

GENERAL REPORT
International Association of Judges; Annual Meeting in Montevideo, Uruguay

1st Study Commission; November 21st to November 24th 2005

**“Economics, Jurisdiction and Independence”
(«Gestion des juridictions et indépendance»)**

Questionnaire

A. SYNOPSIS

This General Report is based on the reports of **17 countries** (Deadline: 20.10.05)¹:

Austria, Canada, Croatia, Denmark, France, F.Y.R.O.M/Macedonia, Germany, Ireland, Italy, Japan, Lithuania, Netherlands, Niger, Portugal, Slovenia, Spain, Sweden.

1. "New Public Management" in the Judiciary

1.1 Introduction

New public management (NPM), management techniques and practices drawn mainly from the private sector, are increasingly seen as a global phenomenon. NPM reforms shift the emphasis from traditional public administration to public management.

NPM reforms have been driven by a combination of economic, social, political and technological factors. A common feature of countries going down the NPM route has allegedly been the experience of economic and fiscal crises, which triggered the quest for efficiency and for ways to cut the cost of delivering public services. However, it may well be argued that "fiscal and economic crises" are just used as excuses to push forward political intentions!

NPM refers to two concepts. The most relevant may be the new institutional economics. "The new institutional economics refers to introducing incentive structures (such as market competition) into public service provision. It stresses aggregating bureaucracies; greater competition through contracting-out and quasi-markets; and consumer choice." (Rhodes,1996.²)

The NPM style of government involves distinguishing between policy decisions and service delivery. Service delivery, proponents of NPM argue, is best left to "entrepreneurial" governments based on principles like competition between service providers, outcome based performance standards, decentralized authority, market mechanisms and other qualities not traditionally found in government bureaucracy. Rhodes notes that "NPM and entrepreneurial government share a concern with competition, markets, customers and outcomes." (1996)

Key elements of NMP may include

- various forms of decentralizing management within public services (e.g., the creation of autonomous agencies and devolution of budgets and financial control),
- increasing use of markets and (internal) competition in the provision of public services (e.g., contracting out and other market-type mechanisms such as benchmarking),
- increasing emphasis on the quantity of outputs, performance and customer orientation.

¹ Reports that arrived after the deadline () could not be considered. Nevertheless these reports are available at the respective association or the Secretary General of the IAJ

² Rhodes, R. A. W. 1996. "The New Governance: Governing without Government." Political studies XLIV: 652-667.

1.2 Questions and Answers

1.2.1 In several countries notions of NPM are being applied to the judiciary or it is planned that they be applied to the judiciary. These notions of NPM may infringe the independence of the judiciary generally and the individual judge. Please give a short survey of certain tendencies or features which may derive from NPM in your jurisdiction.

Country	Question 1.2.1 "Ideas of NPM"
Austria	Some tendencies to privatisation ; Court inspection system
Canada	Pre trial mediators, incentives for court managers
Croatia	Private companies delivering court summons to the parties
France	New rules concerning the application of the budget in 2006 ("LOLF"). The presidents of the Courts of Appeal are responsible for expenditure and personnel.
Germany,	NPM has been introduced in German courts to some extent.
Ireland,	Best practice; customer orientation of the Courts Service ³
Italy	Use of internet within judiciary and for the people; "e-Court project"
Japan	NPM – ideas used in the public sector are not directly applied on the judicial power but similar methods may be used by the independent management of judicial administration; PFI (private funds)
Lithuania,	Cutting of salaries (avoided); initiatives oriented to customer orientation; Budget allocated to individual courts; periodical evaluation of judges;
Macedonia/ F.Y.R.O.M,	Budget allocated to the judicial power (Court Budget Council) ; quality control through periodical reports ;
Netherlands,	Budget orientation on quantity of output; benchmarking tendencies; flexibility in distribution of workload; regular customer orientation;
Niger	The concept of NPM has not yet been taken into consideration; although there is a certain consciousness of the inefficiency of the public service of the judiciary
Portugal	No integrated initiative of NPM is in action or planned
Slovenia	Decentralized judicial budget, ⁴ enhanced self administration concerning the allocation and expenditure of funds (coordinating role of the Supreme Court), national minimum quantity performance indicators for judges (workload norms), ⁵ customer oriented court-annexed mediation and arbitration schemes, experimental optional permissive rather than prescriptive civil procedural rules
Spain	A reform of the reorganization of the "bureau judiciaire" is on the way. Aim: to increase the efficiency according to the techniques and practices of the private sector (NPM). Concerning the work of the judges (magistrates) system has been established which stresses the importance of the productivity according to the quantity of the performance. ⁶
Sweden	Increasing emphasis on the quantity of output and performance will be implemented in the judiciary; Reorganisation by reducing the number of courts

Country	Question 1.2.1 Infringement on independence. The answering association sees an infringement on independence by the following means:
Austria	Cutting of resources at least indirectly influences judges in the way they run their proceedings if they wish to compensate these cuts.
Canada	Incentives for court managers resulted in reductions in court staff and increased delays. ⁷
France	Concerns as to the limitation of the cost for criminal justice because the budget does not consider the real needs. This is not without consequences for judicial independence because the judges/magistrates are restricted in their inquiries by a

³ The Court Service, which was formed in 1999, is an independent body in charge of the budget and the management of the courts. Chairperson is the Chief Justice of the Supreme Court.

⁴ Each district court, court of appeal and the Supreme Court has a status of independent budget user.

⁵ Determined by the HJC.

⁶ Approved by HCJ.

⁷ An uncontested divorce now takes up to six weeks which used to take less than one week before.

	limited budget.
Germany	To date the NPM elements in German Courts have not produced threats to judicial independence. However the German Judges' Association warns of the dangers of subjecting the judiciary to extraneous procedures.—NPM is not applicable to the jurisdiction of the courts concerning the application of the law and determination of peoples' rights. However NPM might be used for the administration of courts. Budgets for judges and panels of judges could represent a danger to judicial independence, because the judge would be forced to keep in mind the effects of his decision on his personal budget (or the budget of the panel). If he exceeds his budget the judge would be forced to justify himself. ⁸ Finally, cost for lawsuits (witnesses, experts, and interpreter) must not be subjected to a strict budget as these resources have to be available sufficiently and without restrictions.
Lithuania	Cut of salaries of judges ⁹ ; Cut of the financial conditions of courts ¹⁰ ; first appointment of judges at district courts on a probation period of 5 years ¹¹
Slovenia	Monitoring and measuring on an "organizational/entrepreneurial level" does not infringe on judicial independence. However, individual workload norms for judges and bonus related salary systems could seriously jeopardize judicial independence. ¹² Policy targets such as increasing the number of accused persons or decreasing the number of recidivists might have a negative effect on judicial independence. Furthermore, specific customer oriented policies such as court annexed mediation could bar people from the access to courts (if these policies are mandatory).
Spain	The system of quantity assessment of a judge's performance can, according to the Spanish Association of Judges, infringe on judicial independence.

Country	Question 1.2.1 General Tendencies
Canada	Tendencies towards privatisations in some provinces. Ideas of privatisation of court buildings.
Denmark	Some steps to best practice and quality control
France	"Rationalization" of the rules of budget application and administration of expenditures
Germany	A threat of NPM to judicial independence would only lie in relating the budgets and the benchmarking to individual judges. The "transparent" judge could possibly be forced by influences from outside to orientate his decisions to the size of his budget (by the head of court or by his colleagues).
Ireland	Customer orientation; different types of ADR
Italy	Tendencies of different means of NPM in the public sector but not in the judiciary;
Lithuania	Tendencies towards customers orientation and towards quality control
Netherlands,	Budget orientation on quantity of output; transfer of budget, which was saved into the next period; benchmarking tendencies; flexibility in distribution of workload; regular customer orientation;
Japan	PFI realization of public facilities by using private funds; promotion of ADR
Sweden	Reorganisation by reducing the number of courts. Increasing emphasis on the quantity of outputs and performance will then be implemented into the judiciary

⁸ Therefore the German Association of Judges has always rejected budgets for individual judges/panels. Up to now there are no plans to introduce such a budget system in Germany.

⁹ This was declared unconstitutional by the Constitutional Court and is now forbidden by law

¹⁰ After a Ruling of the Constitutional Court the Law on Courts now prohibits worsening the financial, material and technical conditions for the functioning of courts provided by law. Only if the economic and financial situation of the country deteriorates considerably, can the parliament-review the material and financial conditions for the functioning of the courts.

¹¹ There is a controversial discussion; some see this as danger for the independence.

¹² At least in appearance since the parties might have the perception that financial interest of judges would prevail.

Slovenia	Bonus related pay systems for judges, ¹³ output oriented management system, ¹⁴ shift from individual workload norms to organizational performance (quantity and quality standards of a whole court/of departments of a court).
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1.2.2. Please report on the following typical features of NPM.

Are they applied in your judiciary? If yes, in what way are they applied?

Do you think that they infringe on the independence of the judiciary?

- Global budget, devolution of budgets (1)
- financial control, (2)
- internal competition, benchmarking (3)
- best practice (4)
- quantity of outputs (5)
- flexible distribution of workload (6)
- customer orientation, (7)
- emphasis on performance, incentives (8)
- Quality control (9)
- others (10)

Country	1	2	3	4	5	6	7	8	9	10
Austria				X ¹⁵	X ¹⁶	¹⁷	X ¹⁸	¹⁹	²⁰	X ²¹
Canada								X ²²		
Denmark	X ²³			X ²⁴				X ²⁵		
F.Y.R.O.M./Macedonia		X ²⁶							X ²⁷	

¹³ According to a "stick and carrot principle."

¹⁴ Negotiated yearly goals of each court based on previous performance (time in relation to a certain category of cases and related cost).

¹⁵ Of course there are lot discussions how to deal best with certain procedural regulations or technical arrangements of the work. The ministry of justice as well as the Austrian Judges' Association collect proposals for possible improvements of these regulations. The ministry even sets out a price for the best ideas. Nevertheless the concrete way in which a judge applies a given regulation within the given frame must strictly lie with him/her alone.

¹⁶ In Austria there is a highly-developed system of statistics. Of course in the long run the amount of input to a certain court should influence the number of staff at that court (judges of course can not be transferred). Even more problematic is the fact that the quantity of output is more and more seen as a means to judge the quality of the judge in comparison with the quantity of output of other judges. If one looks at the number of cases only, this is very problematic and involves the danger that judges consider the way of handling their cases mainly on this aspect.

¹⁷ By the constitution it has to be determined which cases will be assigned to which judge in advance. Only if there is an extraordinary workload, which was unforeseen, this could be changed during the given period.

¹⁸ A lot was done in this field: internet sites; conferences and training on this topic.

¹⁹ They ministry of justice wanted to introduce a kind of financial remuneration for judges under certain conditions according to their work (speed and number of cases). This was rejected by the Austrian Association of Judges and seen as a strong infringement of independence.

²⁰ There is a court inspection system. It regularly looks at the performance of the single court. It is mainly the court management which is under supervision. The jurisdiction as such is not under this control. It is controlled by the courts on the occasion of remedies only.

²¹ Reducing the number of district courts.

²² Some courthouse managers receive salaries based in part on the amount of money by which they under-spend their budget.

²³ A minor part of the total court budget is delegated to the individual court which insofar is subject to central financial control.

²⁴ The National Court Administration gathers information about best practice. All courts may obtain information from there which may help to improve the efficiency of the court.

²⁵ At present the courts are attempting to introduce quality control measures aimed at the judicial decisions. This control is performed by colleagues of the same court.

²⁶ The drafting and allocation of the budget is entrusted to the judicial power. There is a Court Budget Council composed of the President of the Supreme Court; the President of the High Judicial Council and six other court

Ireland			28	X ²⁹			X ³⁰			
Italy							X ³¹			
Japan										X ³²
Lithuania		X ³³					X		X ³⁴	
Netherlands	X ³⁵	X ³⁶	X ³⁷	X ³⁸	X ³⁹	X ⁴⁰	X ⁴¹		X ⁴²	
Portugal			X ⁴³							
Sweden					X ⁴⁴			X ⁴⁵	X ⁴⁶	
Slovenia	X	X ⁴⁷	X ⁴⁸	X ⁴⁹	X ⁵⁰	X	X	X ⁵¹		

presidents and a representative form the Ministry of Finance (without a right to vote). This body reports to the Parliament and to the Minister of Finance.

²⁷ Every month and every year the higher judges prepare a report on the performance of every single judge.

²⁸ There is a Public Service Benchmarking Body. This does not deal with benchmarking within the judiciary or the court service, but compares different positions within the public sector and the private sector with respect of remuneration, recruitment, security of tenure etc.

²⁹ To provide a world class service best practice is searched for and applied.

³⁰ The Courts Service has a strong customer service orientation, with a commitment to providing a high quality and professional service to all users of the courts. A "Customer Charter" is in place, as is a complaints procedure. Such measures are aimed at the general public, litigants and lawyers. In addition, advisory booklets on various aspects of the courts (e.g. court procedure and the structure of the courts) have been published.

³¹ The High Council of the Judiciary, the Supreme Court and other courts set up internet sites to give easy access to legal documents (laws, regulations, jurisprudence etc.) and forms. Within the judiciary internal information on training and access for the judges to their own files is given.

³² PFI Law Relating to Promotion of Realization of Public Facilities by Using Private Funds ex 1999.

³³ In 1999 the Constitutional Court ruled that the influence of the minister of justice on the budget of the courts is unconstitutional; Now every court has its own budget, which is drafted by it and proposed to and decided upon by the parliament after passing the High Council of the Judiciary (or directly in case of the Supreme Court).

³⁴ Done by judges of a higher court every 10 years or on certain occasions defined by law

³⁵ Recently the courts have been allowed to save 5% of their budgets for another year. The distribution to the courts follows the output. There is a time related tariff for each type of case by which the number of cases of this type is weighted, elaborated by experienced judges.

³⁶ Each year the budget of the previous year is evaluated and put into relation to the output and influences the size of budget of the next year.

³⁷ The High Judicial Council promotes benchmarking between courts and supports the possibilities to learn from each other.

³⁸ See footnote 37

³⁹ The distribution of the budget to the courts follows the output. There is a time related tariff for each type of case by which the number of cases of this type is weighted, elaborated by experienced judges.

⁴⁰ By their statute judges are allowed to work in other courts, too. In this way it became possible to distribute so-called mega-cases in penal affairs (in our country taking more than 3 days instead of the normal 3 hours) from the big cities and courts to smaller courts in the country-side. Quantity is measured by experienced vice-presidents giving the judges a certain amount of cases. More and more contracts are made (where also other judicial activities, such as training etc. are considered.)

⁴¹ Regularly courts are used to ask for the wishes of their so-called customers (lawyers and their clients, witnesses, interpreters, juvenile advisers, mass-media etc.) in a scientifically and statistically correct way. Afterwards they consult customer panels on improvements of what has been complained about. In the past this has resulted in open court days, a website, lectures by judges in schools, columns of judges in local newspapers, regular meetings with the press etc. I don't think judicial independence is at stake here, because judges withdraw in cases with parties which they met before in this respect. More emphasis will be laid on judicial performance, compared to writing verdicts/judgments. Judges are being trained in communication with parties involved in a case, practice questioning, interviews of and by colleagues, trying to be comprehensible to lay people (we have no juries or lay judges !), while sessions are becoming hearings and talking gives way to listening.

⁴² There are plans to give more and higher bonuses for results in quality of both the primary process of dealing with cases and of the ways in which public trust is being earned; juries of judges and clients should appoint the nominees.

⁴³ Programme to "dematerialize" the process by providing on-line access for the HCJ to enable it to control the workload and the efficiency of the judges in a better way.

⁴⁴ New directives will result in the possibility to measure both quantity and quality of output.

⁴⁵ The results of quantity and quality control of output will be considered in the decision of remuneration of judges

⁴⁶ See footnotes 44 and 45.

⁴⁷ Internal audit service at the Supreme Court.

⁴⁸ Annually published comparative list of the productivity of a court (made by the Judicial Council).

⁴⁹ Experiences about the best judicial practice at the regular meetings of the presidents of courts and of the HCJ

2. Costs of the judiciary

2.1 How many professional judges are there in the judiciary of your country? (absolute figure and per 100'000 inhabitants)

2.2 How much is the share of the judiciary of the overall annual budget of the state? Indicate the percentage out of the total state budget)?

2.3 Is there any fixed percentage in the overall budget of the state?

Country	2.1 Total number/per 100'000 inhabitants	2.2	2.3
Austria	1732/ 21,47	about 1%	No
Canada	2068 / 6.89	about 1 %	No
Croatia	1900/ no answer	max. 3 %	No
Denmark	338 / 6.3 ⁵²	0.30%	No
France	7500/10	1.30% (0,80%) ⁵³	No
F.Y.R.O.M/Macedonia	665/ 32	1.7 %	No answer
Germany	21000/26	3 % ⁵⁴	No
Ireland	127/ 0.33	0,24 % ⁵⁵	No
Italy	7059/ 13.24	1.6 % ⁵⁶	No
Japan	3266/ 2.56	0,4 %	No
Lithuania	727/ 21 ⁵⁷	0,9 %	No
Netherlands	2200/ 13.25	0.5 %	No
Niger	197/2	0.82%	No
Portugal	1671/16	1,2% ⁵⁸	No
Sweden	1647/18.3	0.5 %	Yes (0.5%)
Slovenia	924/46	1.82%	No
Spain	4346/9.54	0.6% ⁵⁹	

2.4 What is the recent development (1995-2005) of finances allocated to the judiciary? Give a short survey.

Country	2.4
Austria	Increase in absolute figures in the last years (1999: 792 mill EUR, 2003: 888 mill EUR); now almost frozen.
Canada	No answer.
Croatia	Increase of finances except between 2000 and 2003.
Denmark	Percentage of the total government budget almost the same between 1995 and 2005 (0.27 – 0.30%).
France	Increase of the budget, but it does not keep pace with the needs. ⁶⁰

⁵⁰ Controlled by the presidents of court and the HCJ.

⁵¹ The judicial career system (promotion to higher posts/salary classes) is related to registered and assessed performance of a judge (made by the so called Personal Council and the HCJ).

⁵² Considering the 320 deputy judges who also make judicial decisions the figures are 658 / 12.3

⁵³ This is the budget for the functioning of the courts only (without administration of penitentiaries/jails etc.).

⁵⁴ Average differs from state to state.

⁵⁵ 0.19 % Courts Service; 0.05 % salaries of judges.

⁵⁶ Including prisons

⁵⁷ Actual serving judges; on basis of existing provisions for judges: 751/22

⁵⁸ This is the budget 2004 of the Ministry of Justice as a whole. According to the European Council (CEPEJ) the budget share of the judiciary alone was 0, 8% in 2002.

⁵⁹ 1 058 204 Euros in 2004 (without administration of the penitentiaries and without the costs of the judiciary which are taken over by the autonomous provinces of Spain, e.g. Madrid, Cataluna, Valencia etc.

⁶⁰ According to a report of the European Council (CEPEJ) France takes in rank 23 in Europe concerning the per capita expenditures for justice.

Germany	Tendency of a decrease of the financial equipment between 1995 and 2005.
Ireland	From 1999 to 2005 the budget of the Courts Service as well as the salaries of the judges more than doubled.
Italy	Increase of a part of the national budget 1995 (1,1%) to 2005 (1,6%). ⁶¹
Japan	Percentage of overall budget almost constant ; absolute figures 1995 to 2005: plus 10 %
Lithuania	Increase of absolute amount; decrease of part of overall state budget; still less than needed.
Macedonia	No answer.
Netherlands	Since 1995 the budget has been rising, but for 2005 there is a reduction. ⁶²
Niger	The budget of the Ministry of Justice has doubled.
Sweden	The number of courts, the number of employees has decreased, the number of workload has increased
Slovenia	Increase of funds for the judiciary from 1,35% (1995) to 1,82% (2005)
Spain	Slight increase of budget, but not enough to meet the needs of the judiciary

2.5. Can you report on any cost-cutting measures in the last 10 years (1995.2005)? If yes, give a short description of them (please consider especially changes of court procedures, remedies etc.)

2.6. Is there any influence of these cost-cutting measures on judicial independence and jurisdiction? If yes give a short description.

2.5 Cost reducing measures	2.6 Effect on judicial independence	
Video and telephone conferencing (Canada)	Making service more accessible and cutting the need for judges to travel	
Reducing the number of security officers (Canada)	Some courtroom operate without security	
Cutting of secretarial services, providing judges with computers instead (Canada)	Greater involvement for preparing written decisions, etc.	
Reducing oral hearings (divorces and adoptions on document basis only; Canada)		
Introduction of mandatory mediation, privately paid, prior to commencing litigation in some types of cases (Canada)	This reduces access to justice as some parties may decide not to litigate because of the cost	
Reducing the salaries of judges and public prosecutors (15 to 20%) (Croatia)		
Discussion to combine administrative courts, fiscal courts and social security courts; (Germany) ⁶³		
Reducing the number of judges (Germany, ⁶⁴ Austria)	Increasing the duration of proceedings (Austria)	
Increasing the fees of proceedings (Germany)	Fewer proceedings	
Increasing the lawyers' charges (Germany)	Fewer proceedings	
Model-projects of mediation within court proceedings (Germany, Denmark)		
Alternative dispute resolutions to save costs (Germany)		
Order to try an Assessment Board before starting a proceeding at court (Ireland) ⁶⁵	Fewer proceedings ⁶⁶	
Procedural measures to speed up the procedure (Austria ⁶⁷ , Canada ⁶⁸ , Croatia, Germany ⁶⁹ , Italy).		

⁶¹ See footnote 56

⁶² The Council of the judiciary asked for 820 millions and got 757 millions EUR

⁶³ Part of a "major judicial reform" which is being discussed at the moment

⁶⁴ Between 1995 and 2002 the number of judges was reduced by 1200.

⁶⁵ Personal Injuries Assessment Board (PIAB), a statutory body which was established in 2004 and provides independent assessment of personal injury compensation for victims of motor, workplace and public liability accidents. According to the new law all claims for personal injury in these cases must be submitted to the PIAB.

⁶⁶ The number of cases was reduced from 15.293 in 2004 to 297 in 2005 (till September 2005).

First appointment for a period of probation (Lithuania)	May infringe independence	
Discussion to abolish a separate system of administrative courts (Lithuania)	Rejected because change would create instability in the judicial system and would not speed up the procedures	
Rationalization of system of remedies to the Supreme Court (Japan).		
Transfer of competence: authority to issue a demand for payment to court clerks (Japan).		
Expansion of the jurisdiction of Summary Courts (Japan).		
Law concerning the promotion of public facilities by using private funds (Japan).		
No studies have been made in this field up to now (Niger).		
Reorganisation by reducing the number of courts (Sweden, Austria).		
Only const rising measures can be stated: due to procedural rights of the defendants in criminal cases, increased complexity of cases etc. (Slovenia).		

3. Privatisation of the judiciary

3.1. Are there tendencies to shift competences from the state courts to private arbitration, mediation and "private courts" ("rent a judge")? What are your experiences?

Country	3.1
Austria	There are tendencies to enforce mediation which till now have not been very successful. People prefer to go to court rather than use other institutions. Courts are still seen as a system which functions quite well. A new kind of court of arbitration was established at the chamber of lawyers and the chamber of notaries, which is not used at all. More and more writing facilities are outsourced, which does not improve the work of the judges.
Canada	Private mediator before a litigation is allowed in small claims (25'000.00 \$). Rent-a-judge is very popular in many places in Canada (use of arbitrators/mediators especially in business litigation).
Croatia	Mediation and arbitration are "top themes". Mediation has been introduced in courts with very little success. Arbitration is used especially by companies (traditionally anchored).
France	Small crimes are dealt with by a delegate of the prosecutor of the Republic who decides about a measure of reparation (instead of a penalty).
F.Y.R.O.M/Macedonia	Service of documents transferred to special entities; special enforcement officers appointed by the Minister of Justice.
Germany	A new procedural law makes alternative dispute resolution possible.
Ireland	Arbitration is very popular and the main method of dispute resolution in some sectors (insurance or construction industries). Before filing a litigation in separation or divorce proceedings, Personal Injuries Assessment Board (PIAB). ⁷⁰
Italy	There are some arbitration courts; they are expensive and are not used very

⁶⁷ A lot of changes were made in the procedural codes to speed up the proceedings or to save costs by reducing the necessary input. The success was very poor. The problem is that the changes were used too legitimate a reduction of staff, which made it impossible to gain the effect of the changes for to shorten the duration of the proceedings.

⁶⁸ The jurisdiction of lower court judges has been increased significantly which resulted in a reduction of the number of pre-trial steps.

⁶⁹ See footnote 63

⁷⁰ See footnote 65

	much.
Japan	Civil and domestic mediation systems in court; private mediation and arbitration. ⁷¹
Lithuania	No tendencies.
Netherlands	Political and legal promotion of mediation; apart from that there have always been many private courts especially in the field of consumer cases with small financial interests (mostly founded by industrial and commercial branches and consumer organisations) and of sports.
Niger	Some laws provide for arbitration (e.g. "le droit OHADA"). But the effectiveness of this institution is questioned.
Portugal	There are arbitration courts (chosen by convention of the parties or by legal imposition) and there is mediation (family issues). However as arbitration is expensive, it is not very frequent. There is a tendency to reduce the conflicts that demand a jurisdictional response. ⁷²
Sweden	No such tendencies.
Slovenia	Tendency to expand competences of state courts by launching court annexed mediation schemes and declaring mediation as a regular and additional type of justice. Competences of state courts are shifted to private arbitration in commercial disputes (by contract of the parties). ⁷³
Spain	There has been a law on arbitration (in civil matters) since 1988. The aim is to reduce the number of civil and commercial disputes. However, this has not been a success up to now.

4. Divers

4.1 Is remuneration for judges dependent at all on their performance (quantity or quality of output)?

Country	4.1
Austria	No ⁷⁴
Canada	No
Croatia	No
Denmark	No
France	Since 2004 a bonus (called "modulable") of 0% up to 15% of the salary may be paid additionally. The criteria according to which this bonus is granted are not clear and therefore contested
F.Y.R.O./Macedonia	No
Germany	No
Ireland	No ⁷⁵
Italy	No
Lithuania	No
Niger	No
Portugal	No
Sweden	New directives will from 2006 onwards give the possibility to measure both quantity and quality of output in the decision of remuneration for judges.
Slovenia	Not yet
Spain	Yes. The salary of a Judge in Spain contains a variable part of 5-10% which is related to his/her performance (productivity). ⁷⁶ The Spanish Association of Judges has given notice of appeal against this system before the Supreme Court

⁷¹ A new Alternative Dispute Resolution Basic Law will come into force in 2007, and shall promote the use of private ADR.

⁷² Several infractions that were crimes have been turned into a non criminal category of infractions which will permit the imposition of administrative punishments (with possibility to appeal to the criminal court).

⁷³ Since judges may perform the function of mediators in court annexed mediation programmes, a kind of "rent a judge" system can not be excluded.

⁷⁴ See footnote 19.

⁷⁵ Article 35 of the constitution salaries of judges cannot be reduced.

⁷⁶ The amount of the productivity of each tribunal is established by HCJ according to objective criteria. Every 6 months the Spanish judges are obliged to inform the Inspection Service of the HJC about the quantity of the

B. CONCLUSIONS

- 1) An independent judicial system needs a secure economic basis. It is up to the state to provide sufficient means to the judicial power so as to be able to avoid every pressure; be it by the legislative or by the executive power. Even if states suffer from lack of financial means, the judiciary and the courts being a fundamental part of the state, should receive their part of available finances as far as possible.
- 2) New Public Management (NPM) is not applicable to the jurisdiction of courts and judges to determine the law and apply the rights of people according to law. However that will not prevent an exchange of opinions about how to employ best practice to court procedures, so long as that exchange does not infringe the judge's right to follow procedures without the threat of adverse consequences to him/her personally.
- 3) NPM can be used for the management of the courts. But even here care must be taken not to infringe the independence of the judiciary in an indirect way. A lack of resources (number of judges, staff) could put judges under pressure to act in a certain way in proceedings.
- 4) The judiciary (high judicial council, single courts) should be involved in the process of budget drafting and in the allocation of given resources.⁷⁷
- 5) Nevertheless the practice of providing for budgets for individual judges and/or panels of judges should be avoided, because that practice could constitute a danger to judicial independence. That is because the judge would be forced to keep in mind the effects of his decision on his personal budget (or the budget of the panel).
- 6) Cost of lawsuits (witnesses, experts, interpreter) must not be subjected to a strict budget as these resources have to be available sufficiently and without restrictions.
- 7) Monetary Incentives of some kind, such as bonus related salaries for judges, workload norms for judges and bonus related salary systems, could seriously jeopardize judicial independence. At the least such incentives might give an appearance of jeopardizing judicial independence since the parties might have the perception that the financial interest of judges would prevail over the principle of giving an impartial decision.⁷⁸
- 8) Customer orientation is an aspect of NPM, which is essential and should be supported by all actors of the judicial system. One of the main tasks should be to make courts and their work more understandable, better known and more accepted.
- 9) Alternative Dispute Resolution (ADR) could be an efficient means of finding solutions in conflicts. ADR might be better accepted by all parties involved. In some cases the aspect of reducing the workload of courts might also play a role. If ADR is mandatory before the litigation can be brought before the court, it is essential that parties can afford it, otherwise access to justice is denied.
- 10) There are systems to transfer workload from one judge/court to another according to the development of the workload or to distribute cases considering special abilities or expertise of judges. To avoid an infringement on independence it is essential to know who is in charge of this transfer or distribution, and how independent and uninfluenced this person/body is.⁷⁹
- 11) The analysis of procedures is one of the main focuses in reform projects of judicial systems. A simplification of some steps or even a reduction of some steps or formalities can save time and money.

performance. Those who surpass by 120% the fixed amount of productivity get a bonus (of 5-10% of the salary). However, those who don't achieve 85% of the fixed amount get a reduced salary.

⁷⁷ See point 4 Conclusions 1st study commission, Vienna 2003).

⁷⁸ The European Association of Judges, a regional group of the International Association of Judges, passed a resolution against a remuneration scheme, including such elements which were introduced in France (15.5.2004).

⁷⁹ See conclusions 1st Study Commission 2001 On the Appointment and the Role of Presidents of Courts

But these benefits may be jeopardized by a simultaneous reduction of staff which can often be observed in the course of these reforms. It is essential to keep in mind that the changes proposed do not affect the right to a fair trial and an impartial (and hopefully correct) decision. This question especially arises when remedies are reduced or limited or when panels of judges are substituted by single judges.

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The presidency of the First Study Commission of the IAJ

Stephan Gass

Richard Aikens

Gerhard Reissner

Véronique Imbert