue for Court Manager evaluation of Court is connected with the re-election of judges by the parliament. In some of these cantons the judges, after having been re-elected, vote for the appointment (or re-appointment) of the Court Manager.

Critical issues - Not reported.