Monitoring The EU Accession Process: Judicial Capacity

Table of Contents

I. Introduction 13

A. The Conceptual Framework: How is Judicial Capacity Enhanced? 14

B. The Role of the Union: Clarifying Standards for Continuing Membership 19

II. Overview of Country Findings 22

A. Recent Developments Affecting Judicial Independence and Capacity – Summary of Country Findings 23

1. General Observations 23

2. Country Summaries 23

B. Professional Competence of Judges 26

1. Selection and Promotion 27

2. Evaluating and Regulating Performance 33

3. Training for a Professional Judiciary 38

C. Institutional Capacity of the Judiciary 40

1. Governance and Administration of the Judicial Branch 41

2. Court Administrative Capacity 47

D. Recommendations 50

1. To Candidate States 50

2. To the European Union 50

I. INTRODUCTION

This Overview and the accompanying country reports assess the state of judicial capacity in ten Central and Eastern European countries seeking full membership in the European Union.[1]

In 2001, the EU Accession Monitoring Program published reports on candidate States' efforts to comply with certain aspects of the political criteria for membership.[2] Those reports focused on issues relevant to judicial independence in particular as a fundamental aspect of the requirement that members States of the Union ensure stability of institutions guaranteeing the rule of law and human rights.

The current reports examine judicial capacity as a complement to the 2001 reports.[3] They are intended to bring to the attention of candidate State Governments and judiciaries, civil society and the European Union issues that still need to be addressed if candidate State judiciaries are to achieve the capacity essential to fulfil the obligations of membership.

The expansion of EUMAP's monitoring efforts from judicial independence and impartiality to other elements that distinguish an autonomous and capable judiciary is a result of the evolution of judicial reform in the region. Although in principle judicial reform should address all relevant components comprehensively, the legacy of the communist period made the emancipation of judiciaries in the current EU candidate States a particularly urgent task.[4] Independence is inherent in the concept of adjudication – there is no adjudication, properly speaking, without an independent and impartial adjudicator; since the previous regimes by their very construction rejected the judge's fundamental independence and impartiality, a special emphasis on this particular element

[1] In these reports, the term "candidate States" refers to the ten States in which EUMAP has conducted monitoring – Bulgaria, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Romania, Slovakia, and Slovenia – and do not include consideration of Malta or Cyprus; nor does it include consideration of Turkey. References to the situation in specific candidate States in this Overview are generally made without citation; full citations are included in the accompanying country reports.

[2] *See* EU Accession Monitoring Program, *Monitoring the EU Accession Process: Judicial Independence* (Open Society Institute, Budapest, 2001), available at <www.eumap.org> (hereafter, *EUMAP Reports 2001*).

[3] The present reports are designed so that they may be read independently, or in conjunction with the 2001 reports; many of the theoretical and practical arguments about reform – and especially judicial independence – that are mentioned in the present reports are discussed at greater length in the 2001 reports. *See* EUMAP Reports 2001.

[4] *See, e.g.,* Lucie Atkins, *The Shifting Focus of Judicial Reform: from Independence to Capacity,* available at <www.eumap.org>.

in Central and Eastern Europe has been justified. Today, although a number of problems related to judicial independence remain – and are discussed in this year's reports – the impressive progress achieved in the majority of the States over the past twelve years in this area[5] makes it possible to consider other elements of judicial reform that complement and counterbalance judicial independence.

This expansion of focus is not only possible but also necessary because of the ever-increasing relevance of the European judiciaries in political, economic and social life and the resulting public demands for professionalism, efficiency and accountability. This is especially relevant with regard to the candidate States; the dramatic political change from totalitarianism to a European Union based on democracy, a free market, human rights, and the rule of law and the concomitant growth of legal instruments as a means of social regulation, have led to a considerable increase in the quantity and complexity of cases brought before courts. This new challenge requires judges and judicial administrators to acquire and maintain new competencies and to develop efficient and transparent work methods. If judicial reform is socially unresponsive, public trust in the legitimacy of the judiciary will be put at risk.

Following on the work initiated with last year's reports, the present reports discuss major changes in each State's constitutional and regulatory framework or practices affecting the judiciary that occurred between August 2001 and July 2002, including changes that affect judicial independence. The central objective, however, is to ascertain the effectiveness of existing mechanisms and standards in ensuring that the quality of judges and supporting institutional infrastructure guarantees the *capacity* for an independent, competent, accountable, and efficient judicial process.

A. THE CONCEPTUAL FRAMEWORK: HOW IS JUDICIAL CAPACITY ENHANCED?

The concept of judicial capacity may be understood as incorporating four mutually reinforcing notions: independence and impartiality; professional competence; accountability; and efficiency.

Independence and impartiality: This report focuses principally on judges' capacity to adjudicate, but it is clearly an essential condition for adjudication that individual judges be guaranteed real independence in exercising their core decision-making

[5] *See, e.g., EUMAP Reports 2001,* p. 21.

functions.[6] More broadly, however, judges or the judiciary as a whole often require a level of peripheral independence ensuring that they may administer their own affairs.

This is not because there is any inherent right to independent administration as such, but simply because experience has shown that direct and formal guarantees of independence are often insufficient if there are indirect or informal ways in which outside actors may influence judges. Outside control over the judiciary's budget, administration, or disciplinary apparatus, or over judges' career paths may jeopardise judges' adjudicative independence even in the face of formal guarantees. When circumstances require or allow it, the judiciary should form a separate and autonomous (that is, self-governing and self-administering) branch, or at the minimum, should have a meaningful level of participation in administering its own affairs.

In the candidate States in particular, the legacy of the judiciary's subordination and dependence and, more broadly, the lasting cultural effects of political dictatorship, may require institutional separation and institutional guarantees of judicial independence that are more far-reaching then in countries with an entrenched culture of judges' independence or a tradition of decision-making based on consensus and negotiation. But any present or future member State which does not provide its judiciary with a reasonable level of autonomy in administering its own affairs ought to bear the burden of explaining why such a deviation from the norms of Union membership should be accepted.

As argued in EUMAP's 2001 reports, judicial independence is not an absolute right vested in judges, but a structured strategic decision by society to accord judges a measure of freedom for the purpose of ensuring access to meaningful justice for all. In that sense, it is part of a broader range of strategic choices society makes to ensure such access; that broader range of choices encompasses what these reports call judicial capacity. Independent governance and administration may be equally well understood as an aspect of judicial independence or of judicial capacity – indeed, formalistic, definitional distinctions are less helpful in formulating policy than a pragmatic appreciation for the real effects different approaches to structuring the judiciary's activities may have.

Professional competence: Adjudicative and even administrative independence may be essential, but they are insufficient; it makes little sense to make judges independent if they are nonetheless incompetent. Unless judges are individually and collectively capable of rendering timely, effective determinations that broadly comport with,

[6] *See, e.g.,* Art. 1 of the Universal Charter of the Judge, adopted in 1999 by the International Association of judges: *"The independence of the judge is indispensable to impartial justice under the law."*

reinforce, and advance society's sense of justice, there is little gained by society affording judges a broad measure of independence.

The professional aptitude of individual judges is therefore a crucial element of judicial capacity. Judges must have sound judgement, professional erudition, and skill to render judgements effectively in accordance with the law and their own conscience. To ensure this, judges should be selected in accordance with clear procedures that verify their personal and professional suitability for the strenuous demands of the profession. Judges' advancement in the profession, likewise, should bear a reasonable, measured relationship to their demonstrated abilities, and they should have the opportunity and, perhaps, the obligation to continuously refresh and improve their professional knowledge and skills.

There are various models for ensuring that individuals with a high level of professionalism enter into and advance in the judiciary; these include both the civil-service model that draws young professionals into judging and the common-law tradition of appointing judges somewhat later in life. All the candidate States – like the majority of member States – have adopted some form of the civil-service model, but both these major models have advantages and drawbacks, and reform in this area should be undertaken with a comprehensive view. For example, the emphasis that many States place on probationary periods for new judges – an evaluative method that necessarily places their adjudicative independence at risk – is often a direct consequence of the recognition that new judges have little experience; this in turn is a direct consequence of a system that hires recent university graduates as full judges.

Accountability: Guarantees of judicial independence and measures to promote the personal and institutional aptitude of individual judges must be set within the context of mechanisms to ensure judges' collective and individual accountability before society as a whole and to other branches of the State, as well as within the judicial branch itself. Indeed, as EUMAP's 2001 reports argued, accountability and independence are actually complementary expressions of society's decision to grant a limited measure of autonomy for particular common purposes, and an independent judiciary must therefore be ultimately accountable for its decisions and operations.

As a practical matter, without clear mechanisms for establishing accountability, the judiciary will ultimately fail to secure public confidence in its ability to deliver effective justice and safeguard social, economic, and democratic values. Throughout Central and Eastern Europe, increased independence has often been perceived as having unduly diminished reasonable controls needed to detect and correct abuses of power within the judiciary. Although it is always necessary to insulate judges from the political process in order to ensure their adjudicative independence, mechanisms of accountability should nonetheless ensure that judges are professionally and publicly accountable for their performance.

Some of the mechanisms for locating judicial independence within a framework of accountability include ensuring transparency and creating channels of non-controlling communication between judges, the other branches, media, and the public;[7] these mechanisms will obviously enhance the judiciary's professional capacity as well by providing feedback concerning judges' performance. In particular, judicial accountability requires that reasonably transparent mechanisms for selection of judges and for assessment of their performance be introduced, and that the judiciary's internal operations be conducted in accordance with pre-established rules subject to some measure of non-controlling external scrutiny. In the first instance, therefore, judicial accountability requires transparency and answerability, rather than formal legal liability and sanctions which always carry with them risks to judges' adjudicative independence.[8]

Organisational efficiency: Society grants judges independence not as an abstract right, but as a pragmatic privilege to ensure the public welfare; to continue to merit this status, judges and the judiciary as a whole must prove capable of resolving disputes and delivering justice in accordance with the law and in a timely, efficient manner. Indeed, enhanced administrative capacity and a new operational culture within the judiciary are important – although often overlooked – elements of meaningful judicial reform.

Although skilful judges are essential, they are not sufficient; an inadequate organisational structure will thwart the best efforts of even the most capable judges. To achieve an adequate level of systemic competence over time, the judiciary as a whole must be organised in such a way that competent and accountable judges can thrive within a supportive operational framework. Such a framework requires a strong and transparent organisational structure, qualified and highly skilled management, and adequate human, financial, and technical resources on both the national and court level.

Administrative operations of the judicial organisation should be arranged in a manner respectful of court clients' time and expense. Courts should have access to adequate levels of information processing technology and research materials, and judicial administrators should held accountable for their performance, just as judges should be. Above all, an ethos of responsibility and competence needs to be fostered – an

[7] *See EUMAP Reports 2001,* pp. 19–20.

[8] Consequently, issues of criminal and civil liability and professional discipline of judges, as well as corruption, judicial ethics, and conflicts of interest, although of considerable importance, are not the core focus of the 2002 reports, and will be considered only in connection with other issues. Corruption in the ten candidate States, including its serious effects on their judiciaries, is considered at length in a parallel series of reports: EU Accession Monitoring Program, *Monitoring the EU Accession Process: Corruption and Anti-Corruption Policy* (Open Society Institute, Budapest, October 2002), available at <www.eumap.org>.

especially important element given the traditionally low status of the judge in the system that formerly dominated in the candidate States.

Interrelatedness of reform efforts: These four principal elements of any meaningful judicial reform are closely interrelated, and indeed even overlapping. For example, the methods and standards for judicial selection and promotion are crucial both to protecting judges' independence and to ensuring the quality of the corps of judges.[9] Training increases judges' range of knowledge and skills – essential to their professional competence – and in the process gives them the means to be more independent, both through their increased knowledge and through autonomous management. Judges' performance evaluation in turn is a form of professional accountability, but also a means to encourage enhancement of professional skills and knowledge, and thus independence. More broadly, institutional arrangements may either support or hinder judges' independence, professional competence, accountability, and efficiency.

Ideally, any change relevant to the judiciary should be mindful of all elements of judicial capacity and should approach reform in a complex and comprehensive manner. An unduly narrow focus on one single aspect of reform, however important in itself, at the expense of the others might not lead to improved judicial performance. Indeed, it might be harmful to the judiciary's overall capacity to deliver timely, quality adjudication.

For example, exclusive attention to efficiency in terms of the speed with which cases are processed might be harmful because an effective but subservient judge compromises the very concept of neutral adjudication. Alternatively, an imbalanced emphasis on judicial independence, without regard to the broader range of factors affecting the judiciary's work, may lead to the abandonment of efforts to monitor judges' activity, and in turn to a decline in professionalism and performance.[10]

---

[9] *See, e.g.*, UN Basic Principles on the Independence of the Judiciary, Art. 10 available at <http://www.unhchr.ch/html/menu3/b/h_comp50.htm>, (accessed 8 October 2002), which directly links judicial independence to professional and personal qualities of judges: "Persons selected for judicial office shall be individuals of integrity and ability with appropriate training or qualifications in law."

[10] For example, reform efforts in Italy have shown that when judicial independence is pursued at the expense of other important values, such as judicial accountability and guarantees of professional competency, reform may prove self-defeating and ultimately even detrimental to judicial independence. *See* Giuseppe Di Federico, "Judicial Independence in Italy: A Critical Overview in a (Non-systematic) Comparative Perspective", in *Guidance for Promoting Judicial Independence and Impartiality* (United States Agency for International Development, Office of Democracy and Governance, Technical Publication series, January 2002), available at <http://www.usaid.gov/democracy/pdfs/pnacm007.pdf>, (accessed 8 October 2002).

Even more importantly, these reports do not mean to suggest that there are purely technical solutions, however comprehensive, that can ensure the effective, accountable, competent, and independent adjudication of legal disputes. The act of creating a truly independent and capable judiciary – or reforming an existing judiciary in accordance with the principles of judicial independence and capacity – is a complex social phenomenon not readily reducible to static formulae, nor is success or failure in such reform ever merely a matter of numerical evaluation or ranking. Even more than financial or technical resources, successful reform requires social and political commitment; it requires, more than anything else, an atmospheric change. Society – the populace and its governing officials – need to view the creation and maintenance of a truly independent and capable judiciary as an important shared good in the common interest, and one worthy of high priority. This is a shared goal that the Union and all its members can jointly foster.

B. THE ROLE OF THE UNION: CLARIFYING STANDARDS FOR CONTINUING MEMBERSHIP

The accession process has generated an unprecedented momentum for judicial reform in the candidate States, and has demonstrated the importance of the continuing role played by the European Commission. The Commission has placed great emphasis on the ability of judiciaries to safeguard citizens' rights, contribute to a favourable business environment, and implement EU legislation,[11] as well as, more recently, on the judiciary's adjudicative and administrative independence.[12] In 2002, for example, the Commission launched an Action Plan for each candidate State's judiciary, accompanied by special financial assistance, to reinforce its administrative and judicial capacity.

Encouragement and incentives from the Commission have proved quite effective in promoting reform of the judiciary; during the last two years constitutional amendments affecting the judiciary have been adopted in Slovakia, while new comprehensive laws or significant amendments to existing ones came into force in Poland (in 2001), in Bulgaria, the Czech Republic, Estonia, Lithuania, Slovakia, and

[11] European Commission Strategy Paper 2001, available at <www.eumap.org> (noting that "[a] predictable and efficient judicial system is… essential for the citizen and business;" [and candidate states] "need an adequate level of… judicial capacity to implement and enforce the acquis [ ]").

[12] For the first time, in 2001, the Commission's Regular Reports all noted the importance of safeguarding judicial independence. *See* European Commission, *Regular Reports on Progress towards Accession 2001*, available at <www.eumap.org>.

Slovenia (all in 2002). Numerous specific changes have been made in all States and some Constitutional Courts have proclaimed important decisions affecting the judiciary.

In most of these States, however, the newly adopted legal acts have yet to be effectively implemented, and in many cases a number of serious flaws in existing reforms need to be rectified. The recent public and political priority given judicial reform needs, therefore, to be sustained beyond the initial legislative phase, and indeed, will only prove effective if it continues beyond the date of accession into the period of full, continuing membership.

The importance of clear standards extends beyond the current candidates for membership, however: current member States are also engaged in ongoing reform efforts aimed at enhancing judicial capacity, as the recent creation of judicial councils throughout Western Europe – in Ireland (1998), Denmark (1999), Belgium (1999), and the Netherlands (2002) demonstrates. Western European judiciaries face problems similar to those experienced by the candidate States in the East. The well-documented Italian case shows that lopsided reforms, in which only one element of judicial capacity is addressed, may lead to a situation in which the judiciary becomes a closed, unaccountable, inefficient and self-perpetuating professional guild.

In this context, the European Union, including its current members and applicants for membership, needs to ensure that the standards candidate States are called upon to meet are themselves clearly defined, rationally related to the requirements of the Copenhagen criteria, and, of course, consistently applied across the Union, to both members and candidates alike. To date, however, the accession process has shown that the Union itself needs a more comprehensive approach to the reform question. There are few standards on how the judiciary should be organised and how it should function, and the existing expert support system is often uncoordinated and ineffective.

There have also been instances when the European Commission has sent mixed signals to candidate States.[13] On occasion, the direction of judicial reforms in different countries has been dependent on expert advice from EU member States; in the absence of EU-wide standards, pre-accession advisors and representatives of twinning institutions have often simply encouraged the adoption of specific solutions imported from their own States. In some instances, their advice has arguably not been in accord

[13] For example, the Commission repeatedly recommended that Slovakia abolish probationary periods for judges, but has not made similar recommendations in other cases, even though several other candidate and member States use such systems, and one candidate – Slovenia – is presently considering introducing a five-year probationary period.

with clearly preferable practice or international standards.[14] Different approaches by different twinning institutions and EU-employed experts are also partly responsible for uneven reforms throughout the region. Candidate States cannot reasonably be expected to bring their judiciaries into line with standards that are themselves not defined.[15]

Judicial reform – like legal reform more broadly – will perhaps inevitably always have a highly particular, national character, given the strongly domestic focus and divergent traditions of different States' legal systems. Indeed, considering that the Union embraces members with both common-law and various civil-law systems, there will always be broad scope for choice in how States wish to organise their judiciaries – even to the point that what may be seen as essential to a just system in one may be thought antithetical to justice in another. Yet although the scope for choice may be very broad, it is not infinite; there are, and properly ought to be, areas of agreement. To the degree that the Union and its members do wish to create a community of shared values, some measure of common standards should be identified that constitutes the minimum membership requires.

One of the most valuable services the Union and the Commission could provide is to identify those common minimums, and to assist States in realising their common interest in seeing those standards met throughout the Union. Such standards, while minimal and largely reflective of existing practice in member and candidate States, should nonetheless have a prescriptive quality; they should be properly understood as expressions of the political commitments made in the Copenhagen criteria and consequently continuing obligations on all members.

The process of clarifying and defining such standards will likely require that the EU itself engage in further monitoring, much as it has done during the candidacy phase through the Commission's Regular Reports, which have proven useful tools in promoting reform. The act of monitoring – as EUMAP's own reports have sought to demonstrate – is itself a spur to the clarification of unvoiced yet commonly accepted standards. Such monitoring – whether done by the Union itself or by outside groups that have the Union's cooperation – should itself be truly independent, well-staffed and stably funded, and its findings should have political support.

[14] In Latvia, for example, the EU's pre-accession advisor proposed employing judges in the Ministry of Justice as a means to increase the efficiency of the Ministry, although this practice raises serious risks to judicial independence.

[15] In Slovenia, for example, the Government has claimed that certain controversial measures that tend to limit judges' independence – such as a five-year probationary period and mandatory dismissal for certain misbehaviour – are *necessary* for accession to the Union – a claim that suggests the need for the Union to clarify what it believes the content of the process and the political criteria to be.

Most importantly, standard-setting and monitoring should have consequences supported by all members. The Copenhagen criteria should be understood as vital, continuing obligations. Any deviation from the minimum common standards the Union defines for itself, whether by a candidate or a member, should be justified, not by mere assertion of privilege, tradition, or unique history, but through reasoned, convincing, and – where necessary – continuing evidence that the deviation neither violates the Criteria and the values underlying them nor the legitimate needs of an independent and capable judiciary in particular.[16] Ongoing adherence to commonly defined minimum political and democratic standards should be a *sine qua non* of membership; the power to derive those minimum standards, and to continuously monitor member States' compliance with them, is a logical and necessary function of a vital Union.

II. OVERVIEW OF COUNTRY FINDINGS

The remainder of this introductory Overview largely parallels the structure of the accompanying individual country reports and surveys their findings, providing theoretical and practical justifications for the issues they examine in detail, drawing generally applicable observations from them and highlighting particular problems of note. The country reports should be read in conjunction with this Overview, which places each report's findings in both a theoretical and regional comparative context.

[16] *See* Council of Europe Recommendation No. (94) 12 on the Independence, Efficiency and Role of Judges, Principle I, Art. 2c., available at <http://cm.coe.int/ta/rec/1994/94r12.htm>, (accessed 8 October 2002), Universal Charter of the Judge, Art. 9, available at <http://www.iaj-uim.org/ENG/frameset_ENG.html>, (accessed 8 October 2002), ("Where this is not ensured in other ways, that are rooted in established *and proven* tradition, selection should be carried out by an independent body, that include substantial judicial representation.")(emphasis added).

A. Recent Developments Affecting Judicial Independence and Capacity – Summary of Country Findings

1. General Observations

Although generalisations about ten countries with significantly different legal systems, levels of economic development, histories, and social organisation is inevitably problematic, it is nonetheless useful to identify some trends in which all or some of the States partake. Most States have afforded some greater measure of autonomy to their judiciaries in recent years, although the degree varies greatly and some have yet to make any meaningful changes.

One interesting trend is that in those States that have afforded their judiciaries extensive autonomy, such as Hungary and Lithuania, the principal concern now is not threats to judicial independence as such, but rather the risk of an insufficiently accountable, insular and corporatist judiciary. Mechanisms for ensuring that society has non-controlling access to information about the judiciary's decision-making and administrative processes can help limit this novel risk and also help ensure that the judiciary develops its professionalism.

In other States, the risk to judicial independence remains real, as the executive continues to exercise undue influence over the administration of the judiciary and judges' career paths. This is especially true in Bulgaria, Latvia, and Romania; in the Czech Republic, this system has recently been discredited by the Constitutional Court, but no replacement has been developed. These executive-centred systems – as well as the nearly universal tendency to afford the judiciary only the most minimal involvement in budget planning – also limit the judiciary's ability to develop its professionalism by fostering continued dependence on outside expertise.

Beyond these structural concerns, there is broad scope for improvement in administrative procedures. All the States, whether or not they have devolved autonomy onto their judiciaries, continue to employ selection, evaluation and promotion procedures that are insufficiently transparent and objective. Few have adequate training systems, and none provides the kind of training in technical or managerial skills that an autonomous judiciary will need to ensure its professionalism.

2. Country Summaries

Brief summaries of each candidate State's progress and deficiencies in ensuring judicial independence and capacity follow:

It is now widely acknowledged that the many serious problems confronting **Bulgaria**'s judiciary – such as lack of clear operational standards, opaque selection and promotion, and ineffective performance evaluation – require a comprehensive, committed solution. In 2001, reform of the judiciary emerged for the first time as a central political concern. Recent legislative amendments could provide a good basis for an overall reform effort; it is now essential that they be implemented in full and in a manner fully consistent with the principles of judicial independence and judicial capacity.

Certain amendments, moreover, would actually further jeopardise the position and professionalism of the judiciary, and should be reconsidered. Beyond that, the amendments fail to address a key issue: the need to reform the Supreme Judicial Council, whose current composition unnecessarily limits judges' independence and their ability to improve the judiciary's professional capacity.

Judicial reform in the **Czech Republic** remains in a state of flux, following the Constitutional Court's recent invalidation of important parts of the new Act on Courts and Judges. In abolishing the new Act, the Court made it clear that an executive-centred model for governance and administration of the judiciary must be revised.

The Court's decision is itself a welcome corrective to a flawed piece of legislation, but courts are still in an uncertain position. The willingness to engage in serious debate about judicial reform that the political branches demonstrated in passing the Act is itself an important and welcome change; the Government and Parliament should return to the still-outstanding question of how to shape an independent, accountable and efficient judiciary.

Estonia has made significant progress in establishing and supporting an independent, capable judiciary. Courts are increasingly staffed with capable, trained professionals; reform of judicial and administrative structures is given priority on the political agenda.

The new Courts Act potentially represents a major step forward in strengthening the judicial system if its provisions are effectively implemented, especially those on the new Council for Court Administration. In particular, further progress is needed to integrate the judiciary into the budget process, to clarify judges' selection process, and to develop a comprehensive system for performance evaluation based on clear standards.

In **Hungary**, the independence of the judiciary as a separate branch is well established. Generally, the structures of judicial self-government and self-administration function efficiently. A recent ruling by the Constitutional Court has helped ensure that basic questions about the organisation of the judiciary are protected from politics.

At the same time, the continued involvement of the executive in the budgeting process for the judiciary has resulted in consistent under-funding that weakens its independence and capacity. More broadly, the very success the judiciary has had in

asserting extensive autonomy makes it imperative that it continue to increase judges' professionalism and to avoid creating an insular and unaccountable institution that lacks public trust and support.

Latvia lacks a comprehensive approach to modernising and strengthening its judicial branch. Judicial reform has proceeded, when it has, in an *ad hoc* manner in response to specific problems, and has failed to establish effective systems for selecting, training, evaluating, and administering judges. The problems that plague the judiciary's operations are largely a result of consistent under-funding.

Recently proposed amendments to the laws governing the judiciary promise some improvement, but there does not yet seem to be sufficient political will to ensure that the amendments can be effectively implemented; at present the amendments even include elements that will likely do nothing to improve the judiciary's position.

Lithuania has taken a decisive step towards ensuring judicial independence; new institutions of judicial self-governance enjoy broad powers that can ensure adequate representation of the judiciary's interests and needs. Certain areas still require attention: the system for selection and promotion of judges needs to be made more merit-based and transparent; consideration should be given to developing a system of periodic assessment of performance; and training still needs to be placed on a stable and sustainable footing.

More importantly, expanded institutional autonomy makes it imperative that the judiciary also ensure its accountability, in part by acquiring specialised expertise in public administration, and enhancing the transparency of its operations; early signs suggest the system may be tending towards insularity and resistance to professionalisation.

Poland has made important progress in judicial reform in the past year. Two new Acts have introduced procedures and professional staff posts that – if properly implemented – could enhance courts' ability to manage themselves professionally and autonomously.

However, reform efforts need to be pursued more vigorously. Although courts have gained considerable autonomy, reform has proceeded piecemeal, and there have been reversals. Last year, the Ministry of Justice imposed austerity measures that demonstrated the risks to the judiciary's autonomy that exist when the executive retains fiscal or administrative supervision over courts. Whatever body retains the authority to administer the courts needs to be more transparent and to develop regularised, inclusive procedures.

Romania has made little progress in realising greater independence or professionalisation of the judiciary. Several major structural problems – such as the Ministry of Justice's continued administrative authority, and the Superior Council of Magistracy's mixed composition and joint jurisdiction over judges and prosecutors –

have not been addressed, preventing the effective and independent functioning of the judicial system and contributing to the high level of public mistrust in the courts.

Government, Parliament, and society as a whole need to commit to comprehensive and sustained reform of the judiciary's internal structure and its relationship to the rest of the State, if judges' independence and their professional capabilities are to be fully realised.

In the past two years **Slovakia** has made significant progress in clarifying the equality of the judicial branch and in strengthening the independence, competence, and efficiency of courts. Comprehensive implementation of the new Act on the Judicial Council would do much to further enhance the autonomy and efficiency of the judiciary.

Still, further improvements are clearly needed in several areas, including overly discretionary selection procedures and serious delays in case resolutions. Although recent constitutional and legislative changes have transferred certain powers to the new Judicial Council, the Ministry of Justice retains extensive responsibilities for the operation of the judicial sector. Whatever body ultimately exercises administrative control over the courts needs to develop more professional administrative capacity and expertise.

Slovenia has made considerable progress in establishing an independent and capable judiciary. Professional and political commitment has kept improvement of the judiciary at the top of the reform agenda. Legislative efforts to address discrete areas of concern – budgeting, selection procedures, evaluation, and case flow – are currently underway.

However, recently adopted legislation and proposed constitutional amendments would actually reduce the scope of judicial independence. In particular, the proposed five-year probationary period, mandatory dismissal of judges in cases of constitutional violations, and the system for setting judges' salaries should be reconsidered.

B. PROFESSIONAL COMPETENCE OF JUDGES

One of the foundations for a capable and legitimate judiciary is the professional competence of individual judges; indeed, access to professionally competent

adjudication is considered a human right of court service users.[17] The most relevant tools to ensure that competent judges serve in the judiciary are those addressing judges' career path and acquisition of skills – that is, the systems for selection and promotion, performance evaluation and training. If poorly designed, these systems may allow unskilled, incompetent and unmotivated individuals to populate the bench and may discourage the development of professional standards. By contrast, rationally designed methods and procedures promote merit and stimulate the continual renewal and development of a professional and motivated cadre of judges, which in turn will ensure that society has access to more efficient and timely adjudication of its disputes.

1. Selection and Promotion

The quality of individuals selected and appointed to perform judicial functions is crucial for the capacity of the judiciary to deliver high quality services. International standards recognise the significance of objective criteria for selection and promotion,[18]

[17] International Covenant on Civil and Political Rights, Art. 14 (declaring the right to a competent, independent and impartial tribunal), available at <http://www.unhchr.ch/html/menu3/b/a_ccpr.htm>, (accessed 8 October 2002).

[18] Council of Europe Recommendation No. (94) 12 on the Independence, Efficiency and Role of Judges, adopted on 13 October 1994, Art. 2c, available at <http://cm.coe.int/ta/rec/1994/94r12.htm>, (accessed 8 October 2002), (declaring that selection and career of judges should be based on merit, having regard to qualifications, integrity, ability and efficiency); Universal Charter of the Judge, Art. 9, available at <http://www.iaj-uim.org/ENG/frameset_ENG.html>, (accessed 8 October 2002), (declaring that selection and each appointment of a judge must be carried out according to objective and transparent criteria based on proper professional qualification); Judges' Charter in Europe, Art. 4. (declaring that selection must be based exclusively on objective criteria designed to ensure professional competence, and judicial promotion must equally depend upon the same principles of objectivity, professional ability and independence).

and pay significant attention to the procedures employed, including what body controls the process and how is it composed.[19]

It seems incontrovertible that, as a minimum, the quality of justice directly depends on the quality of the individuals chosen to be judges; organisational systems can only do so much to improve the skill and capacity of the individuals initially chosen and promoted. The importance of the quality of judges for the overall strength of the judiciary requires that applicable criteria and procedural rules be crafted and applied in a manner that ensures clear, rational and objective selection and promotion so as to prevent cronyism or other unmerited preferences in admission to the profession or in subsequent promotion.

While in the first instance the most important considerations are that selection and promotion criteria be fair and transparent, it is of equal importance in practice that the judiciary exercise some measure of autonomous control over the process. The degree of autonomy which judiciaries exercise in selection and promotion ranges from almost absolute in Hungary and Lithuania, to minimal in Romania.

Several States still afford the executive considerable latitude in determining judges' career path, which inevitably affords opportunities to interfere with judges' adjudicative independence and tends to discourage the development of autonomous capacity within a still dependent judiciary. Where the executive still controls selection and promotion, judges' independence is stifled, and, moreover, opportunities for professional development of the judiciary as a whole tend to be more limited, because

[19] Council of Europe, Recommendation No. (94) 12 on the Independence, Efficiency and Role of Judges, Principle I, Art. 2c., is perhaps the most specific:
The authority taking decision on the selection and career of judges should be independent of the government and the administration. In order to safeguard its independence, rules should ensure that, for instance, its members are selected by the judiciary and that the authority decides itself on its procedural rules. However, where the constitutional or legal provisions and traditions allow judges to be appointed by the government, there should be guarantees to ensure that the procedures to appoint judges are transparent and independent in practice and that the decisions will not be influenced by any reasons other than those related to the objective criteria… These guarantees could be, for example one or more of the following:
i. A special independent and competent body to give the government advice which it follows in practice; or
ii. The right for an individual to appeal against a decision to an independent authority; or
iii. The authority which makes the decision safeguards against undue or improper influence.
See also the Universal Charter of the Judge, Art. 9 ("Where this is not ensured in other ways, that are rooted in established and proven tradition, selection should be carried out by an independent body, that include substantial judicial representation.").

the entity with decision-making authority over judges' careers inevitably has institutional interests that diverge from those of the judiciary itself.

All candidate States have introduced novel procedures for judges' selection and promotion in an attempt to realign them with international standards. Admission to the profession and subsequent promotion are based on legally defined minimum requirements and procedural rules of various degrees of specificity. Despite unquestionable improvements, there are several aspects that are in need of reassessment from the point of view of rationality and efficiency of selection and promotion criteria and procedures. If not addressed, they will continue to undermine the credibility of the systems. There are three aspects in particular in which improvements are still needed: rules that unnecessarily limit the scope and quality of the pool of candidates; a lack of objective criteria; and an unduly closed and opaque process.

a. Unnecessarily narrow pool of qualified candidates: There is a clear tendency to narrow the pool of lawyers who are able to join the bench. Following the typical continental tradition, all the candidate States have introduced a civil-service or career model that gives preference to new law graduates or young professionals,[20] who are then gradually promoted throughout their careers. This system effectively bars – or at least strongly discourages – experienced legal professionals from entering the profession;[21] in turn, this limits the pool of qualified candidates. Although previous legal practice *per se* is no guarantee that a candidate will be a good judge, there seems to be no reason to discriminate against those who would like to bring to the bench their professional knowledge and life experiences. Indeed, diversity would not only strengthen the judiciary professionally, but would also increase its democratic legitimacy.

Moreover, when judges control the selection process without effective input from outside the judiciary, the career model may even contribute to the development of a closed and hierarchical institutional culture that is unfavourable to valuable innovation

[20] For example, Poland and Slovakia give clear preference to judicial apprentices – in Slovakia, a public tender for a vacant entry level position is announced only if no apprentice can fill it – and thus even judicial aspirants with extensive legal experience may be excluded in favour of less experienced apprentices.

[21] It should be noted, however, that there is a tendency to make exceptions for holders of academic degrees. In Lithuania, for example, holders of Ph.D.s with a certain number of years of pedagogical experience are eligible to join the bench. The rationale behind this exception is unclear; it is certainly questionable whether pedagogical experience is more relevant or useful than, for example, a practicing lawyer's courtroom experience.

and social responsiveness.[22] This risk is especially acute in the Czech Republic, Hungary, Lithuania, Poland, and Slovakia, and to some degree in Bulgaria.

The practice of some other States has shown that certain quotas reserved for experienced legal professionals can mitigate this drawback of the judicial career system; simply opening up the examination process to applicants of all ages and of greater experience without prejudice can likewise improve the overall quality of candidates.

b. Overly general and discretionary criteria: In a majority of the candidate States the criteria for judicial selection and promotion are overly general. The criteria typically include requirements of citizenship, legal education, civil capacity, minimum age, and either a clean criminal record or moral integrity. These requirements are frequently too minimal to guide officials and bodies responsible for making decisions about who is an adequate candidate; instead, such open and general guidelines simply allow for overly broad discretion unrelated to candidates' merit.

In Bulgaria, for example, the process of identifying, selecting and nominating candidates for judgeships is largely left to the discretion of court presidents, who submit proposals for appointment to the Supreme Judicial Council together with a statement describing the professional experience of that person. There are very few formal requirements: Bulgarian citizenship, a law degree, a clean criminal record, and a certain number of years of professional experience; candidates must also have certain undefined "required moral and professional qualities."

In Romania, judges are appointed by the State President upon the proposal of the Superior Council of Magistracy, but only following the recommendation of the Minister of Justice; the Council may not consider a candidate not recommended by the Minister, who thus has an effective and uncontrolled discretionary veto power over any candidate.

In Hungary, the powers of court presidents to determine promotion of serving judges to higher instance courts are almost entirely discretionary; in such cases, court presidents are simply entitled to select judges to fill vacant positions.

Selection and promotion criteria need to be further elaborated beyond mere formal eligibility requirements. Slovenia has taken steps in that direction, by developing more specific criteria to assess ability to perform judicial functions, such as conscientiousness,

[22] This issue is also an excellent example of the need for comprehensive reform: while the judiciary ought properly to have autonomous control over, or at least significant input into, the selection and promotion of judges, unrestrained or non-transparent control may, as noted here, discourage accountability and actual lessen incentives for increasing professional competence.

diligence, oral and written expressive ability, and ability to communicate and work with parties.[23]

Judicial examinations, which are a condition for admission in all candidate States except Slovenia, are generally narrow in scope and only test applicants' technical legal knowledge. While such knowledge is of course important, it should be equally important to examine an individual's personal or psychological suitability for the profession;[24] if personal abilities are not subject to verification, this may lead to the selection of 'good lawyers' who nonetheless do not have the personal maturity and sobriety needed for impartial, socially responsive adjudication. Tests should therefore aim to assess more than merely technical legal knowledge; psychological tests, such as are used in Hungary, are a step in the right direction.

The standards for oral examinations in particular need further clarification with an eye to verifying the personal qualities of candidates. Oral examinations are particularly valuable in determining the personal qualities of applicants, but they are also, by their nature, more discretionary and more open to abuse than anonymous written examinations. This trade-off is perhaps unavoidable, but States could do considerably more to ensure that oral examinations are as impartial as possible.

For example, oral examination boards should always consist of multiple members, preferably drawn from and selected by more than one organisation.[25] Interviewers should be trained, and should have clearly elaborated, written guidelines for conducting the interview. They should have to file a written assessment of each candidate; whenever possible, candidates should have the right to review and possibly appeal those assessments, which should also be available to internal assessors.

[23] It is not always clear, however, how these characteristics are verified.

[24] The value of the judicial examinations is also attenuated by exemption clauses existing in all countries. The rationale for such exemptions is not always clear, and they often give an unjustifiably broad discretion for the Minister of Justice. In Romania, for example, the Minister of Justice is entitled to grant an exemption to former Members of Parliament and political appointees of the Ministry.

[25] In particular, the practice of allowing the president of an individual court which has a vacancy to constitute the examination committee should be discouraged; new judges should be competent to adjudicate anywhere in the country or jurisdiction, and should consequently be selected according to standards that are, to the extent possible, reproducible anywhere. Court presidents' right to select judges for their court should, in most instances, be restricted to selecting from among candidates already approved to serve as judges anywhere in the country or jurisdiction by some other body.

Standardisation of procedures is especially needed in Latvia, where oral exams constitute the entire assessment process.[26]

c. Unduly closed and opaque process: The process of selection and promotion is insufficiently transparent and lacking in opportunities for outside input. In all candidate States judicial selection and promotion procedures are opaque and are confined to a small number of officials, mostly untrained judges or officials of the Ministry of Justice who are granted considerable discretion. Many details about screening procedures and determinations about individual candidates are not made public.

To minimise undue discretion and alleviate the risk of abuse, conditions for promotion and vacancies should be widely advertised, candidates should be publicly introduced, and the broader legal community – judges, lawyers' associations and legal academics – should be given an opportunity to express their views on candidates' suitability.

Procedural transparency and outside input are especially advisable for judicial systems that have achieved a high degree of administrative autonomy, such as Hungary and Lithuania. If these systems are to secure public support for their newly acquired and far-reaching independence, they must constitute their membership in a manner that is transparent and reasonably open to outside input and scrutiny. Opaque selection and promotion procedures will only contribute to suspicion of abuse and consequent public mistrust, which remains high in most candidate States.

In sum, it is inevitable and acceptable that a certain measure of discretion and confidentiality is left to members of selection committees. However, when a lack of clarity in how untrained selection committees reach decisions is combined with a lack of input from legal professionals or representatives of civil society, the value of oral interviews as a legitimate means of verifying professional aptitude is diminished, and opportunities for arbitrary or even biased selections are increased. Inclusion of representatives of legal professions and academicians in the process, better preparation for members of selection committees, and more transparent proceedings are all advisable.

[26] In Latvia, candidates must complete an examination before the Judicial Qualifications Board. The examination, prepared by the Courts' Department of the Ministry of Justice, consists solely of an oral interview testing the candidate's legal knowledge. There is no written component, assessment of legal reasoning or writing skills, or psychological assessment to determine the candidate's suitability for a judicial post, nor do there appear to be any grading criteria or procedures. In addition, the Board consists exclusively of judges who have received no additional training to prepare them for evaluating the suitability of judicial applicants.

2. Evaluating and Regulating Performance

Monitoring and evaluation of individual judges' performance is a relatively recent phenomenon. Increased reliance on the courts and the greater complexity of cases have resulted in higher workloads and longer proceedings, which in turn have increased public demand for competent and efficient courts. This in turn has led to the recognition in many candidate States that a system of evaluation based solely on the appeals system and the traditional administrative supervision of judges' performance is insufficient to ensure the continuous improvement of judicial performance. Lack of feedback may lead to professional stagnation and a decline in standards. In career systems periodic evaluations are especially important to ensure performance-based promotion.

Systematic assessment of individual judges' performance in accordance with pre-established standards is a form of individual accountability. Because assessment also provides a form of periodic feedback about the quality and efficiency of their work, it assists in further professional development and can also be a valuable tool in improving judges' overall capacity, especially when integrated with training programmes.

There are two principal issue areas in which candidate States' practice requires improvement: in a smaller number of States, judicial independence concerns are raised by the continuing influence of the executive over evaluation, in some cases in a manner linked to disciplinary sanctions or promotion prospects; and more generally, in all States that have evaluation systems, there is a need for greater clarification and sophistication in the standards employed.

a. Accountability and independence in the evaluation process: A primary consideration in designing any evaluation system is that it must not intrude on judges' independence or exercise of their core adjudicative function, especially where evaluation is linked to promotion or otherwise to regulation of judges' status or behaviour. This does not mean, however, that no evaluation may be conducted, or that evaluation may not have any consequences; society's legitimate interest in an accountable, efficient judiciary does provide scope for inquiring about judges' performance.

Where sanctions or significant professional consequences do attach to the outcome of evaluation, then allowing the executive to retain the power routinely to sanction judges through evaluative or disciplinary processes unnecessarily introduces serious risks to independence; the requirements of judicial independence strongly suggest that in such cases discretionary or determinative authority should reside with the judiciary or with a truly independent body within which the judiciary has meaningful participation.

Generally, as a result of the drive for greater institutional independence, the trend in the region has been to assign responsibility for evaluating judges' performance to the judiciary itself. Thus, responsibility for evaluations has been variously assigned to court

presidents (Hungary, Romania, and Slovakia), special commissions composed of or controlled by judges (Latvia and Estonia respectively), court personnel councils (Slovenia), or to judges of higher courts (Poland, Romania[27]). Commonly, other individual judges – usually at the appellate level – and bodies within the judiciaries such as court councils participate in the process.

In general, the ability of judges to evaluate the professional side of their colleagues' work is certainly greater than that of outsiders, and this trend is in general a welcome development. However, if given an entirely free hand, judicial institutions may prove less attentive to legitimate concerns with judicial efficiency and accountability for misconduct than would external bodies. The case of Italy has already been cited as an example of the harm to both judicial accountability and judicial independence caused by a bias towards an overly independent and insufficiently accountable judiciary.[28]

Where judicial bodies have an exclusive or nearly exclusive authority to evaluate judges' performance, they must endeavour to demonstrate to the broader society that they can undertake this task with professionalism; non-controlling mechanisms for making evaluation procedures transparent can help ensure that the judiciary does not lapse into insular or self-serving institutional behaviour.

In certain States, however, the opposite concern still predominates: in Latvia and Romania, the Ministry of Justice has retained – and in Bulgaria, recently acquired – inspection powers that bear, directly or indirectly, on performance evaluations. In Romania, for example, there have been reports of general inspectors from the Ministry extending their evaluation to the substantive reasoning of judgements under the rubric of verifying how the law is applied in particular cases; many judges have expressed concern that the Ministry is using inspections to control the judiciary.

In Bulgaria, the Ministry of Justice's powers are even more considerable. In 1998, the Ministry acquired the power to submit a motion for disciplinary proceedings, in an attempt to overcome the reluctance of court presidents to discipline judges from their courts. Clearly, it is not desirable that the Ministry, as a branch of the executive, has

---

[27] Romania has established a system of monitoring and evaluation in which the Ministry of Justice, appellate courts and court presidents all have extensive inspection and evaluation powers.

[28] *See, e.g.*, Giuseppe Di Federico, "Judicial Independence in Italy: A Critical Overview in a (Non-systematic) Comparative Perspective", in *Guidance for Promoting Judicial Independence and Impartiality* (United States Agency for International Development, Office of Democracy and Governance, Technical Publication series, January 2002), p. 88. ("In Italy… evaluations, although still required by the law, have been de facto eliminated by the CSM [Superior Council of Magistracy], whose composition and electoral system is such as to favour the corporate career expectations of the magistrates[ ]").

such considerable powers both to propose disciplinary proceedings and to conduct what inevitably is the principal investigation.

In principle, there is nothing wrong with another branch being involved in evaluating judges, bearing in mind society's legitimate interest in judicial accountability. However, having in mind the region's legacy of executive domination of the judiciary, and the fact that the powers of Ministries are often not precisely circumscribed, this practice seems to contradict the principle of judicial independence and should be abandoned altogether.

Where organs of the executive nonetheless retain inspection powers or are otherwise involved in evaluation, there should be a clearly discernible firewall between those evaluative powers and any exercise of disciplinary power or of discretionary authority over judges' career paths – powers that, in any event, should be limited or removed as likely to be antithetical to judicial independence.

Nonetheless, a democratic system of governance does imply a principle of judicial accountability: a middle path, therefore, is to entrust evaluation to independent bodies, composed of judges and representatives of other public and private institutions, bar associations, and law schools, and which might include Ministries of Justice. Judges may have majority representation on such bodies, but other groups are also represented, and proper procedures would ensure that no one individual or one group's representatives can totally dominate the process.[29] This would inject some measure of public participation into the process, and lessen legitimate concern about corporatist bias.

An additional way in which society's legitimate interest in ensuring judges' accountability can be assured is to provide the general public with opportunities – even if only indirectly – to express its opinions about judges' performance and to have legitimate remedies for judicial misconduct. Mechanisms to encourage public input are especially important in candidate State societies that do not have a tradition of public scrutiny of the judiciary through civil society organisations.

In part, these social demands can be met by establishing effective complaint mechanisms that allow petition for action against judges for misbehaviour. Besides serving as a mechanism to initiate disciplinary procedures, public complaints can be a valuable source of information that can spur improvements in judicial performance, provided the procedure incorporates remedial as well as punitive sanctions. At present, however, no candidate State has developed a comprehensive complaint mechanism; either they are entirely absent, as in Lithuania, or lack clear guidelines and procedures

[29] For example, the power to initiate an evaluation for disciplinary purposes may be separated from the power to actually conduct such an evaluation; or again, evaluation and imposition of sanctions may be separated.

that would ensure that complaints are actually handled seriously, in a manner that either corrects judges' behaviour or sanctions them for misbehaviour.

An emerging issue in the region concerns whether, and to what extent, ombudsmen may properly be involved in scrutinising judges' performance. Estonia, Slovakia and Slovenia have extended to ombudsmen the power to receive public complaints concerning judges and, in certain cases, have empowered them to initiate disciplinary proceedings. A number of critics, especially from the judiciary, argue that the power to initiate disciplinary prosecution of a judge violates judicial independence. It may be too early to assess whether this novel solution complies with the principle, or even whether it is effective in supplementing other mechanisms for public complaint.

Clearly, there a need for effective mechanisms to deal with public complaints against judges besides the appeal systems and systems for monitoring and periodic evaluation of judges' performance. In general, however, an ombudsman's office should be subject to the same tests and limitations as any other separate branch in its relations with the judiciary; this is especially the case if the ombudsman's office is in fact dependent on the legislature or executive, or if its independence is in any way limited.

b. The content of evaluation: As for the content of evaluation, meaningful criteria should include at least three elements: the quality of decision-making, the efficiency of case processing, and professionalism in conduct; in addition, measurement criteria should be selected to avoid encroaching on judges' independence. The challenge, in practice, is how to define and balance these elements, and how to select sources of data and information to use, so that evaluation serves to increase the opportunities and incentives for judges to develop their professional capacity.

These are the areas in which the systems employed in many of the candidate States present problems. Two candidate States (Czech Republic and Lithuania) have yet to introduce a system of periodic evaluation of judges' performance; in others (especially Bulgaria,[30] Estonia,[31] Latvia,[32] and Poland[33]) periodic evaluation systems exist, but require significant changes to improve evaluation criteria and procedure.

[30] The system was introduced in July of 2002.

[31] Estonia has introduced mandatory assessment for newly appointed judges at the end of their probationary period, but thereafter full judges' performance is not subject to periodic assessments after they are appointed.

[32] In Latvia performance evaluation is linked to the qualification system that determines judges' salaries. Although the law requires that promotion to a higher qualification class should be based on judges' knowledge and work experience, judges are promoted more or less automatically after completion of the minimum time in previous qualification class.

[33] In Poland evaluations are part of regular inspections by designated judges-inspectors and are supposed to be conducted every three years, although in practice this rule is not observed.

Several of the candidate States rely heavily on quantitative measurements of judges' efficiency,[34] analysing objective data such as numbers of cases received and disposed of, or length of proceedings. However, although it may provide incentives that decrease court delays, rigidly numerical measurements may not be reliable indicators of judicial performance; for example, a judge who completes ten highly complex cases in a month may in fact be working more efficiently than one who completes twenty simple cases.

More broadly, the incentives that a numerical system create for reducing delays may in fact lower the quality of adjudication; when not complemented by qualitative criteria, purely quantitative evaluation encourage judges to focus on completing cases quickly rather than deciding them well. This is especially true where sanctions attach to negative evaluations, as is the case in several candidate and member States.[35]

Where possible, evaluation should in the first instance be routinised and integrated into training rather than employed as an extraordinary disciplining mechanism. Judges should be given an opportunity to participate in the process of evaluation and get feedback, so that they see it as an opportunity for improvement and willingly participate.[36]

For all their shortcomings, attempts to introduce quantitative indicators into performance evaluation systems are a welcome improvement over essential standard-less or discretionary evaluation, and should be further encouraged and supported. More sophisticated measurement rubrics could take a variety of factors – such as the

[34] For example, the Judicial Council in Slovenia has introduced the *Criteria for Determining the Projected Amount of Judicial Work* that determines purely numerical norms for disposition of cases – 18 cases per month or 180 per year for district court judges. However, the *Criteria* do not take into consideration the complexity of cases and other specific circumstances, such as court location, space and human resources.

[35] In Slovenia, for example, the Judicial Council's decisions on periodic assessments by personnel councils can affect the career path of judges, such as promotions to higher courts and higher pay brackets; a negative assessment may result in removal from office by the Judicial Council. The Council's *Criteria for Determining the Projected Amount of Judicial Work*, while primarily intended as a tool to reduce court delays, are also used in the performance evaluation process; failure to achieve projected goals in caseload has a negative effect upon evaluation of judges' performance. Judicial and academic commentators have criticised the *Criteria* and its influence on judges' careers, arguing that the quantitative indicators for judicial work are not balanced by clear, qualitative evaluation criteria.

[36] At present, only Hungary and to a certain extent Slovenia involve individual judges in their own evaluation process.

complexity of court procedures – into account,[37] and could be counterbalanced by qualitative measurements, such as knowledge of laws, practical ability to apply them, and evidence of impartiality. The EU could play a useful role in coordinating efforts to develop common minimum standards or evaluation methodologies.

3. Training for a Professional Judiciary

Effective training for judicial candidates and judges is the most direct way to enhance their capacity for impartial, competent and efficient adjudication. Lack of adequate training may lead to poor performance and may even make judges vulnerable to influence. On the other hand, well-designed training not only increases judges' core adjudicative skills, it can also help make judges more responsive and accountable by reinforcing a proper understanding of the judge's role in society.

The importance of judicial training has been recognised by the European standard-setting instruments, which declare that States should ensure initial and continuing judicial training at State expense.[38] The European Charter on the Statute for Judges further provides that any authority responsible for ensuring the quality of training programmes should be independent from executive and legislative powers and draw at least half of its membership from among judges; it also indicates that judicial training should extend beyond technical legal training to include social and cultural knowledge.[39]

All the candidate States provide judicial training in one form or another, and increasingly, judges have substantial influence over planning and implementing judicial training.[40] In general, however, the level of public and political understanding of the

[37] In Slovakia, for example, the existing measurement system has been changed to a point system designed to account for the complexity of individual cases. Judges have to achieve a minimum standard of 1,000 points a month, which may be accumulated in different ways. The system does not seem to have particularly alleviated the serious problem of court delays, however, and it has been criticised as not having a rational relationship to the actual amount of work judges can or should undertake.

[38] Council of Europe Recommendation No. (94) 12 on the Independence, Efficiency and Role of Judges, adopted on 13 October 1994, Principle III, Art. 1.a; European Charter on the Statute for Judges, adopted 8-10 July 1998, DAJ/DOC (98) 23, Art. 2.3 and 4.4.

[39] European Charter on the Statute for Judges, Art. 2.3. and 4.4.

[40] There is a clear trend towards transfer of responsibility for judicial training from the executive to either independent entities or bodies within the judicial branch. Only Latvia, Poland and Romania still vest overall control for judicial training in the Ministries of Justice. The negative consequences of this model are perhaps best illustrated by the unilateral and dramatic reduction in 2001 of judicial training by the Polish Ministry of Justice.

role training plays is weak, resulting in a lack of adequate resources, limited institutional capacity, haphazard planning, and a narrow, technical scope for such training as does exist.

Stable and sufficient funding is perhaps the most decisive factor for ensuring a programme of sustained training. Inadequate funding – the most direct reflection of weak political commitment – makes strategic planning, institutionalisation, and professionalisation of judicial training very difficult. In all candidate States, financial support for judicial training is low, and is even decreasing in Estonia and Poland; the Bulgarian Government does not provide any support for its Magistrates Training Centre. Rather than relying on uncertain external sources, States should develop funding mechanisms such as multi-year block grants, or clear legislative commitments to prescribed funding levels, that are based on clear standards with a rational relationship to the intended scope of training.

Given the poor funding levels, it is unsurprising that institutional capacity to provide quality judicial training is also generally limited. Four countries – Hungary, Poland, Slovakia, and Slovenia – have no permanent judicial training institutions at all, while the institutions established in other States are poorly financed and staffed, and their future prospects (in some cases, even their survival) remain unclear.[41] Slovakia provides a cautionary example of a failed attempt to implement a training programme without secured and stable financing for the length of the project.

As a result, many States in effect rely on seminars organised and funded by NGOs or foreign donors as a complement to or even substitute for institutionalised training, even though such training is generally very limited in scope and *ad hoc*, and the funding itself often project-driven and of limited duration. Yet these seminars are usually not coordinated with judges' real work and often too basic and repetitive.

Generally, judicial training programmes are narrow and rarely include topics that would help judges to meet challenges related to the ongoing transition to democratic judiciaries. Typically, judicial training programmes in the candidate States teach judges about the main branches of substantive and procedural law, but do not incorporate

[41] In Bulgaria, Estonia, Latvia and Lithuania judicial training has been carried out by non-governmental judicial training centres. As foreign donors gradually reduce their financial support for the programs of these centres, States should either start providing finances to these establishments or incorporate them into State-run judicial training systems, or otherwise use experience accumulated in the centres so that their potential is not wasted. In some cases, the assistance of the EU might be crucial to ensure long-term sustainability of these establishments; EU contributions to institutional capacity-building might be a better long-term investment than funding for specific training programs.

topics affecting attitudinal and behavioural change. Such training only rarely addresses relevant non-judicial skills, such as case management techniques.

Although updating judges' knowledge of the substantive law is important, well-conceived and comprehensive training should also teach practical skills necessary to deal with the increasing complexity of cases and the court caseload. At a minimum, an effective judicial training programme should address topics and skills that will help ensure that judges are adequately trained to meet the challenges that administering an autonomous and professional branch entail, such as:

- understanding of the basic elements of a democratic system of government, including the proper role of courts and judges;
- appreciation for the importance of judicial ethics, and knowledge about how to apply specific ethical concepts in practice;
- knowledge of higher legal principles that guide law-making and law implementation in a democratic system;
- familiarity with modern interpretative techniques, legal reasoning and drafting;
- critical thinking skills;
- social and psychological knowledge and people skills; and
- knowledge of case management techniques and training for court presidents.

Other factors that might improve the output of training efforts – such as ensuring that training sessions are attended by judges doing related work, mandating attendance, or even ensuring that pay, promotion and evaluation systems do not incorporate implicit disincentives for judges to attend[42] – are generally absent, and should be considered.

C. INSTITUTIONAL CAPACITY OF THE JUDICIARY

Much of the attention paid to the judiciary has focused on the large-scale legal or constitutional framework, or on individual judges' adjudicative independence. Equally important in ensuring that judges enjoy a proper scope of authority, however, is the judiciary's collective administrative and managerial capacity, at both the national and

[42] Slovenia's *Criteria for Determining the Projected Amount of Judicial Work* seem to discourage participation in training: while the *Criteria* provide for reduction in workload for judges with administrative responsibilities, they do not make any accommodation for judges attending professional development seminars.

court levels. An autonomous judiciary will be better able to respond with flexibility to its own perceived needs than will one that is directed by an external authority. The organisational set-up of the judiciary, its operational standards and practices, and its level of managerial and administrative expertise have direct and indirect links to the independence, competence and efficiency of the judicial process.

1. Governance and Administration of the Judicial Branch

In the region as a whole, there is a clear trend towards transfer of governing, representative and administrative powers to bodies formed outside the executive branch and controlled by judges, who thereby undertake a collective responsibility for their conduct and role. However, there are still a number of States in which the executive retains an unduly intrusive level of involvement in judicial administration at the national level.

Although constitutional and legal guarantees for the separation of powers and judicial independence have long been recognised in Europe, and in the candidate States since the early 1990s,[43] only recently has the concept of the judiciary as a single, national entity gained wide currency, recognising that limits to judges' independence and professional capacity may come from more indirect sources, as well as from direct intervention, and that judges collectively require some broader measure of autonomy in order to develop their ability to provide society with effective and impartial adjudication of its disputes.[44]

Judges who feel that they are responsible for or can influence the administration of their own affairs are likely to have more incentives to act as equal, active participants in improving judicial performance. Institutional reform giving judges a meaningful role in organising court operations on the national level is a means to enhance judicial

[43] In the candidate States in particular, the legacy of the recent past has provided an additional impetus towards institutional reform. Under the previous regime judiciaries were of little relevance and low status, and were subordinated to and dependent on the executive for all their needs, including funding and administrative support. This legacy has made it more difficult for the political branches to recognise judiciaries as equal partners; the perception that the judiciary is a public sector that has to be guided, managed and supervised persists, and has partly prevented judges from developing a collective sense of themselves as a separate, independent and equal branch.

[44] *See, e.g.,* Judges' Charter in Europe, Art. 6 (declaring that administration of the judiciary must be carried out by a body representative of the judges and independent of any other authority). Indeed, when another branch is responsible for the judiciary, it will always have incentives and opportunities to make the judiciary a lower priority. *See EUMAP Reports 2001*, p. 24.

competence, impartiality and efficiency, provided judges are willing and able to develop a necessary expertise and sound and transparent operational practices.

Among the candidate States there are three basic models for governance and administration, which may be broadly termed independent, intermediate or power-sharing, and executive-centred. Budgeting matters will be considered separately, as in general across the region judges have very little real involvement in the budgeting process, which in turn limits their effective degree of autonomy under any of these models.

a. Independent model – Hungary and Lithuania: This model provides for autonomous governing and administrative bodies – commonly called Judicial Councils[45] – that assume all but political responsibilities for the system of justice. Such a system creates a framework with strong potential to improve judicial performance, but in turn requires an additional focus on developing an administrative capacity within the independent governing and administrative bodies, since they may no longer rely on expertise and support from the executive; more broadly, such newly autonomous institutions may have to confront a professional culture that commonly is reluctant to admit external expertise into the judiciary.[46] It is also important that institutionally independent judiciaries operate transparently; without specialised expertise and transparent procedures, judiciaries may become inefficient, unresponsive, unaccountable, and distrusted professional guilds.

Both Hungary and Lithuania have created largely self-governing and self-administering judiciaries. The Judicial Councils are policy-setting, representative and decision-making institutions. They approve draft budgets for courts, provide a regulatory framework for court operations, supervise court activities, decide on matters related to judicial selection and careers, and participate in disciplining judges. Independent national offices for court administration service the Councils; these offices assist the Councils through research, analysis and preparation of decisions and implementing Councils' decisions, and are responsible for the day-to-day operations of courts.

The Hungarian Judicial Council and Office have been operational since 1998, and appear to be efficient and fairly transparent institutions; they have adopted a number

[45] *See, generally*, Wim Voermans, Councils for the Judiciary in EU Countries, (European commission/TAIEX, Tilburg University/Schoordijk Institute, 1999), *available at* <http://cadmos.carlbro.be/Library/Councils/Councils.html#_Toc459267097>, (accessed 21 June 2002).

[46] *See, e.g.,* Giuseppe Di Federico, "Judicial Independence in Italy: A Critical Overview in a (Non-systematic) Comparative Perspective", in *Guidance for Promoting Judicial Independence and Impartiality* (United States Agency for International Development, Office of Democracy and Governance, Technical Publication series, January 2002), p. 93.

of standards to ensure competent and efficient court procedures, and publish annual reports on their activities. The Office in particular could benefit from developing clearer requirements for non-legal positions to ensure that competent professional managers and experts are employed. (The Lithuanian Office for National Court Administration has only recently started operations.)

The Hungarian experience also shows that the autonomy afforded a self-managing judiciary may be limited by the effects of the budgetary process, in which the judiciary's involvement is still nominal. Even though the National Judicial Council drafts a budget proposal, the executive has the right to draft a parallel proposal, which Parliament has in practice accepted as the basis for its deliberations instead of the Judicial Council's proposal. In these circumstances, it is not clear how much practical participation the judiciary actually enjoys, despite its formal rights.

The new Government has pledged to respect the budgetary powers of the National Judicial Council; however, reliance on the good will of changing Governments undermines the very idea of judicial self-governance and, in practical terms, leads to consistent under-funding of the judiciary, which has direct repercussions on judicial capacity.

b. Intermediate or power-sharing systems – Bulgaria, Estonia, Poland, Romania, Slovakia, and Slovenia: Although the precise form of judicial organisation in these States differs significantly, in all of them governing and administrative powers over the judiciary to a certain degree are shared between an autonomous Judicial Council and another body, usually in the executive.

These Judicial Councils do not have the same degree of governing authority as the Hungarian or Lithuanian models, but they generally have significant responsibility for or participation in personnel decisions such as judicial selection, promotion and discipline, which in principle should help to safeguard judges' independence. Increasingly, Councils also give their consent or issue advisory opinions on matters such as draft budgets and draft legal acts relevant to operations of the judiciary. In some cases, they may exercise certain standard-setting powers, such as determining norms for court workloads (Slovenia). However, the Ministries of Justice retain major or exclusive powers related to policy-making, the budget process and court administration. Sometimes Supreme Courts, as in Slovenia, perform certain representative and decision-making functions.

This model may well constitute an improvement in policy-making and administration over the executive-centred model, provided the Judicial Council is able effectively to counterbalance the Ministry of Justice in areas of joint decision-making. However, the practice to date in the candidate States suggests that there are major obstacles to full realisation of this model's potential for reform, including problems with the

composition of Councils, control over their agenda, their administrative capacity, and clarification of the division of powers between the Ministry and the Council.

These obstacles are especially evident in Bulgaria and Romania. Bulgaria has created an institutional structure that, on paper, is quite close to the independent model, while Romania has followed the French model of a more limited Council that primarily participates in personnel decisions. However, in their practical operations, these councils' ability to act autonomously, or to protect the legitimate interests of the judiciary and promote its professional development, is quite limited.

One of the most important limits concerns the Council's composition. Councils in both States include prosecutors, and in Bulgaria investigators, as well as judges. The negative consequences of a mixed composition are best illustrated by the Bulgarian example. The conflicting interests of judges, prosecutors and investigators – and the bodies that elect them to the Council – have often limited the ability of the Council to provide consistent management; instead, different management rationales – arising from the different role investigators, prosecutors and judges play – have led to conflicting policies being imposed on the justice system. For example, as the Government is held politically responsible for successfully tackling crime, it has had a clear interest in establishing some control over investigation and prosecution in order to carry out consistent policies to combat crime. This had led three Governments to pass legislation replacing the Supreme Judicial Council before its constitutionally mandated term had expired. Such direct political intervention inevitably creates disincentives for Council members to take principled positions at odds with the interests of the Government in power, even if those interests might be detrimental to the professional development of the judiciary.

Romania represents a striking example of the need for Councils to control their own agenda or, at least, participate in shaping it. The Superior Council of Magistracy participates in decisions relating to judges' career paths, and can express opinions on draft laws and matters concerning courts' administration; however, the Council can act only upon the Minister of Justice's proposals. In effect, this Council appears to act as a rubber-stamp institution for important decisions taken elsewhere.

The ability of the Councils to efficiently fulfil their tasks also depends on their administrative capacity, which tends to be insufficient in all candidate States that follow a power-sharing model. The Ministries of Justice tend to continue to provide administrative support for Councils. The administrative capacity of Bulgaria's Supreme Judicial Council, for example, is clearly insufficient to handle its many formal responsibilities; in practice, the Council relies on the Ministry, which has a far larger staff, for administrative support and standard-setting. The Councils' administrative dependence on the Ministries, especially when coupled with the Ministries' control or significant influence over agendas and funding, and the lack of a precisely defined

division of powers between them, may give the Ministries an opportunity to influence the administration of the judiciary to an extent beyond their legal mandate.

The often-indistinct division of responsibilities between the Council and the Ministry and the low administrative capacity of the Council contribute to regulatory deficiencies. To a certain degree, all candidate States lack sufficient standards in areas such as caseload norms (which provides the basis for determining the number of judges and court staff), budget preparation, distribution of allocated funds, technology and equipment, court space and facilities. In Slovenia, for example, the Supreme Court in coordination with the Ministry of Justice formulates the budget for the judiciary on the basis of courts' financial plans and presents it to Government, while the Judicial Council also provides its opinion on the proposed budget; however, the judiciary is rarely represented during the crucial stage when the State budget is deliberated within the executive, as the Ministry of Justice, being a member of the Government, has no formal responsibility to represent it.

c. The executive-centred model: the Czech Republic and Latvia: Under this model the judiciary is not treated as a separate entity, but rather as an agency subordinated to the Ministry of Justice. The Ministry develops and supervises the policy of the judicial system and exercises governing, representative and administrative powers over it, with the exception of the self-governing Supreme Courts.[47] Ministerial powers include drafting the budget for the judiciary, allocating funds, determining the numbers of judges and court personnel, selecting and disciplining judges, appointing and dismissing court presidents, and setting standards such as caseload norms. Typically, the Ministry also exercises broad monitoring powers with regard to the organisation and functioning of courts and judges. Court presidents function effectively as officers of the executive.

The executive-centred model not only violates the principle of judicial independence, it does little to promote efficiency in management and administration. It has not been successful in involving judges in improving their professional capacity, but rather has encouraged dependency and limited initiative.

Moreover, despite their extensive authority, these Ministries of Justice have not proven able to ensure courts' efficient operation. Their leadership has been unstable, with frequent changes of ministers[48] exposing the judiciary to shifting political priorities. Most importantly, the Ministries lack the expertise necessary to develop clear and

[47] Traditionally, Supreme Courts are self-managing institutions under all institutional models. In practice, although Supreme Courts are administratively autonomous from the court system, Supreme Court judges and especially Supreme Court presidents often speak on behalf of the whole judiciary.

[48] In Poland, for example, where the Ministry of Justice plays a major role in judicial administration, there have been five Ministers of Justice over the last 25 months.

rational standards that would assist in the modernisation of courts to support competent and efficient adjudication. In Latvia, for example the EU pre-accession advisor has noted that the Ministry's employees have insufficient professional capacity, caused by frequent staff changes and inexperience;[49] this has resulted in a lack of clear criteria in areas such as budgeting, numbers of judges and support staff, or norms for technology and equipment.

Both Latvia and the Czech republic should revise their existing models for governance and administration to provide judges with autonomous mechanisms to articulate and defend their interests. Regardless of which model is adopted, however, these judiciaries need more professional and transparent management.

d. Budgeting and infrastructure: Much of the progress that has been made towards administrative autonomy is limited, however, by restrictions on judges' participation in the budgetary process. Control over the judicial budget may function as a powerful economic tool that directly affects judicial capacity. While it is normal in a democracy for the legislature to exercise predominant control over budget decisions, input or participation from the judiciary helps ensure that the judges' legitimate interests are protected from indirect economic pressure. Judges are best positioned to make informed estimates about the investment needs of courts; in turn, judges who are at least partly responsible for budgetary decisions – or at least for allocation of budgets – are more likely, over time, to take responsibility for courts' administration, and in so doing develop their own ability to act autonomously and professionally.

Where, however, such control is completely insulated from judges' input or participation, legislatures tend to give judicial funding a lower priority; in turn, under-funding results in reduced investment, lower professional standards and outdated infrastructure. Under-funding can contribute to maintenance of a culture of administrative dependence in the judiciary, and over time, under-funding undermines judicial independence, making individual judges and court staff more vulnerable to economic corruption, and making courts as institutions more dependent on economic largesse from the political branches and less able to defend their legitimate interests.

In most of the candidate States, the courts have been chronically under-funded. In part, as noted, this has been a consequence of judges' minimal opportunity to participate in the budgetary process (except, to some degree, in Hungary[50] and Lithuania), as well as a lack of clear methodology or standards for determining budget allocations, and even, in those cases in which the courts do have some say, a

[49] Court System Reform of Latvia, Tiesu Namu Agentura, Riga, 2001, pp. 26, 30.

[50] *See* section II.C.1.a. of this report.

demonstrably low level of professionalism in preparing budget requests.[51] If courts are granted greater participation in the budget process, relevant officials – court presidents or court managers – should be trained in principles of budgeting and finance; at present, no State provides such training.

2. Court Administrative Capacity

Much day-to-day administration occurs at the court level; the increase in courts' relevance and the growing quantity and complexity of litigation require that court operations be modernised not only technologically, but also organisationally. The current general model employed throughout the candidate States – that of relying on untrained court presidents – is inadequate; steps should be taken to introduce or strengthen professional management skills into the courts.

In all candidate States court presidents perform important managerial functions, yet their managerial competence is limited; despite broad responsibilities for ensuring efficient court operations, court presidents receive no managerial education or training. There are no systems for post-appointment training for judges in managerial positions, and the occasional courses offered on topics relating to court management are not sufficient to enable court presidents to manage increasingly complex court operations.

In addition, in all candidate States, judges who are not in managerial positions are nonetheless frequently involved in court administration – such as supervision of registries, court archives, enforcement offices – technical tasks related to pre-trial and post-trial phases,[52] and simple, non-contentious legal acts such as registry entries. Judges overloaded with numerous administrative, technical and professional non-adjudicative tasks cannot deal adequately with their core adjudicative functions.

Courts across the region are therefore in need of more competent management and administrative support. As an interim measure, court presidents should receive special training in areas such as strategic planning, personnel management and case management as a priority. Even if they were adequately trained, however, judges performing managerial tasks necessarily have less time to devote to their core

[51] In Lithuania, for example, a State audit found that a district court had failed to follow mandatory budgeting procedures laid out in the statewide regulation on drafting budgets.

[52] Research conducted in Hungary shows that, on average, trial time occupies 27 percent of judges' time and writing judgements 15 percent, with the remainder devoted to administrative tasks such as management, statistics and dictation of trial records.

adjudicative work.[53] A more effective long-term solution would be to concentrate on professionalising court management by transferring certain management functions to non-judicial professionals operating under court presidents' overall supervision.

Courts should employ trained managers who know how to plan court operations, perform budgeting tasks, and manage court infrastructure and personnel. Bulgaria, Estonia, Poland and Slovenia have recently introduced new court administrative positions, such as managing directors or court secretaries. In the long run, this may improve court management, provided that judges are willing to transfer to these new professional officials meaningful and clearly delineated powers, and steps are taken to ensure that these positions are filled by individuals with relevant education and skills.[54]

Throughout the region the quantity and quality of court support staff is insufficient – again in part a function of chronic under-funding. Salaries are generally quite low – commonly lower than salaries of comparable administrative staff in other branches – and work conditions difficult, and there are few prospects for professional growth; the situation is especially troublesome in the Czech Republic,[55] Latvia, and Romania, making it difficult to hire and keep even junior court staff members, yet recent reforms have not addressed this problem. In all States consideration should be given to improving remuneration, training, and work conditions for court support staff.

Courts could also improve efficiency by employing trained junior legal and administrative staff for specific quasi-judicial and non-judicial tasks such as the non-contentious register and records or case management; junior staff positions with competencies similar to those established in Poland, or of *greffiers* or *Rechtspfleger*, could be considered. Such employees also should be given an opportunity to regularly upgrade their competence through on-going training. Such a system would free up judges to concentrate on their core adjudicative functions.

In addition to its deleterious effects on the judiciary's ability to develop professional administrative skills, insufficient funding directly creates a number of concrete problems that restrict courts' capacity to deliver quality judicial services. Physical court conditions in most candidate States need considerable improvement, especially in Latvia, Lithuania and Romania. Chronic lack of investment has resulted in shortages of space, poor facilities, and

[53] In Romania court presidents, who are usually experienced judges, reportedly devote 90 percent of their time to handling administrative matters, and consequently have little time for adjudication or for assisting less experienced judges.

[54] In Slovenia, court secretaries – who hold managerial positions in all but district courts – are lawyers, not trained managers.

[55] In the Czech Republic, salaries of court support staff range between 6,000 and 12,000 Czech crowns (€200 to 400), while the average income is now 16,000 Czech crowns (€540).

out-dated equipment. Only in Estonia and Slovenia are working conditions generally satisfactory, although in Slovenia some courts still lack sufficient space.

Modernisation is especially needed for record management, case-flow management, case statistics, and trial recording. In a number of States court documents are still processed manually, while trial recording is likewise still performed with dictaphones or by hand, which greatly increases the opportunities for error and corruption; Romania's archaic system of manually maintained case registers, and Lithuania's partial and handwritten trial recording system in particular need reform and modernisation. Automated document systems and real-time recording would increase administrative efficiency and enhance the courts' ability to provide professional judicial services.

Case backlogs in particular continue to plague consumers of court services in most candidate States. Case backlogs negatively affect the quality of judgements and damage public trust in courts. The problem is especially severe in Latvia,[56] Romania, Slovakia, and, according to anecdotal evidence, in Bulgaria;[57] the situation has stabilised or slightly improved in the Czech Republic, Estonia, and Slovenia.

Most of the infrastructure and administrative improvements discussed above would contribute directly to more efficient and speedier case resolution by allowing judges to concentrate more on adjudication, which in turn, would speed up court proceedings and decrease case backlogs. In addition, more concentrated effort is needed on legal reform, such as decriminalisation of certain offences, simplified procedural rules and alternative methods of dispute resolution; very few candidate States have comprehensive programmes in place to explore alternatives that reduce reliance on the courts.

[56] In Latvia, courts regularly disregard procedural requirements concerning time limits for hearing cases. In many courts the docket is so full that cases are scheduled several years in advance. The worst situation is in the Riga regional court, which is currently scheduling hearings for 2004; appeals in criminal cases are sometimes reviewed after the appellants have served their sentences and been released.

[57] Bulgaria does not have a reliable case tracking and information system.

D. RECOMMENDATIONS

Recommendations directed to individual States are included in the country reports. Here, only generally applicable recommendations and recommendations to the EU are noted.

1. To Candidate States

- Ensure that judicial reform aimed at consolidating the judiciary's independence and enhancing its professional capacity is made a political priority.
- In countries in which the executive retains control or influence over the administration of the judiciary or over judges' career paths, reduce or eliminate that influence so as to ensure judges' adjudicative independence. Consider the introduction of autonomous judicial administration.
- In countries in which the judiciary already has considerable autonomy, ensure that society's legitimate interest in accountable adjudication is protected by the introduction of transparent, non-controlling forms of input and scrutiny.
- Consider revising budget procedures to give courts greater input into the process, so as to ensure that courts' administrative autonomy can be meaningfully realised.
- Develop more objective, regularised, merit-based, and transparent procedures for administering judges' career paths.
- Consistent with the principles of judicial independence and accountability, take steps to develop systems for periodic evaluation of judicial performance that are transparent and based on balance of relevant quantitative and qualitative criteria. Consider integrating performance evaluation with training programs.
- Ensure that judges' training is financed in a stable and sustainable manner. Incorporate technical and managerial skills into training curricula.
- Introduce more professional management at the court level. Transfer managerial and administrative functions from judges to trained professionals under their supervision.

2. To the European Union

- Stress that the creation and maintenance of an independent, capable judiciary is a core value common to the Union and a continuing obligation of EU membership.

- Assist States in developing effective reforms by clarifying the content of values common to the Union with regard to an independent and functional judiciary, and consequently the minimal expressions of those values, in concrete policies, that continuing membership requires.
- Emphasise the importance of comprehensive rather than fragmentary judicial reform to address the lack of institutional independence and capacity in the judicial system.
- Drawing upon the experiences of other candidate and member States, provide technical assistance in the establishment of appropriate criteria and methods for selection to judicial office, promotion, and performance evaluation.
- Support efforts to ensure that judicial training has sufficient, stable, and sustainable funding. Support institutional consolidation of judicial training and facilitate exchange of judicial educators with training institutions in other EU candidate and member States in order to improve training in relevant judicial and management skills for judges and administrative skills for court managers and personnel.
- Consistent with the principles of judicial independence and accountability, take steps to develop systems for periodic evaluation of judicial performance that are transparent and based on balance of relevant quantitative and qualitative criteria. Consider integrating performance evaluation with training programs.
- Ensure that judges' training is financed in a stable and sustainable manner. Incorporate technical and managerial skills into training curricula.
- Provide technical support for programmes to reduce endemic court delays and backlogs.