



European Network of Councils
for the Judiciary (ENCJ)

Réseau européen des Conseils
de la Justice (RECJ)

Final report ENCJ working group on Courts Funding and Accountability 2006-2007

Courts' funding and accountability

1. The role of judicial, legislative and executive bodies in the funding of courts

a/ Does your Constitution set out a system for the funding of your courts? If so, please quote the applicable constitutional regulation.

There is no special constitutional regulation in any of the countries concerning the founding of courts. Even though in England and Wales there is not a written constitution the Lord Chancellor and Secretary of State for Constitutional Affairs (Minister of Justice) is under a statutory to ensure that there is an efficient and effective system to support the carrying on of business of the courts of the Supreme Court, county courts and magistrates courts. In Germany there is no organisational autonomy on the part of the third power. Court administration is a matter for the responsible Ministries who also administer relevant budgetary resources. The only exception is the Federal Constitutional Court, which has been granted organisational autonomy as an independent constitutional organ.

b/ Is the budget of your courts a separate part of the state budget?

The budgets of Bulgaria, Cyprus, Ireland, Estonia, Lithuania, Poland and Sweden are independent parts of the state budgets. In the other countries which responded to the questionnaire including: Austria, Belgium, Croatia, the Czech Republic, Denmark, Finland, Germany, the Netherlands and Romania the budgets of courts are not independent. In Denmark, the budget is under the Ministry of Justice, whereas in the Netherlands it is a part of the budget for the Justice Department. In Romania the budgets of all the courts apart from the High Court of Cassation and Justice are separate parts of the state budget. In Romania the budgets of the Ministry of Justice and of the High Court of Cassation and Justice are annexes to the law of the state budget that establishes the duties of the main chief credit accountants, i.e. the Ministry of Justice and the president of the High Court of Cassation and Justice.

c/ Is the budget of your courts an independent part of the state budget?

If so, how is its independence guaranteed? (please, quote the appropriate regulation)

Only the budgets of Bulgaria, Cyprus, Finland, Lithuania and Poland are separate parts of the state budgets. Pursuant to Article 117, paragraph 3 of the Constitution of the Republic of Bulgaria the judiciary shall have an independent budget. In Finland the budget line items are defined by law (the State Budget Act and accompanying decree). The appropriations for courts are specified as an independent part in the budget of the Ministry of Justice.

d/ Who draws up the budget?

In Belgium, Bulgaria, Croatia, the Czech Republic, Estonia, Finland and Poland the budgets are drawn up by the Ministers of Justice. In the Czech Republic, it is drawn up in cooperation with courts. In Denmark, Germany and Ireland the Ministers of Finance draw up the budget. In Austria, it is done by Parliament. In Lithuania the budgets of courts are drawn up by the budget appropriation managers - the courts in accordance with the needs of courts. There is a separate sum of budget appropriations for courts and a separate line for each court in the State budget, which is approved by Parliament of the Republic of Lithuania each year. In Cyprus, the budget for the Courts is prepared by the Accounting Department of the Supreme

Court. In Romania the Leading Boards of the courts of appeal lays down the foundations and proposes the draft budgets for the courts of appeal within their jurisdiction and submits it to the Superior Council of Magistracy for endorsement, and to the Ministry of Justice. England and Wales Regional administrators (known as Regional Directors, who are both employed by, and solely responsible to, the Lord Chancellor) are responsible for budgetary preparation and allocation at the local level. The Swedish National Courts Administration presents a budget request to the Ministry of Justice.

e/ To whom is the budget submitted?

In Belgium, Bulgaria, Croatia, the Czech Republic, Estonia, Lithuania, Poland and Romania the budget draft are submitted to the Councils of Ministers. In addition in Bulgaria and Lithuania the budget is also submitted to the National Councils for the Judiciary and in Belgium, Ireland and Estonia to the Minister of Finance.

The budget of the Danish Courts Administration (on behalf of all courts in Denmark) is submitted to the Ministry of Finance which is aligned with the Ministry of Justice. Negotiations between the Courts' Administration and the Ministry of Finance determines what the input will be in the overall budget draft of the state presented to Parliament.

In Romania the budget of the High Court of Cassation and Justice is approved by the General Assembly of that court with the consultative endorsement of the Ministry of Public Finances. Then, the president of this Court submits the draft annual budget to the Ministry of Public Finance. The courts of appeal, submit the draft annual budgets for the courts of appeal and for the courts within their jurisdiction to the Ministry of Justice and to the Superior Council of Magistracy for the necessary endorsement. After receiving the endorsement from the competent organs, the main chief credit accountants, i.e. the Minister of Justice and the President of the High Court of Cassation and Justice have the obligation to submit to the Ministry of Public Finances until the 15th of July of every year the draft budget for the next financial year.

In the Czech Republic, England and Wales, Finland it is submitted solely to the Minister of Finance. In Estonia the Minister of Justice submits the draft total budget for the courts of the first and the second instance to the Minister of Finance who after negotiations with all the ministers submits it to the Government, which

approves the draft of the state budget. The President of the Supreme Court presents the draft budget of the Supreme Court to the Minister of Finance.

In Austria, and Germany they are submitted directly to Parliament.

In Sweden the Ministry of Justice reviews and analyses the budget request submitted by the National Courts Administration. The Ministry of Finance analyses the overall economic situation and calculates the scope for expenditure increases or the requirement for expenditure decreases. Negotiations then take place between the Ministry of Justice and the Ministry of Finance about the financial resources to the judicial system. The final decision of the budget proposal is taken by the Council of Ministers. (The decisions of the Council of Ministers are collective, so all members of The Council of Ministers, including the Minister of Justice, must agree about the decisions.)

f/ Who approves the budget?

The organs which approve the Budgets for the courts in most countries are their Parliaments.

In Bulgaria the Supreme Judicial Council (National Council for Judiciary) adopts the draft budget of the judiciary. Then, the National Assembly adopts the budget of the judiciary according to organs of the judiciary as an independent part of the state budget. In England and Wales, the budget is prepared by the Lord Chancellor's ministry, the Department for Constitutional Affairs, and submitted to HM Treasury (i.e. the Ministry of Finance) which is headed by the Chancellor of the Exchequer. Discussions will then take place between DCA and HM Treasury but the final decisions are taken by the Treasury. The overall budget for the government is then presented to Parliament; after debate, the convention is that the government's budget is approved. In Germany the legislative organs approve the budget at the federal level, the Bundestag and Bundesrat the organ through which the Länder participate in the legislation of the Federation. In the Netherlands the courts' budget is approved by the legislature (Parliament and government together) and in Ireland the budget is approved only by the Council of Ministers.

g/ Do the judiciary (heads of courts, presidents, representatives of judges) participate in the preparation of the budgets of local courts? If so what is their role?

In Austria, Cyprus, Denmark, England and Wales the judiciary does not participate in the preparation of the budgets of the local courts.

In Bulgaria while drawing up a budget draft of the judiciary the Minister of Justice may request information and proposals from the administrative heads of the organs of the judiciary.

In Croatia courts participate in two ways: The presidents of the courts negotiate directly with the Ministry of Justice concerning their annual budget and their needs. Settlement, if reached, is not mandatory for the Ministry of Justice. A proposal of the Budget has to be sent for previous opinion to the General Assembly of the Supreme Court (all judges of the Court) but that opinion is not binding to the Ministry or Government.

In the Czech Republic the heads of the courts make a list of their requirements, they submit a draft version of the budget for their local court. In Denmark, the drafts that are sent to the local courts from the Danish Courts Administration are based on objective criteria, which is the number of court cases dealt with, square meters of the courts, etc. In Estonia, annual negotiations are held between the Ministry of Justice and the representatives of each court, where participants discuss the court`s performance and the needs for the next year.

In Finland, the main hearing of courts takes place in the negotiations between the presidents of courts and the representatives of the Ministry of Justice annually, in spring, when the budget is drafted. The courts through their representatives express their wishes as to budget appropriations required to run the court. After submitting the budget to Parliament the Ministry of Justice negotiates in October – November with every court head for the budget implementation and the financial needs of each court. In these negotiations the performance targets for the following year for every court are also confirmed.

In Germany, court budgeting is a matter for the responsible Ministries, who also administer relevant budgetary resources. The only exception is the Federal Constitutional Court, which has been granted organisational autonomy as an independent constitutional organ. Within the state budget (of the Federation or the respective Länder), parts of the entire budget are allocated to the Ministries which are responsible for the Judiciary. The budget for one or more fiscal years is set forth in a law that is enacted before the beginning of the first year and that makes separate provision for each year. There are so-called “budgeting models” which represent an

increasingly growing form of judicial self-governance, especially in the courts of the Länder. “Budgeting” here refers to the decentralised and independent management of budget funds by the courts. Each court is allocated a certain amount of funding to administer independently. While such funding is derived from the total justice budgets of the respective Länder, the courts may nevertheless dispose of the funds independently and without outside influence. This budgeting procedure enables courts to make independent decisions on personnel and materials budgets and especially on setting priorities for the expenditure of funds. Not least, available funds can therefore also be employed in a more targeted and economical manner. The concrete regulations (i.e. allocation, control etc.) of these budgeting models are different from Land to Land.

In Ireland the Courts Service Board which has a majority of Judges in its membership approves the budget for all courts.

In Lithuania, each court submits its proposal for its budget draft to the Judicial Council for consideration. Before the Judicial Council, the draft budgets of all courts are analyzed and negotiated in the working group initiated by the Judicial Council and consisting of 12 judges from different courts and the head of the National Courts Administration.

In the Netherlands, each court Board provides the Council for the Judiciary with a production plan, based on the prospective number of cases to be handled, and a draft budget for the court. The Council also considers the local input and allows for costs that are not handled locally. In the Courts of Appeal Directors in cooperation with Courts of Appeal Presidents prepare the draft of the budget for the particular court of appeal jurisdiction.

In Poland, the Appeal Courts’ Directors with the Appeal Courts’ Presidents prepare the budget draft of the respective Appeal Court territory.

In Romania, the budget of the courts of appeal and of the courts within their jurisdiction is drafted by the Leading Boards of the courts of appeal, which lays down the foundations and proposes the draft budget. Then, the economic manager who functions within every court of appeal and tribunal ensures the organization of the elaboration, substantiation and presentation to the competent bodies of the draft annual budget. Furthermore, the proper administering of the courts is the responsibility of the court presidents, who are also, members of the Leading Boards.

In Sweden, the courts send their 3 year plan to the National Courts Administration, including budget request, motivations etc, in September. The National Courts Administration analyses the budget request, makes comparisons between courts using key-ratios (measuring workload, the use of resources, performance etc) and statistical information. Then there are dialogues between National Courts Administration and the courts during September-November, and agreements between National Courts Administration and the courts are made. The formal budget decision is made in December.

h/ What is the role of the Council of Ministers or the Minister of Finance in the preparation of the courts' budget, if the budget is drawn up independently by the Minister of Justice, the National Council for the Judiciary or another body?

In Austria, the Minister of Finance provides the terms of reference. The Minister of Justice compiles their budget and debates the budget with the Minister of Finance. After conciliation the Council of Ministers agrees and then Parliament accepts the budget.

In Belgium an independent inspector (member of the federal financial inspection service) provides an opinion on the budget (The budget is adapted when the ministry of justice agrees). The Ministry of Justice discusses the budget with the Minister of Budget, which is then adapted if the Ministry of Justice agrees. The Minister of Justice and the Minister of Budget discuss the budget adaptation if the Minister of Justice agrees. The budget is discussed and approved by the Council of Ministers. The council's meeting is called " the conclave".

In Bulgaria, the Minister of Justice draws up a draft budget of the judiciary and submits it for review to the Supreme Judicial Council. The draft budget adopted by the Supreme Judicial Council shall be submitted to the Council of Ministers. The role of the Council of Ministers is expressed in the drawing up of an opinion on budget which draft it submits to the National Assembly.

In the Czech Republic, the Ministry of Finance gives general rules for the creation of the budget and approves the amount requested. The Ministry of Justice prepares, in cooperation with the courts, a budget draft of the courts, which is a part of the Ministry of Justice's total budget.

In Denmark, the Ministry of Finance following negotiations with the Danish Courts Administration sets the budget limit. The Administration then decides the budget within the limit. The final (overall) budget of the state – presented as a draft of the fiscal law of the state of Denmark for the next coming year – is per definition the draft of the fiscal law of the whole government, not the draft of the Minister of Finance. Therefore, the Minister of Finance of course must negotiate the overall draft within the government before it is presented to Parliament. It would be natural if the government has negotiated with the most important cooperation partners in Parliament even if they are NOT part of the government before the result is presented to Parliament. Negotiations then follow with the different political parties. It is a tradition that the government – any government – tries to obtain consensus or at least to obtain that the vast majority of the government votes in favor of the fiscal law.

In Estonia, the Ministry of Finance has negotiations with the Ministry of Justice on the size of the total budget for the Ministry of Justice as well as other ministries. The size of the budget for the courts is also discussed there, but the decision on how much money will be spent on courts will be determined by the Ministry of Justice and the Government.. The Courts Service submits budgetary proposals to the Minister of Justice, who in turn submits budget proposals to the Minister of Finance. Draft financial indicators of the State budget are prepared by the Ministry of Finance. The Government approves preliminary financial indicators of the State budget drafted for the period for the next three budget years and the maximum state budget appropriation amounts for the courts that could be allocated to the courts during the next three budget years. The budget appropriation managers – the courts – draw up the programmes and draft estimates of expenditure (budget drafts) on the basis of the Methodology of the Strategic Planning established by the Government and within the limits of the maximum authorized State budget appropriation amounts that could be allocated to the courts. In deciding whether or not to use their authority to change the Council's draft budget and in negotiating product prices with the Council, the Minister of Justice takes into account the budgetary guidelines that are issued by the Minister of Finance.

In Poland The Minister of Finance accepts the draft of courts' budget prepared by the Minister of Justice as a separate part of the country budget.

In Romania after receiving the endorsement from the competent organs the SCM and the General Assembly of the HCCJ the main chief credit accountants, i.e.

the Minister of Justice and the President of the High Court of Cassation and Justice have the obligation to submit to the Ministry of Public Finances until the 15 July of every year, the budget draft for the next financial year. The Ministry of Public Finances examines the draft budget and holds debates regarding them with the Minister of Justice and the President of the highest court. In conflicting views regarding the budget the Government is called upon to settle the dispute. Then, after the draft budgets are finalized, the Ministry of Public Finances reviews the drafts of the budgetary laws and of the budgets and submits them to the Government by the 30 of September of every year. After approving the draft budgets, the Government submits them to parliament for adoption by means of budgetary laws.

i/ Is the Council of Ministers or the Minister of Finance empowered independently to introduce changes to the draft of the budget accepted by those bodies or are such changes introduced by Parliament only?).

In most of the countries solely their Parliaments are empowered to introduce independently any changes to the draft of the budget.

In Bulgaria the Council of Ministers does not have the right to make changes in the draft budget of the judiciary but it can draw up an opinion on it which it includes in the general parameters of the state budget draft which it submits to the National Assembly.

In England and Wales once the overall budget for DCA has been set it can only be changed with HM Treasury consent.

In Finland both the Council of Ministers and the Ministry of Finance are empowered to introduce changes. However, in practice, only after negotiations with the Ministry of Justice.

In the Netherlands the Council of Ministers (or the Minister of Finance) can, of course, exert pressure on the Minister of Justice and try to influence them into using their authority to change the draft budget as proposed by the Council for the Judiciary. It must be noted, though, that the Minister of Justice is obliged to report to Parliament if they changed the Judiciary's proposal, why he did so and to what extent. They also have to submit to Parliament the original draft budget by the Council for the Judiciary.

manage the courts' national budgets, although in Romania the management is limited to the budget of the High Court of Cassation and Justice.

d/ In case of the negative answers to the two previous questions - which body manages the budget at national level and how is this body chosen?

In Austria it is the President of the Higher Regional Court and the Minister of Justice who manage the budget at national level.

In Belgium - Ministry of Justice - Directorate General Administration of Justice.

In Croatia the Ministry of Justice.

In Cyprus - the Chief Registrar together with the Accounting department of the Supreme Court.

In The Czech Republic the Ministry of Justice.

In Denmark - the Danish Courts Administration (in cooperation with and following the guidelines of an independent board).

In England and Wales the management of the budget falls within the competence of the Lord Chancellor who decides how much of the DCA budget is to be spent on the courts, and that budget is then delegated to Her Majesty's Courts Service ("HMCS"). HMCS is an executive agency within the DCA; its Chief Executive reports to the Lord Chancellor and HMCS carries out the instructions of the Lord Chancellor (one senior judge is a non-executive member of the main board of HMCS. However, that judge has no influence or power over the budget which is solely within the control of the executive branch of government).

In Estonia the Minister of Justice allocates the budget between the courts and then Court Managers manage the budget on a daily basis but they need the approval of Court Presidents on deciding the staff and salaries of judges secretaries and consultants as well as they need to assure; the Supreme Court is an exception – the President has all the powers there.

In Finland - the Ministry of Justice.

In Germany the respective responsible Federal Ministry, chaired by a Federal Minister appointed by the Federal President upon the proposal of the Federal Chancellor except for the Federal Constitutional Court being independent in that regard.

In Ireland - the Courts Service, established by the Courts Service Act 1998.

In the Netherlands - the Council for the Judiciary, where the 5 members of the

Council, 3 of them having to be judges, are appointed by the Crown for a six year term.

In Poland - the Appeal and Circuit Courts Directors who are appointed by the Minister of Justice.

In Romania - the president and the vice - president of the HCCJ appointed by the President of Romania, at the proposal of the SCM amongst the sitting judges of this court with a minimum 2 years of activity at the HCCJ; the appointment to these positions is limited for a period of 3 years with the possibility of reappointment only once; the economic manager is appointed by the president of the HCCJ or the presidents of the courts of appeal after passing the exam organized for this purpose by the respective institutions.

In Sweden - the National Courts Administration; the members of the board represent the courts, the authorities and Parliament. The chairperson of the board is the Director General of the National Courts Administration, appointed by the Council of Ministers.

e/ Who is the main manager of the courts' budget at local level

- the Minister of Finance yes/no
- the Minister of Justice yes/no
- the National Council for the Judiciary yes/no
- another independent body (if so what is its name and constitutional position)

The management of courts' budget at local level falls within the competence the Minister of Justice alone in the case of Belgium and England and Wales. The Minister of Justice shares the competence with another body in case of Austria (the presidents of the higher regional courts), Croatia (the presidents of courts), Germany (in some Länder - Minister of Labour or Minister of Finance according to the specialization of courts). Other bodies responsible for the management of courts' budget at local level are:

- courts (presidents, boards, courts' administration) - Bulgaria, Cyprus (the Chief Registrar together with the Accounting department of the Supreme Court), the Czech Republic (head of the court), Denmark (with the limits set for the presidents of courts in favour of the Danish Courts Administration staff), Finland (presidents of courts), Lithuania, the Netherlands (board), Poland (director of courts of each instance),

Romania (presidents),

- the National Courts Administration and each individual court - in Sweden where each individual court is responsible for its own budget; the head of the court is the main manager for court's budget, including salaries and office supplies while the National Courts Administration is the main manager for resources for general purposes such as premises, education costs, Running costs (IT), interest and repayment of debt.

*f / Is the management of the courts' local budget in the hands of judges only?
yes/no*

Only in four countries (the Czech Republic, Denmark, Finland and Romania) the management of the courts' local budget is the hands of judges only. In Germany the judicial self-governance is increasingly employed in the domain of budgeting, especially at the level of Lander courts.

g/ Do the presidents of courts manage the courts' local budgets? yes/no

In six responding countries the presidents of courts do not manage the courts' local budget. Croatia has given two contradictory answers – and thus is not taken into account.

h/ In case of the negative answers to the two previous questions - which body manages the budget at local level and how is this body chosen?

The body managing the budget at a local level in the responding countries is:

- the Minister of Justice - in Belgium, Croatia;
- the President of the Higher Regional Court, chosen by an independent senate for personal and the Minister of Justice and the Federal President - in Austria;
- the Chief Registrar together with the Accounting department of the Supreme Court - in Cyprus;
- Court Managers appointed by the Minister Of Justice (with the exception of the Supreme Court) - in Estonia;
- the Courts Service - in Ireland;
- a Court's Board, whose members are appointed by the Crown after nomination by

the Council for the Judiciary, with the exception of the Director of operations, who must be judges of the court; Netherlands

- in Romania the presidents and vice-presidents of the courts of appeal and tribunals are appointed after passing the exam organized to this end by the Supreme Council for Magistracy, through the National Institute of Magistracy; the exam presupposes the presentation of a project regarding specific attributions of leading positions within courts and consists in written tests regarding management, communication, human resources the candidates' capacity to make decisions to assume responsibility, stress resistance and a psychological test; the Supreme Council for Magistracy, after validating the results of the exam, appoints the judges in the leading positions of president or vice-president of the court; the appointment in leading positions is limited for a period of 3 years with the possibility of reappointment only once; the economic manager is appointed by the president of the courts of appeal after passing the exam organized to this end by the courts of appeal.

- in England and Wales within HMCS there is a system for delegating the budget first to regional, then to area and finally to local court level with the relevant court manager at each court (s/he being an employee of HMCS) responsible for budget management.

i/ On the basis of what criteria are financial resources allocated either to regions or to local courts? (e.g. the population living in the area of the court, the particular specialisms of the court, the average number of cases lodged at a certain court, the number of judges, efficiency of court proceedings)

Each of the responding countries has indicated a particular system of allocation of financial resources to regions or to local courts:

In Austria it is based on the quantity (judges, number of local Courts) of the Higher Regional Court;

In Belgium - the credit for representation costs and for small expenses : the number of judges;

In Bulgaria - the number of the staff approved by the SJC for the respective year, the particular specializations of the court, the execution of the expenditure part of the budgetary account of the respective court for the preceding year, the statutorily established health insurance installments and other taxes due, the resources necessary for the repairs of the judicial buildings etc.;

In Cyprus - the resources are allocated according to the needs of each court, i.e. number of cases;

In the Czech Republic - the number of cases at each court and their complexity (difficultness), the size of the court and the number of its judges (due to the population in its area) set by the Minister of Justice;

In Denmark - number of judges (determined by law!), number of other staff (that may be varied over the years depending on number of court cases and their complexity), renting costs and costs to otherwise run an office (papers, copy machines, computers, stamps, internet, telephones etc.).

In England and Wales - the workload (i.e. the number of cases), local circumstances, performance measures; while particular courts, because of their specialisms, will be given individually-negotiated budgets. (the budget for the High Court, for instance, is separately negotiated to take account of the length of cases being heard at that court; regional budget can also be affected by the political priorities of the executive arm of government, for instance a desire to ensure that criminal cases are heard in priority to civil work);

In Estonia - there are no rules set out, there are some factors being taken into account, namely: the average number of incoming cases, a possible specialisms of the court as well as a big backlog of a court together with objective reasons;

In Finland - i.e. workload (including quality/quantity of pending cases etc.);

In Germany - the respective workload arising from the number and scope of cases and proceedings;

In Ireland - a historical basis;

In Lithuania –

:_The budgets of courts are drawn in accordance with the needs of courts. The courts submit their proposals for their draft budgets to the Judicial Council for consideration. Also, the budget of each court depends on the court powers (court level) in the court system of the Republic of Lithuania. But the biggest part of courts needs consists of the expenses for the salaries of the judges and the personnel. Allocation of financial resources to this part of the budget depends on the number of judges in the court and the court powers (court level) in the court system.

In the Netherlands - the 'Price times Quantity' basis; only the financing of the Trade and Industry Appeals Tribunal is on a lump sum basis;

In Poland - the last year expenses, courts size, the number of cases, expenses to be

made;

In Romania - personnel schemes within the court (judges, clerks, auxiliary personnel, including the probation services); the average number of cases registered to that court (according to previous years estimates); the evolution of prices prognosis, elaborated by the Prognosis National Commission (prices regarding electricity, postal services etc.); the fees of the pro bono lawyers (established by the Ministry of Justice in agreement with the Association of the Romanian National Bars); the level of the experts' fees, etc.;

In Sweden - the average number of receiving cases during the last two years where different categories of cases have different weights in the calculation of the budget, local conditions in the courts are taken into account.

j/ Who decides these criteria?

These criteria are decided either by the Minister of Justice alone (Belgium), the Minister of Justice in cooperation with courts (the Czech Republic, Finland, Poland, Romania), the Minister of Finance (Croatia) or another responsible Minister (Germany), the Supreme Judicial Council (Bulgaria), National Courts Administration (Sweden), Parliament (Lithuania, the Netherlands), the Chief Registrar together with the Accounting Department of the Supreme Court (Cyprus), partly by Parliament (the number of judges) partly by the Danish Courts Administration together with the courts (Denmark) or Her Majesty's Courts Service (England and Wales). In Estonia these criteria are not fixed and the needs are negotiated over with the representatives of the court who have to explain the needs based on these criteria.

k/ If resources are allocated at a regional level, who decides how these resources should be allocated to local courts?

In Austria, the Czech Republic, Germany it is the regional courts (the presidents), the courts' administration (Denmark, Germany, Ireland, Poland, England and Wales), the Supreme Judicial Council (Bulgaria) or the Minister of Justice alone or together with the Minister of Public Finances (the HMCS - a body linked with the executive power in England and Wales) or a court of appeal depending the level of the jurisdiction.

l/ Who may change the allocation of financial resources to a given court during the financial year and what is the role of the judges and / or the administrators of that

court in allocating the resources and changing their allocation?

In Austria the President of the Higher Regional Court manages the budget of the local courts.

In Belgium the Minister of Justice without changing the global budget of the ministry of justice (e.g. between the personnel allocations of the ministry of Justice budget), while global changes of the budget can only be done by Parliament (by voting a modifying law).

In Bulgaria - the Supreme Judicial Council.

In Croatia - the Ministry of Justice.

In the Czech Republic the Ministry of Justice may change the allocations for regional or higher courts, regional courts can do this with regard to district courts in their area; role of judges is significant, a change in allocation is always done after a consultation with heads of the courts and more often on their request.

In Denmark - Danish Courts Administration.

In England and Wales budgets are delegated from the Chief Executive of HMCS to the geographic regions (headed by the Regional Directors) and downwards within the regions to the Area Directors; the Regional and Area Directors are all employees of HMCS; any decision to alter the budget of a local court during the financial year would be taken by the Regional and Area Directors of HMCS.

In Estonia the Minister of Justice can, but he has to hear the opinion of the Court President and the Court Manager; in addition it has to be in accordance set by the Court Administration Council (a body consisting on 11 members, 6 of the judges, whose consent is needed on some of the most important decisions concerning the judiciary, it is not an institution – not a proper council). The budget of the Supreme Court can be changed only by Parliament.

In Finland - basically, the funding is being granted for the whole fiscal year at a time; if an increase in funding is needed in a court the Ministry of Justice can change the sum of money on the basis of a proposal by the President of that court.

In Ireland - the CEO and the Courts Service Board

In Lithuania the allocation of financial resources can be changed by Parliament of the Republic of Lithuania only.

In the Netherlands changes to the allocation of financial resources are made in cooperation between the court's Board and the Council of the Judiciary.

In Poland the change the allocation of financial resources is the competence -

depending on the kind and the size of the resources – of the Minister of Justice or the Appeal Court Director.

In Romania the Minister of Justice, the president of the HCCJ, the presidents of courts of appeal and of the tribunals are empowered to introduce changes to the allocation of the financial resources allocated primarily to their courts and secondly to the courts within their jurisdiction (in the case of the presidents of courts of appeal).

In Sweden the National Courts Administration may change the allocation of financial resources to a given court during the financial year (the court presents basic data about its financial situation; the court adjusts its expenditures; the court can affect the number of employees (not the judges) and to some extent the office supplies).

m/ Who is responsible for the budget at local court level?

The president of courts (Austria, Bulgaria, Croatia, the Czech Republic, Denmark, Estonia, Sweden - for the Supreme Court, Finland, Lithuania, Romania), a board of a court (the Netherlands) the administrators of the courts (Cyprus, England and Wales, Estonia, Ireland, Poland) or the Minister of Justice (Belgium, Germany).

3/ Responsibility of the judiciary and courts for the budget.

a/ Who draws up court financial reports and to whom are they submitted? (eg. the Minister of Justice, the Minister of Finance, the National Council for the Judiciary, or another body – if so, what body?)

In the majority of cases they are the bodies managing the courts' budgets who draw up the court financial reports apart from Cyprus where it is the Auditor General.

Where the reporting body is not the Minister of Justice, it is the Minister to whom the reports are submitted at the last stage. The exception to this rule are:

- Bulgaria where the report is submitted to the National Audit Office,
- Cyprus where the report is submitted to the President of the Republic and then to the House of the Representatives.

In some cases the financial reports are submitted to the Minister of Justice and the Minister of Finances (Ireland) or the audit body (Bulgaria - the National Audit Office, Croatia- State Auditor's) or all three of the mentioned bodies (Denmark). In Lithuania the court financial reports are submitted to the Minister of Finance and the National Courts Administration. Only Romania reported that the final destination of the court

financial report is the Government.

b / What is the system of financial audit in courts? Is the Minister of Finance or any other body responsible for financial control and audit regarding courts?

Among the answers given three systems of financial auditing the courts can be distinguished:

1. involving the state audit authorities alone such as federal financial inspection service (Belgium), the Auditor General (Cyprus), Department of Constitutional Affairs and the National Audit Office (England and Wales), the Comptroller and the Auditor General (Estonia), German Federal Court of Audit or the National Audit Board (Sweden)
2. the competence being shared by minister of the government, a judiciary body and/or a judiciary administration body, namely:
 - the Minister of Justice, President of the Higher Regional Court and an audit court (Austria);
 - the Ministry of Justice and the audit units of regional courts (the Czech Republic);
 - the Danish Courts Administration together with the National Audit Office;
 - the Ministry of Justice and the National Audit Office of Finland;
 - the State Control, National Courts Administration and other state institutions within the limits of their competence (Lithuania);
 - the Minister of Finance and the Supreme Chamber of Control (Poland);
 - the Minister of Justice and the Minister of Public Finances, and as for the High Court of Cassation and Justice – the Court of Accountants (Romania);
 - the Supreme Judicial Council (Bulgaria);
3. involving a private financial auditor approving the financial reports of courts and the National Council for the Judiciary (the Netherlands).

c/ What is the responsibility of the judiciary (heads of courts, presidents of courts) for any departure from the budget? Before what body is a judge (heads of courts, presidents of courts) responsible for any departure from the budget?

In seven of the responding countries (Austria, Belgium, Cyprus, England and

Wales, Estonia, Ireland and Poland) judges or judiciary bodies bear no responsibility for the departure from the budget because the judges are not competent in the budgetary matters.

In Bulgaria the heads of courts bear disciplinary responsibility before the Supreme Judicial Council as well as administrative penalty liability before the National Audit Office and the State Inspection Agency. In case of a damage caused intentionally or by shortages or caused not during or on occasion of the performance of official duties the guilty persons bear financial responsibility before the State Inspection Agency. For intentional crime of general character criminal responsibility is borne according to the general procedure.

In Croatia the Presidents of Courts are in all respects regarding management of courts responsible before the Minister of Justice who has authority according to Law on Courts to dismiss president of court from his presidential duty before and of his/hers mandate, but that do not effects his/hers role as a judge.

In the Czech Republic a head of the court is responsible for the budget of his court before the Minister of Justice.

In Denmark a President of a court is responsible before Danish Courts Administration.

In Finland the President of each Court is responsible for spending the budget appropriations and criminal charges against a judge are brought to the next level higher court instance.

In Lithuania the courts are responsible before the State Control.

In the Netherlands the Board as a whole is responsible for a (severe) mismanagement before the Council for the Judiciary, being authorized to intervene and give binding directions or even suspend a Board member.

In Romania the presidents of Courts are evaluated by the Superior Council for Magistracy during the periodical evaluation of the professional activity of the judges. If it is found that the presidents of the courts have not properly exercised their management responsibilities regarding the efficient organization of the court, they can be revoked from their position by the Superior Council of Magistracy, on its own initiative or at the proposal of the General Assembly of the judges within the respective court.

The president of the High Court of Cassation and Justice can be revoked from his position in case of mismanagement of the court by the president of Romania, at the

request of the Superior Council for Magistracy on its own initiative or at the request of 1/3 of the members of the SCM or at the request of the General Assembly of the court.

d/ What should be the role of the judiciary in managing the financial resources of their court?

All but three (Austria, Cyprus and Poland) of the responding countries have given an opinion on the role of the judiciary in managing the financial resources of their court countries. Apart from the statements of the present situation in financial management of courts there are some program declarations. In case of Belgium the Themis project has been presented, as undertaken in order to decentralize the budget and responsabilize judges and prosecutors and supported by the High Council of Justice the general reform of the management of courts, aiming at a decentralization of the responsibility in the management bodies including the presidents of courts only, the autonomy of the management by those bodies and a system of accountability (responsibility). In England and Wales the issue is the subject of much debate. The judiciary takes the view that their independence cannot be guaranteed unless the courts have a ring-fenced budget protected from government interference. Ideally, the judiciary would like to see HMCS run by a main board comprising judicial and non-judicial directors, with the judiciary forming a majority, but that would require legislation through Parliament. In Romanian judicial system after debates with the judges, it was decided that it is necessary to transfer from the judges the task of managing the financial resources of the courts where they perform their activity. The institution of the economic manager was introduced in order to transfer these attributions to a person outside the corpus of judges. In order to facilitate the administrative and economic tasks of the presidents of the HCCJ, of the courts of appeal and of tribunals, *lex specialia* has expressly established the possibility of transferring these attributions to the vice-president of the courts. In practice, however, the economic manager is responsible for the financial administration of the HCCJ, of the courts of appeal, tribunals and of the courts within their jurisdiction.

Others opinions indicate that the role of the judiciary managing the financial resources of their court should be "independent" (Bulgaria), autonomous in governing the budget within the State judiciary (Croatia), essential (the Czech Republic). Only Estonian and Finnish answers point out that the role of the judges in managing their

courts' budgets should be minimal or limited to awareness and avoiding of unnecessary costs.

4. Judicial salaries as a part of court budgets.

a/ How is a judge's salary guaranteed? (please quote the applicable regulation)

In most of the cases, countries pointed out that the judge's salary is guaranteed in legally binding acts. In Cyprus the Constitution makes express provision for the remuneration of judges. Additionally, the salary of the judges is set out in the Courts of Justice Law (14/60). Furthermore, salaries of the judges of the Supreme Constitutional Court and of the High Court shall be charged on the Consolidated Fund. A similar solution is to be found in England & Wales. The salaries of High Court and circuit judges are also paid out of the Consolidated Fund rather than out of the budget voted by Parliament to DCA. The salaries of all full-time members of the judiciary are protected by legislation (the legislation is to be found in various statutes: the Courts Act 1971, the Supreme Court Act 1981 and the County Courts Act 1984).

In Ireland the salary of judges is paid from the central fund (Exchequer) and the independence of judges are guaranteed by the Constitution.

In Austria the judge's salary is guaranteed in law regulating the judges' rights and tasks (Richterdienstgesetz). In Belgium the judge's salary is regulated by the Code of the Judiciary. In Bulgaria the judge's salary is guaranteed in the Judicial System Act. In Croatia salaries for judges are regulated by law in the Act on Salaries of Judges and other Judicial Officials. In the Czech Rep. the judge's salary is guaranteed in the Act No. 236/1995 Coll. on salaries and remunerations of judges. In Lithuania judges' salaries are established by the Law on Courts. In Estonia the judge's salary is guaranteed by law.

In Poland the judge's salary is guaranteed and regulated in the Order of the President of the Republic of Poland of 06.05.2003 on the basic salary for judges (Rozporządzenie Prezydenta Rzeczypospolitej Polski z dnia 6 maja 2003 r. w sprawie stawek podstawowych wynagrodzenia zasadniczego sędziów sądów powszechnych, asesorów i aplikantów sądowych oraz stawek dodatku funkcyjnego sędziów, Dz. U. z dnia 13 maja 2006 r.)

In Romania the system of salaries for the judiciary is established by special regulations (special law) by Parliament and cannot be modified (except by law or Emergency Government Ordinances). In Germany the remuneration of judges at the Federal level is dealt with in the Federal Remuneration Act (sections 37 and 38 as well as in the schedules to the Act – particularly in Schedule III: “Federal Remuneration Regulations R” [Bundesbesoldungsordnung R]). Judges serving at the Land level were subject to the framework legislative powers of the Federation. Since 1 September 2006 pursuant to Article 74 para. 1 no. 27 of the Basic Law, the Federation possesses concurrent legislative powers with respect to the status rights and obligations of judges serving at the Land level, with the exception of career structure, remuneration and pensions and related benefits. Specifically, this means that the Länder may adopt their own regulations with respect to the remuneration, pensions and related benefits of judges as well as areas outside of status rights and obligations (for example, co-determination and advanced training).

The very mixed formula of guaranteeing the judge’s salary is to be found in Finland, where the salaries of the highest courts justices are determined by law. Salaries of other judges are determined in the uniform salary scheme as a part of normally two-year collective bargaining agreement. These second way of establishing the salaries of judiciary is to be found in Denmark. There only an agreement has to be achieved via negotiations between the state (government) represented by the Ministry of Finance and The Association of Danish Lawyers and Economists (Danish abbreviation is DJØF). In Sweden judge’s salary is guaranteed also by the agreement between National Courts Administration and the trade unions. In Sweden judges’ salaries are financed by the courts budgets. In the Netherlands salaries of judges are part of courts budgets.

b/ On what basis are judges’ salaries varied? Does a judge’s salary depend solely on the post the judge holds, length of service, or on the number and sort of cases considered by a judge? yes/no

The answer to this question was the same in most of the cases. It means that in Austria, Bulgaria, Croatia, Cyprus, the Czech Rep., Denmark, Estonia, Finland, Ireland, Lithuania, the Netherlands, Poland the judge’s salary depends on the post the judge holds, length of service but not on the number and sort of cases considered by a judge. In Romania e.g. the judicial pay is established according to the level of

jurisdiction, the position of judges and the period of time they worked as a magistrate. Differences in judges' salaries result from holding of doctoral degrees, hard or life threatening working conditions, work in rural areas, fidelity percentages, etc.

In Belgium there is also another factor which can influence the judge's salary; this is the number of inhabitants in the territory concerned - for some of the posts.

In Germany monthly remuneration payable to judges comprises the basic salary and the family allowance graded according to marital status and the number of children the judge has.

The judge's basic salary is primarily determined by the remuneration grades which are strictly linked to the functions the judge has been assigned. In other words, a judge will only be promoted to a higher remuneration grade if they have been given a higher function. At the 1-st and 2-nd salary grade the basic salary rates are graded according to the age. The judge's remuneration grows every two years.

As it was pointed out in question no. 4a, the Länder may adopt their own regulations with respect to the remuneration, pensions and related benefits of judges as well as areas outside of status rights and obligations (for example, co-determination and advanced training).

In England & Wales judicial pay is organised into nine 'pay groups', and the general principle is that the judges' band will reflect the level of cases in terms of the seriousness and complexity of the cases they will be expected to hear. Part-time judiciary (e.g. Records or Deputy District Judges) are paid fees – see. Magistrates give up their time on a voluntary basis. Many employers allow time off with pay. However, if a magistrate suffers loss of earnings, they may claim a loss allowance at a set rate. Allowances for travel and subsistence may also be claimed.

In Sweden according to the new agreement between National Courts Administration and the trade unions (which introduced individual salaries) the judge's salary depends on responsibility, experience and difficulty of duties.

If so, who decides the criteria?

In most of the countries the criteria of differentiating Judiciary's salary are determined by national law which regulates also the judges' rights and tasks.

Exception to the rule is England & Wales where the government has created by statute the Senior Salaries Review Body ("SSRB"). The terms of reference of

SSRB are to provide independent advice to the Prime Minister and the Lord Chancellor on the salary paid to judges (and others, including senior civil servants and senior officers of the armed forces).

In reaching its recommendations, SSRB has to have regard for numerous factors including the need to recruit, retain and properly motivate able and qualified judges, the funds available to departments as set out in the Government's departmental expenditure limits and the Government's inflation target. SSRB also has to have regard for the differences in terms and conditions of employment between the public and private and between the various ranks of judiciary, taking account of the job weight as between the various ranks of the judiciary.

Before deciding what salary to recommend each year for each of the ranks of the judiciary SSRB will take account of the evidence it receives, both oral and in writing, from the judiciary and from the Government. It will also look at wider economic considerations and the affordability of its recommendations.

The Government has never failed to implement the recommendations made by SSRB but occasionally (and most recently both in 2006 and 2007) the Government has decided to introduce (i.e. phase in) the increase in salary in two instalments spread over seven months.

In Sweden the criteria for setting judge's salary are established by the agreement between National Courts Administration and trade unions.

c/ Is the salary of a judge influenced by performance of the judge's duties? If yes, what are the criteria (e.g. the number of cases considered, the length and/or complexity of the proceedings, the results of appeals etc.) and who decides the criteria?

In general, most of the countries stated that there is no possibility (in their national laws) that the performance of judge's duties influences the judge's salary. But in Belgium (MB), the salary of the judge may be influenced by performance of judge's duties in case of the disciplinary system (there is a severe punishment of temporary reduction of the salary); in case of insufficient mark (within the individual assessment

of judges); in case of delayed publication of the judgement (there is a possibility to impose financial sanctions as the disciplinary punishment).

Bulgaria stated that the judge's salary is indirectly influenced by the performance of judge's duties. In practice while re-examining the salaries of judges on a six month basis the administrative head of the court may propose a lower remuneration for judges who do not perform their duties satisfactorily.

In Romania in exceptional circumstances, there is a possibility of reducing judges' salaries by 15% at the most, for a period of 3 months at the most, in case of disciplinary action taken against the judge, for certain disciplinary offences provided by the law.

The only way of influencing the judge's salary in Austria and Poland is the disciplinary procedure.

d/ At the national level, which body decides on the framework for the salaries of judges?

Parliament, as a body which decides on the framework of the salaries of judges, was confirmed by Austria, the Czech Rep., Croatia (MM), Germany, Estonia and Lithuania.

In Belgium (MB) the changes to the system of judges' salaries are drafted by the Minister of Justice and then voted in Parliament. In the Netherlands the Minister of Justice's proposals are negotiated with the Netherlands Association of Judges and Public Prosecutors. In Finland the collective agreement is reached between the Judge Union and the Ministry of Justice. In Denmark we can find a similar solution, but instead of the Minister of Justice, the government is represented by the Minister of Finance. Negotiations are conducted with DJØF (an organization representing academic labour). In Bulgaria the framework of the salaries of judges is established solely by the SJC. In Sweden the same framework is decided in an agreement between National Courts Administration and trade unions.

In Cyprus and Ireland the law granted to the Minister of Finance/Department of Finance the competence to decide about the framework of the salaries of judges.

In England & Wales The Lord Chancellor has overall responsibility for the pay, pensions and terms and conditions of the judiciary. He of course relies on the advice of the SSRB. Every five years, on average, SSRB will look at the nine pay groups for

the judiciary and will recommend to the Government whether any particular group of judges should be in a higher or lower pay group.

In Poland the judge's salary is guaranteed and regulated in the Order of the President of the Republic of Poland of 06.05.2003 on the basic salary for judges.

At national level in Romania the salaries of the judges are established by the Parliament through legislative enactments or, in exceptional circumstances by the Government through Emergency Government Ordinances which are subject to approval by Parliament, through laws of approval. In all cases, payment of the salaries and of other pecuniary rights derived thereof to the judges is done by the Minister of Justice for the judges functioning at the courts of appeal and lower courts and by the president of the HCCJ for the judges of this court.

e/ At local level, does an individual judge's salary within this framework depend on discretionary decisions of a court or another body?

Answering this questions almost all countries have denied such a possibility and only Sweden stated that the heads of courts send proposals of the salary for each judge to the National Courts Administration. Then negotiations take place between the National Courts Administration and trade unions about the proposals; the salary for each judge is decided through an agreement between the National Courts Administration and trade unions.

5. The financial responsibility of courts.

a/ Who is responsible for paying financial compensation where there is delay in the finalization of cases? Or where there has been an unlawful decision? (e.g. The state, the court, the judge?)

If delay in adjudicating of cases in Belgium constitutes a breach in civil proceedings and the delay causes damages to the person under the court's jurisdiction, and the court finds the civil responsibility proved, it is the State which assures the payment of compensation decided by the court (MB). Exceptionally in case of an intentionally impartial decision (JMS) it is the judge.

In Bulgaria the State is liable for the damages to citizens due to illegal judicial decisions taken in certain strictly defined cases (pursuant to Article 2 of the Law on the liability of the state and the municipalities for damages).

Croatia, Lithuania, Estonia, Finland, Sweden and Germany also answered that the State is responsible for paying financial compensation for damages which result from official conduct (or omissions) by a court. In Germany such a liability is based upon Article 34 of the Basic Law (Grundgesetz – GG), which shifts the personal liability of public officials (section 839 of the German Civil Code (Bürgerliches Gesetzbuch - BGB) to the State. The liability of the State may be derived from the cases which deal with the omission by the court, if the omission results from work overload (deficient organisation or distribution of resources committed by judges or civil servants).

In the Czech Rep. also the State, or more precisely the Ministry of Justice is responsible for paying financial compensation (Act. No. 82/1998 Coll. on the responsibility for the damage caused by the exercise of state power, amended by Act. No. 160/2006 Coll. in force as of 27 April 2006).

In Poland the Court that heard the case is responsible for paying financial compensation where there is delay in adjudicating of cases. In the Netherlands it is the Court, too (although very large claims, after negotiation between the Council for the Judiciary and the Minister of Justice, will have to be carried by the state). In Austria it is the role of the President of the Higher Regional Court.

England & Wales stated that the payment of any ex-gratia compensation would be decided by the Department for Constitutional Affairs (DCA). Payment of compensation is uncommon and, when paid, is made without any acknowledgement of a legal duty on the DCA to pay it. The listing of cases is seen very much as a judicial function; and losses which are caused by errors in the listing of cases cannot therefore be the subject of a claim for compensation.

Denmark answered that it is for the court to decide if compensation should be granted in case of errors. Delay will not in itself result in compensation. In a civil case a delay may influence the compensation; one part should pay to the other part, i.e. the case where one part used unlawfully a patent and gained profit from doing so. If a patent has been unlawfully used for a longer period of time the compensation will be higher. Compensation would be in any case paid by the state.

Romania pointed out that in the event of delays in adjudicating of cases for reasons imputable to the judge, when the European Court of Human Rights have determined to pronounce a decision against Romania, the state has actio in regres against the judge, who, in bad faith or with grave negligence caused the decision

impose reparations from the Romanian state. Also, according to the Penal Procedural Code (articles 504 - 507), persons that have been unlawfully condemned to a penal sentence, detained, arrested or had their liberty restricted in any way by a court of law, have the right to solicit reparations from the state, that will cover the damages through the Ministry of Public Finances. When the state has been condemned to pay reparations in any of the situations presented above, including the case of condemnation by the European Court on Human Rights, it has the right to recover the reparations paid from the judge prosecutors who, in bad faith or with grave negligence is responsible for the legal situation that resulted in damages to the victims of unlawful judicial decisions.

Only Cyprus stated that there is no provision in legal system for financial compensation in case of delay.

b/ Do judges bear any personal financial risk?

In its answer Bulgaria stated that pursuant to Article 9, paragraph 2 of the Law on the liability of the state and the municipalities for damages the judges bear financial responsibility before the State for the indemnities paid by it to citizens and legal entities who have incurred damages only when the actions or inactions of the judges are judicially recognized as crimes.

Finland pointed out that basically judges don't bear any personal financial risk. However, a judge can be held liable for damages caused by him according to the provisions of the Tort Liability Act (violation of law etc.). In Austria personal financial risk of judges is regulated in the public liability law.

Germany explains that as a rule, liability is excluded (by section 839 BGB) for official actions that are judicial decisions, unless the decision represents a criminal offence by the judge.

In Cyprus, Belgium, the Czech Rep., Denmark, England & Wales, Estonia, Ireland, Lithuania, the Netherlands, Poland and Sweden judges don't bear any personal financial risk.

In Romania judges bear personal financial risk in some types of cases. For example, if the unlawful decision pronounced by a judge or the delays in solving a case are criminal acts, the judges are criminally liable, and in this case reparations may be asked from the judges by means of a civil action in damages. In the situation

stipulated limitatively by art. 504-507 of the Criminal Procedural Code, the state, through the Ministry of Public Finance will pay the damages, with the possibility of recovering the reparations paid by the judge who, in bad faith or with grave negligence is responsible for the legal situation that resulted in damages.

It is hard to recognize what kind of rules govern judges personal financial risk in Croatia, because the answer given by (DS) is “no”, but the answer given by (MM) is “yes, because the State has the right to recourse if judge’s work was illegal”.

6. The finances for training of judges and judge trainees.

a/ Who decides what financial resources should be spent on training?

In Austria and Poland the Minister of Justice decides about financial recourses for judicial training. In Finland the appropriation of funds for judicial training is allocated partly to the Training Unit of the Ministry of Justice and partly directly to the Courts. In Lithuania the appropriation of funds for training is managed by the Ministry of Justice as a separate programme. Also, the planned training of judges is partially financed from the budget of each court. The same solution is to be found in Croatia (DS), where the Ministry of Justice decides about training funds on the State level and presidents of courts within funds allocated for that purpose at the local level.

In Cyprus the Supreme Court decides what financial resources should be spent on training, in Estonia the President of the Supreme Court also decides if training is organized using the Supreme Court’s budget.

In Bulgaria the SJC decides what financial resources have to be spent on training. It decides what funds from the budget of the judiciary will be allocated for financing the National Institute of Justice, although the institute itself draws up the draft budget which it submits to the SJC. In Sweden National Courts Administration decides generally what financial resources should be spent on training. In Ireland The Courts Service Board has the same entitlement.

In England & Wales the Lord Chancellor is responsible for the provision and allocation of resources for the administration of justice (including resourcing the judiciary and the education and training of the judiciary within that system) (paragraph 19 of the Concordat agreed between the Lord Chancellor and then the

Lord Chief Justice). The Lord Chief Justice is then responsible for the provision and sponsorship of judicial training within the resources provided by the Lord Chancellor (Concordat: paragraph 66). The actual training of judges is in the hands of the Judicial Studies Board (“JSB”).

Germany explained that for in-service training of judges and public prosecutors, there is a national training centre. Since 1973, the German Judicial Academy (Deutsche Richterakademie) has been working to promote inter-regional further training of judges from all branches of the justice system, as well as of public prosecutors. It is financed jointly by the Federation (Bundesministerium der Justiz – Federal Ministry of Justice) and the Länder. The Academy has no legal personality; the centre in Trier is subject to the budget regulations of Rhineland-Palatinate, the centre in Wustrau to those of Brandenburg. Nevertheless, there exists a joint budget committee for the Academy.

The costs are equally divided between the German Federation and the Länder, with the contribution of the latter calculated on the basis of the size and income of the Land in question. In addition, there is further training for judges provided by the Länder, but the decisions about the costs of these events are made within each Land by their ministry.

In the Czech Rep. The Judicial Academy which is responsible for training of judges has its own budget (part of the budget of the Ministry of Justice). In Denmark Danish Courts Administration has also its own budget for this. Besides, the individual courts have some possibilities – in addition to this – to spend money on courses for its staff.

In the Netherlands The Court’s Board decides about its own training budget (for judges and staff). The Council for the Judiciary decides about allocating resources to the National Study Centre for the Judiciary, which provides training for judges, Crown prosecutors and court and prosecution office staff.

At national level in Romania, the National Institute of Magistracy has the task of ensuring continuous professional development of the magistrates and of allocating necessary financial resources for this. The budget of the NIM is part of the budget of the Superior Council of Magistracy, as the Institute is placed under the coordination of the SCM. At local level, the appropriations of funds for training are managed within each court.

In answers given by Belgium we can find some incompatibility. JMS stated that the Minister of Justice decides about training finances, but MB pointed out that the recent legislation in Belgium created the Institute for Judicial Training, with a legal personality distinct from the State. Financial resources for the Institute are guaranteed by law.

b/ Who establishes the agenda for training?

In Belgium (MB) the Institute for Judicial Training will establish training programmes based on the criteria outlined by the High Council of Justice as far as training of judges is concerned and by the Minister of Justice where other posts in the judiciary are concerned.

In Bulgaria the agenda for training is prepared by the Director of the National Institute of Justice and is submitted for approval to the Governing Council of the institute, which consists of four representatives of the SJC and three representatives of the Ministry of Justice. A Program Council, which is a consultative organ of the institute, takes part in drawing up and updating the agenda for training. Its composition is determined by the Governing Council and consists of representatives of the legal science and practice. The qualification programmes for a course for increasing the qualification at initial entry into the organs of the judiciary are adopted by the SJC.

In Croatia (DS) Judiciary Academy, Ministry of Justice and Presidents of Courts establish the agenda for judges training. In Denmark, the Danish Courts Administration has a department to deal with that. All deputy judges go through a training programme. The department has an educational committee with representatives from the courts to define what should be offered and the content of these courses.

England & Wales pointed out that the Judicial Studies Board is an independent body, reporting to the Lord Chief Justice, directly responsible for training full and part-time judges in England and Wales and for overseeing the training of lay magistrates and chairmen and members of Tribunals. An essential element of the philosophy of the JSB is that the training of judges and magistrates is both by judges and under judicial control and directions.

The Director of Studies is a Circuit Judge seconded to the Judicial Studies Board and the Board is chaired by Lord Justice Keene. Five committees, each chaired by a

High Court Judge, look after different training requirements for civil, criminal and family jurisdictions, for the magistracy and for tribunals. The sixth committee considers equality, diversity and fair treatment issues.

In the Czech Republic there is a special, independent body - The Council of the Judicial Academy – composed of judges, attorneys and legal experts, which can establish agenda for judicial training. In Ireland, an independent body which can establish such agenda is Judicial Studies Institute, chaired by the Chief Justice.

The Council for Training Judges was created in Estonia to establish agenda for training. The Council comprised of 6 judges and a representative of the prosecution for the Ministry of Justice and of the oldest university in Estonia.

In Austria the Ministry of Justice through its training department coordinates the training activities offered by the 4 regional Courts of Appeal, the 4 Senior Public Prosecutors Offices, the Association of Austrian Judges and the Association of Austrian Prosecutors and draws up together with these partners a yearly agenda. The Ministry itself offers also courses for all judges and prosecutors, among them the largest yearly training event, the so-called “Judges’ Week”. In Finland we can find the similar solution, which means that the Training Unit of the Ministry of Justice has the main responsibility of training. The common agenda is established annually by the Training Unit together with judges. In addition to that the courts organize training also by themselves.

In Poland only the Minister of Justice has the authority to establish training agenda. In Lithuania the Judicial Council together with the Ministry of Justice establish the agenda for training. As a rule, the period between trainings for a judge cannot be longer than 5 years (the Law on Courts).

The outline of the programme offered by the German Judicial Academy is established by the programme conference, at which the Federation and each Land are represented by one vote each. The programme conference is composed of those experts of the Federation’s and the federal states ministries of justice, who are in charge of the further training of judges and public prosecutors. The professional associations are involved in an advisory capacity. Responsibility for programme organisation is then assigned to the judicial administration systems of the Federation and the Länder in accordance with the guidelines laid down by the programme conference.

In the Netherlands The Court's Board establishes the agenda for training. Anyway the National Study Centre for the Judiciary is a service of the Council for the Judiciary and offers the main part of courses. The courses it offers are determined by its own Board, after consultation of its Client Council (consisting of representatives of courts and Public prosecution offices). The courts pay the Study Centre for the courses its personnel have followed, but they can also choose to buy training facilities elsewhere.

Romanian process of establishing the agenda for training is as follows: The Teachers' Council of the NIM analyzes and proposes the areas for the program of the training activity. Then the Scientific Council of the NIM submits the program for the training of the magistrates to the SCM for approval. The NIM coordinates the professional training activities realized by the courts of appeal, by endorsing the training curricula, communicating necessary materials and by training the trainers from the courts of appeal.

In Sweden the basic agenda of training is established by the National Courts Administration, but the individual court also has great possibilities to demand special trainings according to the court's particular needs.

In Cyprus, an institution empowered to establish the agenda for training is The Supreme Court.

We kindly request that you add your own comments on any connection between the way courts are financed and possible threats to courts' and judges' independence.

AUSTRIA: The funding of the courts is part of the public administration (law execution) and is separated from the independent jurisdiction regulated in the federal constitution.

BULGARIA: The question whether the competence of the Minister of Justice pursuant to Article 130a of the Constitution, introduced with its third amendment of March 2006, to propose a draft budget of the judiciary and to submit it for discussion to the SJC, as well as to manage the property of the judiciary, represent a threat to the independence of the courts and the judges is to find its answer in the practice of applying these provisions.

ESTONIA: Judges and representatives of the executive should be able to decide on the objective criteria for financing the courts and allocating resources between courts – then there is no threat to the independence of judges.

GERMANY: Pursuant to Article 97(1) of the Basic Law, judges are independent and subject only to the law. This is referred to as the **professional independence** of the judges. It means that a judge cannot be given any instructions by anyone – not even from the Ministry of Justice, for instance – prior to or while arriving at their judgements of disputes. Judges are also not bound to any sort of administrative regulations or directives, but rather exclusively and solely to the law.

This professional independence is flanked by the **personal independence** of judges, which is guaranteed by Article 97(2) of the Basic Law. This stipulates that, in principle, judges receive lifetime appointments. Generally, they practice their profession until they reach retirement age. Up to that point, under ordinary circumstances, they cannot be dismissed or transferred to another court or position. This is only possible in special cases, and even then, only once they have been ordered to do so by judicial verdict.

This constitutionally enshrined independence of the judges is not threatened by the way courts are financed.

LITHUANIA: The new projects for Law on Courts and the Law on Judicial Salaries are negotiated in the working groups of Parliament of the Republic of Lithuania.

ROMANIA: The periodical evaluation of the efficiency of the judicial system and the financial support for the programs regarding the activity of the courts impose, as a necessity, that the courts' funding belongs to the courts or to an independent body that will also be responsible for other activities regarding the judicial system (e.g. the Superior Council of Magistracy).

This last proposal is preferred since in this way the suspicions of political intervention in the elaboration and execution of the court' budgets are eliminated and the principle of the independence of justice is all the more guaranteed.