

COUNCILS FOR THE JUDICIARY

PRELIMINARY REPORT: STATES WITHOUT A HIGH COUNCIL

Lord Justice Thomas

This report has been drafted on the request of the Council of Europe.

COUNCIL OF EUROPE
CONSULTATIVE COUNCIL OF EUROPEAN JUDGES
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Introduction and caveat

1. This is a preliminary report based on a request to concentrate on those states which do not have a Council. It therefore seeks to analyse the position in states which do not have a High Council of the Judiciary in the sense of a body elected by or appointed from the judiciary with extensive powers primarily in relation to the career and training of judges and in some cases, the administration of the courts; this necessarily involves a degree of comparison of the alternative models.

This paper therefore sets out the position in those states where there exists:

- a. A Court Service or Court Administration provides the administration for the courts (Denmark, Ireland, Norway and Sweden); or
- b. The Ministry of Justice provides the administration for the courts (Austria, Czech Republic, Finland, Germany, Latvia, Luxembourg, Malta and the United Kingdom); or
- c. There is a system with distinct features which make it difficult to categorise (Cyprus, Estonia, Japan, Liechtenstein and Switzerland).

The paper considers the way in which these states deal with court finance and administration, appointment and career development of judges, the discipline of judges and the relations between the judiciary on the one hand and the legislature, executive and the public on the other. It does not consider extensively those states which have a High Council¹, save for Hungary, Lithuania and the Netherlands.

2. However,
 - a. The distinction between a Court Administration and a High Council has been drawn for practical purposes and to accord with the views of some states; Ireland, for example, makes clear that its Court Service is not a Council for the Judiciary.

¹ Albania, Armenia, Belgium, Bosnia-Herzegovina, Bulgaria, Croatia, Cyprus, Georgia, France, Iceland, Italy, Former Yugoslav Republic of Macedonia, Moldova, Poland, Portugal, Romania, Slovak Republic, Slovenia, Spain and Turkey. Consideration is, however, given to the position in Hungary, Lithuania and Netherlands for comparative purposes.

- b. The distinction is not, however, clear cut between a Court Service and a Council as can be seen from the contrast with the Councils which exist in the Netherlands, Hungary and Lithuania – see in particular paragraphs 32 and 50.
 - c. It might be said that it would be better to adopt the terminology of Professor Voermans² and classify the court administrations in Denmark, Ireland, Norway and Sweden together with the Netherlands as the Northern European model of Council (with its emphasis on court administration) in contradistinction to the Southern European model (with the emphasis, for example, on appointment, promotion and discipline), typical of Italy and France. But given the changes of the last few years and the emergence of more Councils, the position is more complex.
3. The terminology and detail of the responses to the CCJE questionnaire varies considerably. This analysis draws heavily on those responses. In the interests of brevity and synthesis, some of the descriptions are general. The author hopes that, despite this, the analysis describes the position of particular states accurately; if there are errors, the author apologises and would be very grateful if corrections were sent to him³.
4. The report is organised in the following sections:
 - I The issues
 - II The differences in institutional approach
 - III The provision of finance and an effective court administration
 - IV The appointment, promotion and training of judges
 - V Ethics and the disciplining of judges
 - VI The general relationship of the judiciary with the legislature, the executive government and the public

I THE ISSUES

- (a) *The separation of powers*
 5. No state in Europe questions the necessity for the rule of law, the separation of the legislative, executive and judicial powers and the independence of the judiciary.
 - (b) *Judicial Independence*
 6. It is a cornerstone of a democratic constitution that the judiciary must be independent of the executive power and legislative power. Some constitutions make express provision for the independence of the judiciary and prohibit interference by the legislative or executive power⁴. In others, it is pre-supposed⁵. As is pointed out, such independence is not a privilege for those enjoying judicial

² Councils for the Judiciary in Europe 8 TRLR - Constitutional Law 121; see also *Councils for the Judiciary in EU Countries* (2003) by Professor Voermans and Dr Albers

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⁴ For example, Cyprus, Denmark, Finland, Germany, Ireland, Lithuania

⁵ Latvia, Norway

status, but a necessary precondition to the giving of objective judgments according to the law and free from external influence.

7. It is also universally accepted that no judge should be subject to the power of another judge in the decisions that have to be made in the procedure or determination of the merits of a case, save by way of an appellate process.⁶
8. But these universally accepted facets of independence are dependent upon the fulfilment of the following three conditions:
 - a. The provision of finance and administration to ensure that the cases before the courts are heard promptly and without pressure.
 - b. The appointment and promotion of judges based on merit and proper training for judges.
 - c. The observance by the judiciary of ethical conduct and the discipline of those who transgress.
9. There are of course other conditions (such as security of tenure⁷, immunity from suit and the fixing of judicial salaries⁸), but relevant to the present enquiry the three conditions set out in the preceding paragraph are the essential conditions. The fulfilment of each of the three conditions, however, depends to a considerable extent on appropriate structures or institutions. Inevitably the type of structure or institution must take into account the different historical developments of each state and the other institutions of the state. This interim report seeks to analyse, in the context of Councils for the Judiciary, the type of structures or institutions in respect of each of these conditions which are necessary as a pre-condition to the role of the judiciary in the maintenance of the rule of law and the functioning of a democratic society. There is a very great diversity in the way in which the states provide structures or institutions to address these three conditions, but in the end the question must be, does the system, looked at as a whole, enable the judiciary to act independently in upholding the rule of law?
10. There is a fourth matter which then must be addressed whatever model is chosen; there must be a workable relationship with the legislature and the executive and the general public with appropriate accountability.

⁶ In Japan, where the Supreme Court has administrative authority over the judicial system and judicial conferences have authority at each court, there is a specific provision to prevent a judge being given instructions as to how to decide a particular case.

⁷ Netherlands: Life tenure (Art 117 of the Constitution)

⁸ In Estonia, the salaries are fixed by law and are free from the influence of Executive Power. In Ireland and the United Kingdom judicial salaries cannot be reduced.

II THE DIFFERENCES IN THE INSTITUTIONAL AND STRUCTURAL APPROACH

11. Fundamental to the consideration of the issues is the difference in the institutional and structural approach to the three conditions outlined in paragraph 8. In some states, institutions autonomous of the executive and legislature (with or without a majority of judges) are responsible (1) for financing and administration of the courts, (2) the appointment and promotion of judges, (3) the provision of training and (4) discipline.
12. As many of the states which do not have a High Council have autonomous institutions or independent methods for appointment and discipline, it is convenient to begin by considering the difference in institutional approach to the issue of finance and administration.

(1) The principles, options and arguments in relation to finance and administration

13. It is generally accepted that the judiciary cannot discharge its essential functions without:
 - a. the provision of finance for courtrooms and administrative services;
 - b. an effective administrative service to support the work of the judges.
14. It is also generally accepted that the way the business of the court is conducted – for example, which judge hears which case, how cases are prioritised - are matters within the responsibility of the judiciary; this is a particularly important consideration where the executive government provides the court administration.
15. The question of how the courts should be financed and administration provided has been addressed in several states. Commissions that have considered the question have generally considered the following models:
 - a. A multifunctional Ministry of Justice with a division responsible for the courts.
 - b. A separate Ministry for the courts with no other material responsibilities.
 - c. A judicial council – a body run by the judiciary which enables the judiciary to administer the courts with a professional management structure.
 - d. An independent agency controlled by a board with strong judicial representation but where day to day operational control of the administration is run by officials who are accountable to the board as well as being accountable to the legislature.
16. There is a powerful view that the courts can only be properly independent if they are provided with a separate budget and administered by a body autonomous of the executive and legislature, whether it be a judicial council or an independent agency.

- a. In the common law states, there has, save in the United Kingdom, been an institutional move towards the close involvement of the judiciary in the administration of the courts⁹.
- b. In the United Kingdom, the argument was advanced in 1988 in these terms¹⁰:

At first sight many would not regard the control of finance and administration as providing any threat to judicial independence. But if the matter is given more consideration, it is to my mind apparent that the control of the finance and administration of the legal system is capable of preventing the performance of those very functions which the independence of the judiciary is intended to preserve, that is to say, the right of the individual to a speedy and fair trial of his claim by an independent judge.

.....

The judges apparently have the responsibility of providing justice without any responsibility for the economic and effective expenditure of the money required for that purpose: the executive have power to control the finances, but no responsibility for the end-product, namely the judicial decision. This separation of powers and duties, reflected as it is in a wholly separate administrative hierarchy who are not answerable to those responsible for the operational functions of the court, i.e. the judges, seems to me one of the basic shortcomings of the present system.

- c. In 1996 a commission established in Ireland to consider the best means of providing a proper financial and administrative structure for the courts advised:

“If the functions of the judiciary are limited by an absence of adequate administrative infrastructure and resources, there is an impingement on the capacity of the judiciary to exercise those functions”¹¹

The commission recommended against (1) a multifunctional Ministry of Justice as the courts would continue to compete with the other demands for funds within the Ministry and the administration would not be sufficiently independent and (2) a body controlled by the judiciary as there would be difficulties with political and financial accountability. It proposed an autonomous agency.

⁹It developed first with the Federal Judiciary in the United States. For an up to date summary of the position in the United States, Australia, Canada and other common law jurisdictions prepared by the Canadian Judicial Council, see *Alternative Models of Court Administration* (2006) <http://www.cjc-ccm.gc.ca/cmslib/general/models-e.pdf>. A short account is also given by Mrs Justice Denham in *The Diamond in a Democracy* (2000).

¹⁰ Sir Nicholas Browne-Wilkinson: *The Independence of the Judiciary in the 1980s* [1988] PL 44

¹¹ Report of the Working Group on a Courts Commission, page 18: Ireland April 1996: [http://www.courts.ie/Courts.ie/Library3.nsf/\(WebFiles\)/E33B888C196A85A980256DA6003459DA/\\$FILE/courts1.pdf](http://www.courts.ie/Courts.ie/Library3.nsf/(WebFiles)/E33B888C196A85A980256DA6003459DA/$FILE/courts1.pdf)

- d. Also in 1996 a commission was appointed in Norway under the chairmanship of the Chief Justice of the Supreme Court; it looked at the Ministry of Justice model, various administration models (independent of the Ministry of Justice) and a court model – a transfer to the Supreme Court or body elected by judges. The majority recommended an administration model outside the Ministry of Justice.
 - e. In 2001 the Constitutional Court of Lithuania¹² expressed this view succinctly when declaring that the financial dependency of the courts on a department of the Ministry of Justice which administered them (as enacted by reforms carried out in 1994) and the power of the Minister to appoint, dismiss and discipline judges was unconstitutional:

“The material basis of the organizational independence of courts is their financial independence of any decisions of the executive. The financial independence of courts is ensured by such legal regulation when finances for the system of courts and every court are allocated in the state budget approved by the law....

The all-sufficiency and independence of the judiciary (as implied in Constitutional principles of separation of powers and independence of the judiciary) presupposes its self-governance (autonomy). The self-governance of the judiciary also includes organization of the work of courts and the activities of the professional corps of judges. The organizational independence of courts and their self-government are the main guarantees of actual independence of the judiciary”
 - f. It is important to note that the view taken in Japan is that enhanced judicial independence is secured by placing with the judicial power (judicial branch of government) the authority over personnel management and budget matters related to courts – see paragraph 36.
17. There is also the view that there can be conflicts of interest between the judiciary and a multifunctional Ministry of Justice where the Ministry provides the finance and administration. The Ministry may seek to use its position to influence the judiciary or cut back on financial provision in a way incompatible with the separation of powers and the duty of a judge to decide according to the law enacted by the legislature and the constitution in contra distinction to the policy of the executive government.
 18. There are considerations which, however, support leaving responsibility for the financing and administration of the courts with the Ministry of Justice:
 - a. The courts need to work closely with other organisations within a criminal justice system – police, prosecutors and prisons – and a single political department is better able to provide this.
 - b. It is for elected politicians to determine where courts are located and the services each should provide.

¹² Ruling of the Constitutional Court of 21 December 1999

- c. It is important¹³ to vest some power over the judicial system in the Ministry of Justice, provided that there are appropriate checks and balances, as the judiciary must have sufficient democratic legitimisation, as all the authority of the state is derived from the people. The Minister of Justice can be dismissed by the head of government who is elected and may be dismissed by the legislature; a body comprising a majority of judges would not have that legitimacy and would not be accountable.
19. There is a further view that it is not necessary for judges to be engaged in administration – they are not skilled and their time is better spent in dealing with their cases. But, as in every system the judiciary are responsible for the conduct of the business of the courts, it is argued that they should not take overall responsibility for the efficient disposal of business in all courts without having authority over the administrative support for those courts.
20. Another consideration is the difficulty of distinguishing between the matters that are properly the subject of judicial control and those that relate to administration (see paragraph 40.a below). There is inevitably a tension if administrative matters are dealt with by a body which is not accountable to the judiciary. The tension detracts from the effectiveness of court performance and management.
21. Furthermore control by the Ministry can be seen as enabling the Ministry to exert influence over the judiciary, particularly where there is no budgetary independence¹⁴.
22. Against this background,
 - a. Some states have developed Court Service or Court Administration - an independent and autonomous body which has as its primary task the administration and management of the courts and the provision of facilities and services for judges and the public when they use the courts.
 - b. Many states have developed Councils of the Judiciary; some have as their functions the administration and management of the courts.
 - c. Other states have left the administration at a Ministry of Justice or in the case of one state in a single functional Ministry.
 - d. There are some states which do not fall into either of these basic categories – see paragraphs 34-37.

¹³ See the response by Germany.

¹⁴ See the views of the Czech Association of Judges.

(2) The issues for discussion in relation to structures or institutions for the provision of finance and administration

23. The following is a summary of some of the main issues which arise for discussion by the working party and against which the current position described in the following paragraphs of this section can be assessed:

a. Financing of the administration of the courts

- i. How important to judicial independence is the securing of proper financing for the courts and court administration?
- ii. Is an autonomous and independent body better able to secure such financing?
- iii. How are conflicts of interest avoided where a multifunctional Ministry provides the finance?

b. Administration of the courts

- i. How important to judicial independence is a court administration which is controlled by an autonomous body rather than the executive power?
- ii. Is this more a question of perception than actuality?
- iii. Can the judiciary be responsible for the proper and efficient conduct of the business of the courts without the administration being accountable to them?

c. Governance of the autonomous body

- i. Should the body be comprised solely of judges?
- ii. Should the body have independent members with expertise in finance or administration or other fields?
- iii. Should the body have representatives of the executive and/or the legislature?
- iv. Should there be representatives of the legal profession?
- v. Is there an optimum size of board?
- vi. How should the day to day operations be organised? To what extent should the judiciary participate or leave these issues to the Director-General and the staff?

d. Appointment and terms of members of the board of the body

- i. How should the members be appointed?
- ii. Should some be *ex officio*?
- iii. Should the judicial members be elected so that different levels of the judiciary are represented?
- iv. What should the length of term of appointment be? Should it be renewable?
- v. What terms should govern dismissal?

- e. *Accountability of the autonomous body and relationship to the executive and legislature*
 - i. How should the body be accountable and in respect of which functions?
 - ii. In what circumstances should the legislative or executive power be able to intervene or ask the body to take into account its policy wishes or conduct investigations?
 - iii. What relationship should it have with Associations of Judges?
 - f. *A single or multifunctional Ministry of Justice*
 - i. What are the benefits of provision of court administration through a Ministry?
 - ii. If a Ministry is responsible for providing the administration, are there benefits in having a multifunctional Ministry or a single functional Ministry?
 - g. *Safeguards for a system administered by a Ministry of Justice*
 - i. Should there be a separate department within the Ministry which provides the administration for the courts?
 - ii. What arrangements should there be for discussions between the Ministry and the judiciary and for the Ministry to take account of the needs and wishes of judges in the provision of finance and court administration?
 - iii. What other safeguards should be provided?
24. To assist in consideration of answers to these questions, there follows an outline of the different institutions and structures. It is convenient first to consider states which entrust finance and administration to independent bodies which act as Court Services or Court Administrations.

(3) The current system: (a) independent and autonomous bodies: Court Service / Court Administration.

25. The states that have adopted the Court Service/Court Administration model (an autonomous and independent body) are:
- a. Denmark¹⁵,
 - b. Ireland¹⁶,
 - c. Norway¹⁷,
 - d. Sweden¹⁸.

¹⁵ Established in 1999 as the Danish Courts Administration; this took over responsibility from the Ministry of Justice. After a long debate in the Danish parliament and the press, the Parliament resolved that the courts were no longer to be administered by the Ministry of Justice. Although there was no proof that the existing system had an adverse effect on judicial independence, the Danish parliament did not want to leave room for even a theoretical possibility that such independence was in doubt; the link between the judiciary and the Ministry of Justice was therefore severed. See also: <http://www.domstol.dk/om/otherlanguages/english/Pages/default.aspx>

¹⁶ Established in 1999 as the Courts Service under the Court Services Act 1998.

¹⁷ Established in 2002 as the National Courts Administration.

These were established after commissions had examined the issues and made recommendations.

(a) *Governance*

26. Each of these autonomous and independent bodies is governed by a Board, but the method of appointment and composition differs:
- a. The Board of each of these bodies comprises members of the judiciary, the court administrative staff, the Bar and others; the proportion of judges on the Board varies¹⁹ and the type of board member not connected with the courts varies considerably²⁰.
 - b. In Denmark, the members are nominated by those they represent and the appointment by the Minister is a formality; for example, the judicial members are elected by each level of the judiciary²¹. In Ireland, some of the judicial members are nominated and some are elected. In Norway, two members are appointed by the legislature and the others, including the judges, by the executive government. In Sweden, the executive government makes the appointments.
 - c. The members have a fixed term of three²² or four years²³; some permit re-appointment²⁴.
 - d. There are provisions for removal in specified circumstances²⁵.
 - e. In Denmark the chairman is appointed by the Board, but in Norway by the executive government²⁶. In Ireland the Chairman is the Chief Justice.

¹⁸ Established in 1975 as the National Courts Administration; see http://www.dom.se/templates/DV_InfoPage_2330.aspx;

¹⁹ In Denmark, there are 11 members - 5 judge members, 1 member from the legal staff of the courts, 2 members from the administrative staff of the courts, 1 practising lawyer, 1 person with special management experience and 1 person with experience of society.

In Ireland, there are 17 members - 9 judges, 2 legal practitioners, the Chief Executive of the service, a representative of the staff, and 4 others.

In Norway; there are 9 members - 4 judges, 2 advocates, 2 appointed by Legislature and a representative of the administration.

In Sweden, there are 10 members - 3 judges, 2 trades union representatives, 2 members of the legislature, a member of the bar, the director-general and one other.

²⁰ In Denmark, the representatives of other groups in society are: members with special management and social insights nominated by the Danish University Rectors Conference and the National Employment Council. In Norway, there are two representatives elected by Legislature. In Ireland there is a member of the Trades Union Congress and a person with experience in finance.

²¹ In Denmark there are 5 judges (one from the Supreme Court, 2 from the Court of Appeal and 2 District Judges); the professional organisations of judges are involved in their selection.

²² Sweden the Director General is appointed for 6 years.

²³ Denmark, Norway.

²⁴ Denmark, Norway.

²⁵ Norway; in Denmark, there is a special procedure.

²⁶ Norway.

- f. In Denmark, Ireland and Sweden, there is a Chief Executive or Director General in charge of day to day operations. In Ireland there is an operational board chaired by the Chief Executive on which the judicial members of the board do not participate; this board deals with operational and staff issues.
27. In states with this model, the relationship with the judiciary is similar:
- a. Generally, there is a close working relationship between the Court Administration/Court Service and the professional associations of the judges through working groups and working parties.
 - b. In Norway, for example, there are annual meetings between the Court Administration and the board of the professional association of judges and frequent contact between the Court Administration working parties and the association of judges.
- (c) *The staff*
28. The size varies considerably:
- a. Denmark: 85
 - b. Ireland: 1000
 - c. Norway: 90
 - d. Sweden 200.
- (c) *The power of the executive and legislature to interfere*
29. In Norway and Denmark, as the Court Administration has the entire responsibility to provide the administration for the courts, the Executive (in particular the Ministry of Justice) has no power to give directions. In Norway the Executive has power to intervene, but any intervention must be notified to the legislature. The power has not yet been exercised; the Auditor-General on behalf of the legislature audits the accounts and administration of the courts.
30. In Ireland, the Court Service must take into account the policy wishes of the Minister of Justice when drawing up its 3 year strategic plan. It must obtain the consent of the Minister to hire consultants and advisers and must submit an annual report to the Minister. The Chief Executive can be asked by the legislature to give an account of the general conduct of the Court Service.
31. In Sweden, the Executive Government can require the Court Service to conduct investigations; it has done so into reducing the number of courts, into considering methods of making the courts more efficient and into the rights of citizens to legal aid. It is also authorised to issue decrees within its competence and has done so on matters relating to administration, including information security. The Executive Government can also decide on its priorities.

(d) Comparison with Councils with a wide range of functions:

32. It may be helpful to contrast these autonomous bodies with the position in:

- a. **The Netherlands** has a Council; the functions are very similar to those of a Court Administration:
 - i. The Council²⁷ was established to provide for integral management by the courts, to strengthen the efficiency and effectiveness of the judicial organisation and to strengthen the independence of the judiciary. It has the sole responsibility for the administration and management of the courts.
 - ii. The Council has 5 members (3, including the chairman are judges and 2 are not; one of these has financial experience); they are appointed for 6 years by the Executive power after agreement with the Council and consultation with the judiciary. Its central staff totals 135.
 - iii. The Minister of Justice can give guidance to the Council.
 - iv. The Council meets with the Association of Judges regularly – at least 4 times a year.
- b. **Hungary** has a National Council of Justice with very wide ranging functions:
 - i. The responsibilities of the Council²⁸ are for obtaining the budget and administering the courts; its responsibilities also include appointment and training (see paragraphs 65.a and 79.b below)
 - ii. The Council has 15 members (9 are judges elected by the Judges' Conference, the President of the Supreme Court, the Minister of Justice, the President of the Bar Association, the Chief Public Prosecutor and 2 members of the legislature). Its central staff totals 180.
 - iii. It is audited by the Court of Auditors.
 - iv. The Council has close contact with Judges Associations.
- c. **Lithuania** has a Council of Judges²⁹
 - i. It is an executive body for the self governance of the courts and has responsibilities in relation to appointments (see paragraph 65.b below).

²⁷ This was created on 1 January 2002; before then the Ministry of Justice decided on the funding of the courts; each court negotiated its own budget. See also: <http://www.rechtspraak.nl/information+in+english>

²⁸ This was established in 1997 to ensure the total independence of the courts by detaching it from the Executive government. http://www.birosag.hu/engine.aspx?page=Birosag_english;

²⁹ This was initially an advisory body, particularly in relation to appointments as the Ministry of Justice was responsible under the reforms of 1994; following the decision of the Constitutional Court in 2001 (see paragraph 16.e) the Council was vested with most of the powers in relation to the judiciary which had been exercised by the Ministry of Justice.

- ii. It has 15 members – all are judges³⁰. 3 are ex-officio and the remainder elected so that they represent all levels of the judiciary. The President is elected by the Council.
- iii. The Council reports to the highest body for the self governance of the courts – the General Meeting of Judges
- iv. The Council has no budget or staff; this is provided by the National Courts Administration - an autonomous body which took over the functions of the Department of the Courts at the Ministry of Justice.
- v. It has close contact with the Judges' Associations.

(4) The current system: (b) The Ministry of Justice.

33. The following states do not have an autonomous or independent body:

- a. **Austria:** The Federal Ministry of Justice is in charge of the administration of the courts; the Association of Austrian Judges has proposed the establishment of a Council for the judiciary, but this is not supported by the executive government.
- b. **Czech Republic:** The Ministry of Justice is in charge of the administration of the courts. Each Court (or group of Courts) has a **Judicial Board**³¹ which advises the President of the Court; these bodies were created in 2002 and have usually 5 members who are elected for a period of 5 years. There is current discussion about the formation of a Council for the Judiciary on the basis of proposals put forward by the Czech Association of Judges and the Collegium of the Presidents of the Courts.
- c. **Finland:** The Ministry of Justice is in charge of the organisation and development of the administrative services for the courts. It does this through an internal department – the Department of Judicial Administration. This cannot interfere in decision making by the judiciary. The creation of a Council of the Judiciary is under discussion.
- d. **Germany:** The Ministries of Justice obtain the budget and determine the number of judges and location of court houses. The management of the business of each court is described in the next section. There is discussion amongst the judiciary about administration of the courts by the judiciary or participation of the judiciary in the administration. The judges' associations have different views³²; the federal and Länder legislatures and governments do not intend to create Councils of the judiciary.

³⁰ Between 2002 and 2006, it was a larger body of 24 (18 judges and 6 representatives of the legislature and executive government, including the Ministers (or Vice-Ministers) of Justice and Finance). This was a political compromise to avoid the perception that the Council was a closed door institution. However this was declared unconstitutional by the Constitutional Court in 2006 as being incompatible with the separation of powers.

³¹ The composition of these boards is described in the response of the Czech Republic; this response also sets out the text of the law establishing Judicial Boards.

³² See answer no 10 of the response of Germany.

- e. **Latvia:** The Ministry of Justice obtains the budget and provides the administration for the courts³³. It has been proposed that there be created a Judicial Administration which would provide the administration for the courts, training and other functions. It would at first function under the control of the Ministry and then be made an autonomous state institution with a Council for the Judiciary to advise on the budget, improvement of the court system etc.
- f. **Luxembourg:** The Ministry of Justice provides the budget; the creation of a Council is being debated.
- g. **Malta:** The Ministry of Justice obtains the budget and provides the administration for the courts. There is a **Commission for the Administration of Justice**³⁴; its principal role is an advisory one in relation to the administration of justice, but it has powers of supervision over the work of the courts and discipline over advocates³⁵.
- h. **United Kingdom:** In England and Wales, what is in effect a single functional Ministry, the Department for Constitutional Affairs³⁶, obtains the budget and is responsible through HMCS (a division of the Ministry) for providing the administrative system, the staff and infrastructure (IT, buildings) to support the carrying on of the business of the courts. The Chief Justice, Presidents and judges in charge of each court have control over the conduct of the business of the courts, but not the administration, though certain members of staff act under their direction. There is a **Judges' Council**³⁷; its primary role is in relation to the internal governance of the judiciary; it has discussions with the Ministry in relation to the financing of the courts and other issues³⁸. In Scotland, the position is similar, but there is a proposal to move to the model that operates in Ireland³⁹. The House of Lords (the Supreme Court of the United Kingdom) has its budget provided as part of the budget of the legislature as it is part of the legislature; this is to change so that the new Supreme Court will not be part of the legislature and have a budget provided by the Ministry, but will have operational autonomy.

³³ The response of Latvia sets out the poor funding of the courts and the lack of judicial input into budgets and the consequences of a lack of financial independence.

³⁴ It has 10 members (The President of the Republic (chair), the Chief Justice, the Attorney General, 2 judges, 2 magistrates, the President of the Bar and 2 non judicial members one appointed by the Prime Minister and one by the Leader of the Opposition; they serve for 4 years. It has 5 staff).

³⁵ The response of Malta makes it clear that the Commission needs to be given effective force to enable it to exercise of its powers. Recommendations are made, but responses by the administration are hard to come by.

³⁶ It has responsibility for court administration and for the provision of legal aid. Criminal Justice Policy, police and prisons are the responsibility of a separate Ministry (the Home Office). The prosecution is the responsibility of another ministerial department headed by the Attorney-General.

³⁷ It is a body representative of the judiciary and is chaired by the Chief Justice. See: http://www.judiciary.gov.uk/about_judiciary/governance_judiciary/judges_council.htm

³⁸ Representatives of the Council and the Chief Justice sit in a non executive capacity on certain boards of the division of the Ministry concerned with the provision of services to the courts such as buildings and IT. A description of the operation of the system has been given by the writer of this report in a lecture in 2005 to the Institute of Advanced Legal Studies.

http://www.judiciary.gov.uk/publications_media/speeches/2005/sp051110.htm

³⁹ Proposals for a Judiciary (Scotland) Bill, chapter 12

<http://www.scotland.gov.uk/Resource/Doc/165568/0045075.pdf>

(5) Other systems

34. In **Cyprus**, there is a Council which is responsible for the appointment, promotion and discipline of judges and related functions; the judicial budget once allocated is under the control of the Supreme Court whose members comprise the Council.
35. In **Estonia**, at present the system is said to be in a phase between states where the administration of the courts is run by the Ministry of Justice and states where there is an independent judicial administration. The power of the Ministry of Justice in the administration of the first instance courts and court of appeal was curtailed in 2002 by the creation of a Council for the Administration of the Courts.⁴⁰ The courts since that time have been administered in co-operation between the Council for the Administration of the Courts and the Ministry of Justice.
- a. The Council has a mixed composition⁴¹ and the Minister of Justice has a right to speak; the sessions of the Council can be convened by the Chief Justice or the Minister of Justice.
 - b. It has no independent budget (as this is provided by the Ministry of Justice); the Ministry of Justice also provides the staff.
 - c. Its functions are to approve the actions of the Ministry of Justice in determining the structure of the courts, the number of judges, the appointments of Presidents of the first instance courts and the Court of Appeal, changes to procedural laws and similar issues. It provides opinions on the candidates for the Supreme Court. The approval of the Council is necessary for most of the important functions within the competence of the Ministry as regards court administration. It has little decisive power, as its power is limited to approving or disapproving the actions of the Ministry.
36. In **Japan**, the Supreme Court controls the administration of the courts, the budget and many other functions through the Judicial Conference of the Supreme Court; each court also has a Judicial Conference that controls the court, but is responsible to the Supreme Court; the system is described as a pyramid with the Supreme Court at its apex.
37. In **Liechtenstein**, there is no Council (as it has only 17 full time judges); appointments and promotions are made by a body appointed by the legislature and the Prince. The President of the Court has extensive responsibilities for Court Administration. There is a proposal to vest the principal powers in relation to the administration of justice in a new body comprised of the President of the Courts and elected judges.

⁴⁰ Estonia also has a Judges' General Assembly comprised of all the judges (currently 249) which is convened by the Chief Justice and meets every February.

⁴¹ The Chief Justice of the Supreme Court, 5 elected judges, 2 members of Legislature, a member of the bar, the Chief Public Prosecutor and the Chancellor of Justice (see paragraph 87)

38. In **Switzerland**, there is no Council for the Judiciary at a federal level or in 23 out of the 26 cantons. 3 cantons have bodies equivalent to a Council⁴². Some cantons are considering establishing councils, but there is no proposal to do this on a federal level. In general, the courts have administrative and organisational autonomy guaranteed by the constitution; the budget for the court is submitted directly to the legislature, though in some cantons the budget is first submitted to the government.

III THE PROVISION OF FINANCE AND AN EFFECTIVE COURT ADMINISTRATION

(1) The principles and arguments

39. The next issue to consider is the way in which finance and an effective court administration is to be provided under the different structures or institutions discussed in the preceding section.
40. Some of the principles and arguments have been discussed in the introduction to the preceding section, but there are four matters which are worth highlighting:
- a. It is possible to draw a distinction between what is the judicial responsibility for the business of the court and what can be regarded as a matter of administration. However, as has been mentioned at paragraph 20, the distinction is never clear cut and there has been no success in drawing the line. This is a factor which has to be considered when deciding on whether administrative services can be provided to the judiciary which are not ultimately answerable to the judiciary as opposed to the executive.
 - b. If the administration is provided by the Ministry and the problem set out in the preceding paragraph is dealt with by making the judge responsible for the administration as well, doubts have been expressed about the compatibility with judicial independence of the Ministry being able to give the judge instructions.
 - c. In considering the role of Councils for the Judiciary and autonomous Court Services and Court Administrations, it is very important to consider the governance of individual courts within the system. In most states, the President (or Judge in charge)⁴³ has considerable authority, but in some states there is a board with either executive or advisory powers in relation to the governance of each court. There is a strong argument for such a collegiate body at each court as it checks the power of the President, ensures the views of the judges as a whole are brought into account and provides a body which can bring collective pressure to bear on a judge who is not carrying out his tasks with proper diligence.

⁴² The response of Switzerland sets out a description of the operation of the Council for the canton of Tessin which was established in 1994.

⁴³ The term President is generally used to cover leadership posts such as President, Chief Judge or Judge in Charge

- d. Another important issue is the evaluation of the efficiency of the system; it is essential to public confidence that the system be evaluated regularly so that any problems, particularly those of delay or a lack of resources can be identified and remedied. A judiciary that does not put its own house in order will find others prepared to do so. The importance of this was emphasised by the CCJE in its opinion No 6 at paragraphs 34 and 47:

The CCJE strongly emphasises, first of all, that the evaluation of "quality" of the justice system, i.e. of the performance of the court system as a whole or of each individual court or local group of courts, should not be confused with the evaluation of the professional ability of every single judge. Professional evaluation of judges, especially when aiming at decisions influencing their status or career, is a task that has other purposes and should be performed on the basis of objective criteria with all guarantees for judicial independence (see Opinion No. 1 (2001) of the CCJE, especially paragraph 45).

The CCJE believes that it is in the interest of the judiciary that data collection and monitoring be performed on a regular basis, and that appropriate procedures allow a ready adjustment of the organisation of courts to changes in the caseloads. In order to reconcile the realisation of this need with the guarantees of independence of the judiciary (namely, with the principle of non-removability of the judge and the prohibition of removal of cases from a judge), it seems advisable to the CCJE that the authority competent for data collection and monitoring should be the independent body mentioned in paragraphs 37 and 45 of its Opinion No. 1 (2001); if another body is competent for data collection and monitoring, the states should assure that such activities remain within the public sphere in order to preserve the relevant policy interests linked with the data treatment concerning justice; the independent body should however have power to take measures necessary to adjust the court organisation to the change in caseloads.

(2) The issues for discussion in relation to the provision of finance and administration

41. The following is a summary of some of the main issues which arise for discussion by the working party and against which the current position described in the following paragraphs of this section can be assessed.

a. The way finance is provided at a national level

- i. If an autonomous body provides the court administration is there a preferred method of securing finance – from the Ministry of Justice or from the Ministry of Finance or from the legislature or with a right to go to the legislature in case of disagreement with the Ministry?
- ii. Should a budget for the courts be a separate and identified allocation in the state budget?
- iii. If the Minister is required to provide finance should the Minister be under a duty under the constitution to provide adequate finance? How is such a duty enforceable?

- iv. If there is no autonomous body which administers the courts, what is the mechanism by which the judiciary can dispute the adequacy of the financial provision for the courts and court administration? A right to go to the legislature?
- b. *The way finance is provided to each courts within the court system*
 - i. Should there be a clear and transparent method of allocation of the budget to each court?
 - ii. Can any common measures or standards be identified?
- c. *Managing and monitoring the operation of the court system*
 - i. Should performance measures be set?
 - ii. If so,
 - 1. By whom?
 - 2. Should performance measures be only for the administration? How does the administration comply with them without interfering with judicial decisions?
 - iii. How should the performance of the system be monitored by a Ministry of Justice in a manner compatible with judicial independence or is this a task that only a body autonomous of the executive (such as a Council for the Judiciary or Court Administration) can perform?
 - iv. In states where the Ministry has the responsibility to manage the system,
 - 1. Should the Minister be under a legal duty to provide a proper system? How is such a duty enforceable?
 - 2. How are the wishes of the judges to be taken into account?
 - v. Should courts provide annual reports? If so, to whom?
- d. *Management of each court and the role of the President (judge in charge)*
 - i. Should the President or judge in charge be solely responsible for the court or should there be a board?
 - ii. If there should be a board
 - 1. Who should comprise the board?
 - 2. Should it be executive or advisory?
 - iii. What role should the President or judge in charge of each court have for
 - 1. the allocation of cases and the distribution of work
 - 2. the evaluation of judges
 - 3. the performance of the court administration
 - 4. the performance of the court?
 - iv. Should there be a system for the inspection of the way the President or Judge in charge carries out the functions? If so, by whom? To what extent may this impinge on judicial independence?

- v. If the Ministry provides the administrative services,
 - 1. What is the responsibility of the staff to the President or judge in charge of the court? Can they be given directions by the President or the judges?
 - 2. Should there be an independent inspection of the way in which the services are provided? To whom should the inspectorate be answerable?
 - e. *Monitoring the work of individual judges – performance management*
 - i. Is this a task that should be carried out?
 - ii. If so, by whom?
 - f. *The position of the Supreme Court*
 - i. What is the justification for providing separate arrangements for the Supreme Court?
 - ii. If there are separate arrangements, how are they to be best related to the arrangements with the other courts within the state?
42. To assist in consideration of answers to these questions, there follows an outline of the different ways in which courts are financed and administered.

(3) The current position: (a) where there is an autonomous and independent Court Administration or Court Service

(a) The provision of finance

43. In Denmark, Ireland and Norway, the financial provision is made through the Ministry of Justice; a budget is prepared for what is required. This is generally based on what is needed to provide courtrooms, administrative services etc. In Sweden, the Court Service critically examines the estimated budgets of each court and then puts forward a single budget to the Government:
- a. The budget allocated to the courts is a separate and identified allocation and account in the state budget⁴⁴.
 - b. If the amount allocated in the draft budget is considered insufficient or there is disagreement with the Ministry of Justice, then in Denmark and Norway, the Court Administration has the right to present its own budget to the legislature.
44. Once allocated, the budget has to be allocated to the various courts. This is a task performed by the Court Administration; in Sweden the Court Administration takes into account the number of cases that a court should handle each year.

(b) The general management of the Courts; performance management of the system.

⁴⁴ In Ireland there is a direct vote of the legislature; in Denmark, it is a separate allocation within the state budget within the appropriation to the Ministry of Justice.

45. The general management of the courts is vested in the Court Service or Court Administration which has the entire responsibility.
46. However, there is a difficult issue as to the extent that the Court Service or Court Administration can examine how effectively the courts are being run:
 - a. In Denmark, an examination is being made of performance standards – good quality within a reasonable time.
 - b. In Ireland, the Court Service plan provides for goals and standards to provide for a high quality of service to the court user.
 - c. In Norway, the Court Service undertakes the organisational development and initiatives to improve the management of the courts.
 - d. In Sweden, targets are to some extent set by the Executive Government; these include time limits within which cases must be decided; the Court Administration does not set targets or opine on court performance.

(c) The management of each court

47. There are various types of function that have to be performed at each court; these are usually delegated to the President or judge in charge of each court:

a. The allocation of cases

- i. In Denmark and Norway, this power is generally vested in the President of the Court; in Norway, this is done partly on a random basis and partly on the basis of the workload of a judge.
- ii. In Sweden the allocation is governed by law and the President of the Court cannot move work to match workload.
- iii. In Ireland, the President of the High Court allocates the cases in that court.

b. The evaluation, career development and discipline of judges

See paragraphs 73 and 74 (evaluation); 85 and 86 (discipline)

c. The provision of administrative services.

In Denmark, Norway and Sweden this responsibility is given to the President of each court. In Denmark, the President is responsible for the day to day court budget and administration.

d. The performance of the court

The specific role of the President is not clear; there appears to be a general responsibility for the court.

(d) Performance management of individual judges

48. The performance management of individual judges is not undertaken by the Court Service/Court Administration.⁴⁵

(e) The position of the Supreme Court

49. In Denmark, Norway and Ireland the Supreme Court does not have its own administration, as it is provided by the Court Administration.

⁴⁵ Ireland, Norway, Sweden

(f) *Comparison with the Netherlands, Hungary and Lithuania*

50. It is again useful to contrast the position of:

a. **The Netherlands:**

- i. The Ministry of Justice provides the budget; if there is a disagreement between the Council and the Minister for Justice, the legislature makes the decision.
- ii. The Council allocates the budget to the courts based on a workload measurement system and sets quantitative and qualitative standards.
- iii. The Supreme Court has its own budget and its own independent organisation.
- iv. At each court,
 1. There is a board comprising the President of the Court, the director of operations and the head of the sectors; the Council has a significant influence in the appointment of the boards.
 2. The board is responsible for the administration of the court and for the staff.
 3. The board distributes work between judges through a managing judge.
 4. The board also evaluates each judge on a regular basis and discusses the evaluation with the judge.
 5. Judges work under the authority of the President of the Court.

b. **Hungary**

- i. The budget is negotiated between the President of the National Council of Justice and the Minister of Finance; the budget is then put to the legislature which decides on the national budget. The Council makes the allocation between courts.
- ii. The Council does not deal with the administration of the Supreme Court.
- iii. The Council monitors the time cases take and reviews annual reports from court Presidents.
- iv. Judges are appraised under regulations promulgated by the Council after 3 years (for the purpose of confirming life time appointment) and thereafter at 6 years and a further 6 years.
- v. At each court,
 1. The President is responsible for the implementation of the budget as approved by the Council and for the work of the court; the President's performance of these duties is inspected by the Council.
 2. The President has a role in the appointment of judges (see paragraph 69.b), appraises the judges and organises training. The President can issue a reprimand; all other disciplinary functions go to a disciplinary court.
 3. The President convenes an annual meeting of judges.

c. In **Lithuania**,

- i. The budget for courts (other than the Supreme Court and Court of Appeal) is obtained by the Council from the executive government on the basis of budgets provided by the courts; the Supreme Courts and Court of Appeal submit their own budget and have a degree of organisational independence of the Council.
- ii. The National Courts Administration analyses the work of the courts and monitors the length of court proceedings and the reasons for any delays. Although it cannot impose targets, it can make recommendations on standards. It also sets standards for the evaluation of judges
- iii. At each court, the President of the court has extensive responsibilities for administration and for the performance of judicial work, including the distribution of work. The President does not evaluate the work of judges or intervene in their careers.

(4) The current position (b) where the Ministry of Justice is in charge of finance and administration

(a) The provision of finance

51. The Ministry plays the central role; for example:

- a. In the **Czech Republic**, the Ministry allocates the budget.
- b. In **Finland**, the Ministry of Justice sets the budget for each court in negotiation with that court before that budget is presented to the legislature. The budget for the higher courts is specifically allocated, but the budget for the other courts is a lump sum which is then allocated by the Ministry.
- c. In **Germany**, the Ministries of Justice are responsible for the financial resources for the courts; there are direct negotiations with the Ministries of Finance and allocations are then made to the courts according to their work. Each court administration then spends the sums allocated on its own responsibility, in accordance with budgeting principles laid down. The judges are consulted as to what they want.
- d. In **Latvia**, the Ministry submits the budget to the Ministry of Finance for all courts other than the Supreme Court which submits its own budget; it has on occasions invited the Chief Justice to participate in the review. The budget is submitted to the legislature; there is a separate allocation in the state budget for the Supreme Court.
- e. In the **United Kingdom**, in England and Wales, the Ministry negotiates the budget with the Ministry of Finance; the Ministry then makes a budget allocation to the division of the Ministry responsible for the courts (HMCS); this allocation is seen as part of the overall budget for the Ministry and therefore may be subject to reduction during the year because of other calls on that budget for extra expenditure elsewhere in the Ministry; this happened in 2006. The Minister is under a legal duty to ensure that there is an efficient and effective system to support the carrying on of the business of the courts and that appropriate services are provided to the courts; the

Minister must report on the performance of this duty to the legislature. There is an Inspector of Court Administration who takes instructions from the Minister and reports to the Minister; but the Inspector is not permitted to inspect any person performing judicial functions.

(b) The management of each court

52. In those states where the Ministry of Justice directly administers the courts, there is a need to entrust at local level a considerable degree of responsibility to the President of the court.
- a. In **Austria**: the President of each court is given considerable responsibility, but is bound by the instructions of the Minister in this capacity, though not in his judicial capacity. The responsibilities are discharged as follows:
 - i. Workload is distributed through decisions of panels of judges.
 - ii. The President is responsible for evaluating a judge for the purposes of his career.
 - iii. The President is responsible for administering the resources necessary for the court administration in accordance with the instructions of the Minister.
 - iv. Supervising the conduct of the business of the court; the President may ask for explanations for delay and initiate disciplinary proceedings.
 - v. Providing training in conjunction with the Ministry of Justice.
 - b. In the **Czech Republic**, administrative officials manage the resources and the courts⁴⁶; the staff work under the authority of the President of the court who is appointed and may be dismissed by the Minister of Justice; the President is advised by a Judicial Board⁴⁷. The President also supervises the general conduct of the business of the court.
 - c. In **Germany**, each court has a degree of responsibility:
 - i. Administrative supervision (such as the use of uniform documents) is undertaken jointly by the Presidents of the courts and the Ministries.
 - ii. The judicial staff work under the authority of the President of the court, but the Ministry of Justice can give directions in relation to the provision of administration (IT, buildings).
 - iii. Cases are allocated under rules determined by the elected Presidium⁴⁸ at each court; this prevents the executive government and the President of the court selecting the judge who is to try a case.
 - iv. The President evaluates the work of judges and makes suggestions for promotion
 - d. In **Finland**, work is allocated partly on a random basis but the workload and expertise of a judge are taken into account.

⁴⁶ There appears to be a difference of opinion as to the role played by the Presidents of the Courts.

⁴⁷ The Association of Czech Judges expresses a doubt about the power of the Judicial Board.

⁴⁸ Consisting of the President and judges elected by all the judges of the court.

- e. In **Latvia**, the President (Chief Judge) allocates the duties and work among the judges and is responsible for the efficient use of court resources.
- f. In **Luxembourg**, the President of the court is responsible for the assignment of work.
- g. In **Malta**, the Ministry of Justice decides upon the staff necessary, but the staff works under the authority of the judge. The President of the court evaluates the work of judges and distributes work between them.
- h. In the **United Kingdom** (England and Wales), the judge in charge of each court supervises the conduct of the business of the court, allocates the work between judges and decides the priorities for hearing cases⁴⁹. Some of the administrative staff act under the direction of this judge, but they are all answerable to the Minister.

(c) Performance management

53. In Finland, the Ministry of Justice imposes targets for the quantity of judgments each court has to deliver. This is not legally binding. Courts may set non binding targets for individual judges. In the United Kingdom (England and Wales) performance targets are set by the Minister for the court administration; these are not binding on the judges, but affect the way in which finance is allocated to courts and to types of case and therefore affect the way in which cases can be prioritised.

(5) The current system (c) where there are other models

54. In **Estonia**,
- a. The Supreme Court makes its own proposals to the Ministry of Finance and has a separate allocation in the State budget.
 - b. The budget for the first instance courts and the court of appeal is obtained by the Minister of Justice, but the Council for the Administration of the Courts expresses its opinion on it. The budget has to compete with other political priorities of the Ministry (crime prevention and prisons) and this sometimes hinders adequate financing for the court estate and staff wages.
 - c. The Council for Administration of the Courts cooperates with the Ministry of Justice to administer the courts; the Council monitors the performance of the courts and lays down principles for internal governance at courts and for the distribution of work, but does not monitor the performance of individual judges. It has asked the Ministry of Justice to work out objective criteria in order to analyse the quality and quantity of work of every judge⁵⁰.
 - d. The Presidents of the first instance courts are appointed by the Minister of Justice as are the Administrative Directors of the courts; the Minister monitors how they perform their functions, though the Council for

⁴⁹ In criminal cases there are detailed provisions for consultation with users of the court issued by the Chief Justice in 2005.

⁵⁰ This includes the number of judgements and the time taken in relation to them and whether the judgments were upheld or overruled on appeal. It is contemplated that this will be used to improve training, but the possibility of disciplinary proceedings for constant and serious work results is not ruled out.

Administration of the Courts can, if there is poor leadership, make a proposal to the Minister for change. The Directors and Presidents are jointly responsible for the staff of the courts. Work is distributed between judges at random on the basis of a plan set by all the judges of the court.

- e. The Judiciary have developed proposals to make the courts institutionally independent of the Executive by making the Council for the Administration of the Courts the body that would become a strategic managing body for all the courts (including the Supreme Court); its powers would include the power to appoint Court Presidents, approval of the draft budget and apportioning it between the courts.
55. In **Japan**,
- a. The Supreme Court Judicial Conference calculates what is needed and submits the budget to the Cabinet each year. The Cabinet submits this budget to the legislature; in the national budget, there is a separate appropriation for the judiciary.
 - b. The President of a Court supervises the court's administrative office and chairs the judicial conference of the court; this is comprised of all the judges at the court. It is this conference which decides on the distribution of work.
56. In **Switzerland**, the staff of the court work under the authority of the President of the court; the President allocates the work within the limits prescribed by law, but he is only a *primus inter pares* and has no functions of discipline over, or evaluation of, the judges of the court

IV APPOINTMENT ETC OF JUDGES

(1) The principles and arguments

57. It has always been clear that the ability of the Executive power to be able to appoint judges, advance their career and train them can affect the independence of the judiciary by enabling the Executive to influence judges.
58. It is generally accepted that the objective of an appointment and promotion system should be to ensure that⁵¹:

⁵¹ Recommendation of the Committee of Ministers on the Independence, Efficiency and Role of Judges, 13 October 1994 at 518th meeting:

All decisions concerning the professional career of judges should be based on objective criteria, and the selection and career of judges should be based on merit, having regard to qualifications, integrity, ability and efficiency. The authority taking the 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 mentioned above. 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 influences.

- a. All have equal access to appointment.
 - b. Judges are appointed on merit, including aptitude, qualifications and professional ability.
 - c. Judges are not chosen for their political affiliation or views.
59. There are arguments for placing the appointment and promotion of judges in a body that is entirely independent of the executive and legislative power as the system of appointment is then seen to be transparently based on the principles set out in the preceding paragraph. There is a difference of view as to whether such a body should be entirely composed of judges or whether there should be representatives of the public. The argument for the latter is that it is important for public confidence that the judiciary is broadly based and does not appoint new persons simply because they are similar to those currently in post.
60. Some argue that it is essential that the executive or legislature should have a role in the system, so that they have confidence in the type of person appointed.
61. Training not only gives rise to the issues considered in the CCJE opinion No. 4, but also issues relating to independence. It is the duty of the judiciary to interpret the law as enacted by the legislature; if explanatory material is provided for training, then this should not be influenced by the executive. For that reason, it is argued that the executive's role in providing training should be limited and all training should be conducted under the auspices of the judiciary or a body independent of the executive government.

(2) The issues for discussion in relation to appointments, promotion and training

62. The following is a summary of some of the main issues which arise for discussion by the working party and against which the current position described in the following paragraphs of this section can be assessed:
- a. *The appointing power*
 - i. Should there be an independent appointing body with the power to make appointments?
 - ii. If so, should the executive or legislature have the right to reject an appointment in specific circumstances?
 - iii. Should the appointing power be vested in the executive government or the legislature assisted by an independent advisory body?
 - iv. Should the appointing power be different for the Supreme Court or the Chief Justices?
 - b. *The composition of the appointing or advisory body*
 - i. Should the appointing or advisory body be the Court Administration or a Council for the Judiciary or should it be independent of these?
 - ii. Should it be composed of judges only?
 - iii. Should it be composed of others as well? If so who? What should the proportion of judges be to non judges?
 - iv. How should the appointing/advisory body be appointed?

- c. *The appointment to Presidencies of courts and other leadership posts*
 - i. Should appointment to these posts be made in the same way as initial appointments?
 - ii. Should the appointments be made by the body responsible for the administration of the courts – the Court Administration, the Council or the Ministry?
- d. *Career development and promotion*
 - i. How should judges be evaluated for promotion?
 - ii. What role should the President or judge in charge of the court play in this?
 - iii. Which body should make the decisions – the same body as makes the initial appointments?
- e. *Training*
 - i. Is the provision for training sufficiently independent of the executive government?

(3) Initial appointment

- 63. There is a considerable variation in the current position.
- 64. Some states have a system where the power of appointment is effectively vested in an independent body; some of these are counties where the Court Service or Court Administration administers the courts and some are where this is done by the Ministry of Justice; for example,
 - a. In **Denmark**⁵², this body comprises six persons (3 judges, an attorney and two representatives of the public); appointments to this body are made by Minister of Justice on the nomination of judicial bodies in the case of the judges, the bar for the attorney and the Danish Adult Education Association and the National Association for Municipalities for the two representatives of the public). The Ministry of Justice or Executive can refuse to accept a nomination for appointment but this in practice never happens.
 - b. In **Finland**⁵³, a Judicial Appointments Board makes proposals to the executive government; this applies to all appointments except those to the Supreme Court and the Supreme Administrative Court; it is made up of judges and an advocate, a public prosecutor and a teacher of law.
 - c. **The Netherlands** also has an appointments body set up under the Ministry of Justice – the Commission for the selection of the Members of the Judiciary.

⁵² Established in 1999 at the same time as the Court Administration.

⁵³ since 2000

- d. In **Norway**⁵⁴, the Judicial Appointments Board in effect makes the appointments, except in the case of the Chief Justice where it puts forward three candidates and the Executive Government makes its choice.
 - e. In the **United Kingdom**, in England and Wales appointments to all posts other than to the Court of Appeal and House of Lords are made by a Judicial Appointments Commission; it comprises 5 judges⁵⁵, a lay magistrate, a lay member of a tribunal, 2 practising lawyers and 6 members of the public. The Minister has a very limited right to reject appointees.
65. In some of the states covered by this paper it is the Council that has an important power:
- a. **Hungary**, the Presidents of the courts invite applications and submit proposals with the opinion of the judges of that court to the Council; the Council is not bound by such proposals. The Council then requests the President of the Republic to make the appointment; it is made for a 3 year term and then, after a detailed audit, for life.
 - b. In **Lithuania**, the Council of Judges advises the President; the President is not bound by the recommendations, but cannot appoint someone in respect of whom the Council expresses a negative view. It is the legislature that appoints or approves the appointment of judges of the Supreme Court and Court of Appeal.
66. In some states, it is the Executive Government that appoints judges, though on the advice of a committee.
- a. In **Austria**, the power to recommend judges for appointment is vested in panels of judges; recommendations to the Executive have always been followed in recent times.
 - b. In the **Czech Republic**, a proposal is made by the President of the Court, considered by the Minister of Justice and the appointment made by the President⁵⁶. The President of the Supreme Court and the Supreme Administrative Court are appointed by the President of the Republic.
 - c. In **Estonia**, judges below the Supreme Court are appointed by the President on the nomination of the Supreme Court. Judges of the Supreme Court are appointed by the legislature on the nomination of the Chief Justice.

⁵⁴ Judicial Appointments Board has 7 members – 3 judges, one advocate, one lawyer in the public sector and 2 members of the public; they are appointed by the Government; this was established as a result of the Commission established in 1996 (see paragraph 16.d)

⁵⁵ 3 of the judges are appointed by the Judges' Council and 2 are elected. Appointments to the Court of Appeal are made by a joint panel of the Judicial Appointments Commission, the Chief Justice and a member of the Court of Appeal. Appointments to the House of Lords (Supreme Court) will be made by a similar joint panel, but constituted to represent the three jurisdictions (England and Wales, Scotland and Northern Ireland).

⁵⁶ The Association of Czech Judges considers this to be appointment by executive power.

- d. In **Ireland** there is a Judicial Appointments Advisory Board⁵⁷ for the purpose of identifying and advising the Executive on those who might be appointed judges, except for the post of Chief Justice and the Presidents of the Courts.
 - e. In **Japan**, the Chief Justice and members of the Supreme Court are appointed by the Executive; judges of the lower courts are also appointed by the Executive, but from a list nominated by the Supreme Court; to ensure that public opinion is taken into account, there is a Committee for the Nomination of Inferior Court Judges which investigates and reports to the Supreme Court on nominations.
 - f. In **Latvia**, the Ministry of Justice makes nominations to the legislature following a review by the Judicial Qualification Board; it is uncertain whether this is binding or advisory. Candidates for the Supreme Court are nominated by the Chief Justice on the basis of the opinion of the Judicial Qualification Board.
 - g. In **Sweden**, there is an Appointments Proposal Board through which all applications for judicial appointment are made and which then makes recommendations to the executive government.
67. In Germany appointments are made jointly by a minister and an electoral committee of the legislature⁵⁸. In Switzerland, judges are appointed by the various cantonal legislatures for a period (usually 4-6 years) with the possibility of re-appointment.

(4) Appointment to Presidents of Courts and leadership roles

68. In states with a Court Service/Court Administration, it is not clear whether these appointments are made by the appointing body, except in Sweden where it is the executive government which makes the appointments.
69. In the Netherlands and Hungary,
- a. **The Netherlands:** the Council makes the recommendation after extensive consultation with the judiciary; the Ministry of Justice can refuse to accept a nomination for appointment but this in practice never happens.
 - b. **Hungary:** The Council makes the appointments.
70. In states where the Ministry of Justice has a central role:
- a. In the **Czech Republic** it is the Executive which makes these appointments, after an opinion from a Judicial Board; the President of the Court has an influential role as he expresses an opinion on those at the court of which he is President.

⁵⁷ This consists of the Chief Justice, the Presidents of the Courts, the Attorney General, a practising member of the bar and 3 persons nominated by the Minister of Justice.

⁵⁸ This is the position in the Federal courts and some of the Länder in Germany; the electoral committees in several Länder includes members of the legislature, judges and a lawyer; A Council for Judicial Appointments (comprising for each jurisdiction the President of the Court and elected judges) provides an opinion on the candidates. The details are set out in the response of Germany.

- b. In **Estonia**, the Minister of Justice makes the appointments below the level of the Supreme Court.
 - c. In **Latvia**, the Presidents of the lowest courts are appointed by the Ministry of Justice for 5 years on the basis of the opinion of the Judicial Qualification Board, comprised of judges⁵⁹. The Presidents of the higher tier are appointed by the legislature for a term of 5 years on the recommendation of the Minister and the Board. The Chief Justice of the Supreme Court is appointed for a term of 7 years by the legislature.
 - d. In the **United Kingdom**, the Presidents and judges in charge of courts are appointed either by the independent judicial appointments commission or by the Chief Justice (with the concurrence or after consultation with the Minister).
71. In Japan, the Judicial Conference of the Supreme Court appoints the Presidents of Courts.

(5) Security of tenure and transfer

72. In most states, either the constitution or specific laws prevent the arbitrary removal of judges or their transfer to other courts without their consent, save in very limited circumstances⁶⁰.

(6) Career development and promotion

73. In some states, the President of the Court has no role in the career development of judges⁶¹.
74. In others⁶², the President of the Court can comment on the way in which a judge has performed and make suggestions for promotion; in the Czech Republic the Judicial Board advises the President of the Court who expresses an opinion to the Minister who makes the decision on promotion⁶³. In Germany, the President of the court writes a testimonial⁶⁴ and may express his view on candidates for promotion. In the Netherlands, it is the board for each court that evaluates each judge and puts forward proposals for promotion.
75. Some states have a formal structure for promotion akin to the process of initial recruitment.

⁵⁹ Others may attend in an advisory capacity, including, the chair of the judicial committee of Legislature, the Minister of Justice, the Prosecutor General, the Chancellor of the Police Academy and the Dean of the Faculty of Laws of the University of Latvia.

⁶⁰ For example, Czech Republic, Denmark, Estonia, Finland, Germany.

⁶¹ Norway.

⁶² Germany, Finland, Japan, Estonia (within 3 years of appointment) and Sweden.

⁶³ The Association of Czech Judges considers the executive government makes the decisions.

⁶⁴ The judge can object and seek redress in the Administrative Court.

76. In Latvia, the Ministry can remove judges during their first 3-5 years after appointment and extend the tenure of judges beyond their mandatory retirement age; tenure is only granted by the legislature after 5 years service⁶⁵.

(7) Training

77. It is important that training is considered separately from appointment and promotion; as the CCJE observed in 2003 in Opinion No 4, paragraph 17 and 18:

In order to ensure a proper separation of roles, the same authority should not be directly responsible for both training and disciplining judges. The CCJE therefore recommends that, under the authority of the judiciary or other independent body, training should be entrusted to a special autonomous establishment with its own budget, which is thus able, in consultation with judges, to devise training programmes and ensure their implementation.

Those responsible for training should not also be directly responsible for appointing or promoting judges. If the body (i.e. a judicial service commission) referred to in the CCJE's Opinion N° 1, paragraphs 73 (3), 37, and 45, is competent for training and appointment or promotion, a clear separation should be provided between its branches responsible for these tasks.

78. In states with a Court Service/Administration,
- a. In **Denmark**, assistance with training is a function of the Court Administration.
 - b. In **Ireland**, training is conducted by a Judicial Studies Institute managed by a Board chaired by the Chief Justice. The Court Service provides administrative support for its work.
 - c. In **Norway**, training is conducted by the Council for the Professional Training of the Judiciary; the Court Administration provides the administrative support.
 - d. In **Sweden**, it is the Court Administration which provides training.
79. There is a useful contrast with:
- a. In the **Netherlands**, the Council develops the policy and carries this out in close cooperation with the boards of the courts; there is a separate training institution, the Netherlands Judicial Training Centre.
 - b. In **Hungary** the Council organises the central training of judges⁶⁶.
 - c. In **Lithuania**, the Council and the Ministry of Justice jointly agree on the training programme and materials.

⁶⁵ The response of Latvia makes clear that the legislature's power to delay tenure threatens the judge's independence during that period; it is said to create an incentive for a judge to avoid adjudicating in ways that might displease the Executive during that period.

⁶⁶ A Judicial Academy was established in 2006.

80. In states with a Ministry of Justice,
- a. In the **Czech Republic**, the Judicial Academy is supervised by the Ministry of Justice⁶⁷.
 - b. The Ministry of Justice in **Finland** provides courses.
 - c. In **Germany**, the provision of training is regulated by law and supervision is shared between the Presidents of the Court or Associations of Judges and the Ministry. However what is also important is the way the institution which provides the training functions; for example, the fact that the director of a judicial school or academy is a judge⁶⁸ is very important.
 - d. In **Latvia**, the Ministry (through the Court Administration) and the Chief Judges collaborate to provide training programmes; a Judicial Training Centre has been provided as a not for profit organisation.
 - e. In **Malta**, there is an *ad hoc* Judicial Studies Board.
 - f. In the **United Kingdom**, England and Wales has a Judicial Studies Board which carries out training. It is controlled by a Board responsible to the Chief Justice. Scotland has similar arrangements.
81. In Estonia, the initial training is by the Judges' Examination Committee; thereafter it is carried out by the Judges' Training Committee. In Japan, training is conducted by the Legal Training and Research Institute established by the Supreme Court and responsible to it.

V ETHICS AND DISCIPLINE

82. It is generally accepted that a disciplinary system must be independent so that there is a fair determination of the case. However this does not mean that discipline should be the sole responsibility of the judiciary; there are arguments for the executive and legislature to have a role in a system and for the public to be involved in the making of determinations.

(1) The issues for discussion in relation to ethics and discipline

83. The following is a summary of some of the main issues which arise for discussion by the working party and against which the current position described in the following paragraphs of this section can be assessed.
- a. *A code of ethics(judicial conduct)*
 - i. Should codes of ethics be adopted by judiciaries?
 - ii. Do such codes improve standards of conduct and underpin confidence?

⁶⁷ The response of the Association of Czech Judges is critical of these arrangements.

⁶⁸ The director of the German Academies at Trier and Wustrau is normally a judge.

b. Disciplinary systems

- i. Should there be an independent body to which complaints can be made?
- ii. What should be the composition of the body which determines complaints? Only judges or independent members as well?
- iii. What should the role of the executive and legislature be?

c. An ombudsman

- i. Is there a role for an ombudsman?
- ii. If so, is such a role compatible with the independence of the judiciary?

(2) Code of Ethics

84. Some have Codes⁶⁹. The development of Codes of Ethics is underway in some states⁷⁰. Some have no codes⁷¹.

(3) Discipline

85. Some states have special bodies that deal with complaints and discipline; for example.
- a. In the **Czech Republic**, discipline is in the hands of a Discipline Bench of the Court; the Minister may bring proceedings and can appeal decisions.
 - b. In **Denmark**, this is the Special Complaints Court; the President of the Court can give a warning in certain defined circumstances.
 - c. In **Estonia**, the Disciplinary Chamber of the Supreme Court adjudicates on discipline.
 - d. In **Germany**, a judge can be reprimanded, but can have recourse to a disciplinary court; it is only a disciplinary court that can impose other disciplinary measures.
 - e. In **Japan**, disciplinary proceedings are taken against a judge by proceedings in the court which has the supervisory authority over the judge concerned. A judge can only be dismissed through public impeachment which is conducted under the authority of the Supreme Court.
 - f. **Latvia** has a Judicial Disciplinary Board comprised of judges; the legislature can remove judges.

⁶⁹ Estonia (www.nc.ee/?id=682), Hungary, (approved in 2005) Lithuania (approved in 2006) Malta, United Kingdom (England and Wales – approved by the Judges’ Council in 2004)

See: http://www.judiciary.gov.uk/docs/judges_council/published_guide0606.pdf

In Latvia, the Association of Judges adopted a Code of Ethics in 1995, but it is not applied in practice.

⁷⁰ Czech Republic, Netherlands (a development of the impartiality guidelines for judges), Norway

⁷¹ Cyprus, Denmark, Ireland (though there are some conventions), Lichtenstein, Sweden and Finland (save for some written in the sixteenth century)

- g. **Lithuania** has a Judicial Ethics and Disciplinary Commission which can institute proceedings before the Judicial Court of Honour; members of the Commission and Court are appointed by the Council. Impeachment is the remedy for the removal of the most senior judges.
 - h. In the **Netherlands**, the President of the Court can discipline judges; the Supreme Court can dismiss a judge through special proceedings instituted by the Procurator-General.
 - i. In **Norway**⁷² this is the Supervisory Committee for Judges; the President of a Court has no role.
 - j. In **Sweden**, discipline is dealt with by the Courts Administration and the Central Committee for Disciplinary Matters.
 - k. In the **United Kingdom**, in England and Wales, there is a system⁷³ which is operated jointly by the Chief Justice and the Minister through an Office of Judicial Complaints; disciplinary hearings taken place before an independent body with lay representation. Sanctions can only be imposed with the joint agreement of the Chief Justice and the Minister.
86. Some states have no disciplinary system⁷⁴

(4) An ombudsman

87. **Estonia** has a Chancellor of Justice, appointed by the legislature on the nomination of the President; the Chancellor combines the office of ombudsman and guardian of the constitution; in this capacity, the Chancellor can bring disciplinary proceedings against all judges and can also propose to the legislature that criminal charges be brought against Supreme Court judges.
88. **Finland** appoints an ombudsman whose jurisdiction under the constitution is to “ensure that the courts of law, the other authorities, and the civil servants, public employees and other persons, when the latter are performing a public task, obey the law and fulfil their obligations”. “A decision to bring charges against a judge for unlawful conduct in office is made by the Chancellor of Justice or the Ombudsman”.

⁷² Sweden and Finland have similar arrangements.

⁷³ Established in 2006.

⁷⁴ Finland - judges have to be tried in the criminal courts; Ireland, though the Chief Justice has power to reprimand judges of the lowest courts; in 2000, a Committee on Judicial Conduct and Ethics recommended the establishment of a body for this purpose. Judges can only be removed through impeachment in the legislature; this has never happened.

VI RELATIONS WITH THE EXECUTIVE, LEGISLATURE AND THE PUBLIC

89. The preceding sections deal with the main issues identified in paragraph 8; there remains the issue identified in paragraph 10, the relationship with the executive, legislature and the public.

(1) The issues for discussion about relations with the executive, legislature and the public

90. The following is a summary of some of the main issues which arise for discussion by the working party and against which the current position described in the following paragraphs of this section can be assessed.

a. *Relations with the executive and legislature*

- i. Should the judiciary advise the legislature and executive on draft laws and proposals?
- ii. If so, what are the circumstances in which the judiciary should do this?
- iii. Should the legislature or executive examine specific cases determined by the courts or does the separation of powers principle require that enquiries be limited to general issues?

b. *Public confidence*

- i. What steps should be taken to maintain public confidence?
- ii. What should be the respective roles of Judicial Councils, Court Administrations, Chief Justices, the legislature and the executive government?

c. *Press criticism*

- i. Is there a duty to defend a judge who is the wrongful object of public criticism?
- ii. What should be the respective roles of Judicial Councils, Court Administrations, Chief Justices, the legislature and the executive government?

d. *Accountability*

- i. In what circumstances is the judiciary or a Council for the Judiciary or a Court Administration accountable for the operation and quality of the judicial system?
- ii. How is any such accountability best discharged?

(2) Relations with the legislature and executive

(a) *Assistance with law reform and drafting new laws*

91. In many states⁷⁵ the judiciary is asked for assistance and comments when laws are drafted or new policies under consideration.

⁷⁵ For example, Germany. In Latvia, the Judges Association participates in this. In the Netherlands the Council advises on laws relating to the administration of the courts.

92. This should not give rise to difficulties provided the issues do not involve matters of political controversy and provided the way in which the judiciary gives assistance does not compromise the ability of the judiciary to adjudicate independently thereafter. On the contrary, it is desirable to the smooth working of a state that advice is given by the judiciary on matters relating to issues, such as court procedural laws, where the judiciary has a particular expertise.

(b) Investigations by Legislature and the Executive

93. Although it must be the primary duty of the judiciary to ensure that any inefficiencies or complaints are investigated and remedied, a judicial system cannot be immune from scrutiny by the legislature.

94. The real issue is the extent to which the legislature can enquire into the system.

a. An investigation into the general functioning of the system and its performance is within the scope of the functions of the legislature. For example, in the Netherlands an enquiry was conducted into phone tapping and as a result the law and processes were changed.

b. However most states would regard investigation into an individual case or the performance of an individual judge would contravene the principle of the separation of powers⁷⁶. There are exceptions to this:

i. In **Norway**, two miscarriages of justice were overturned by the courts in 1995 and 2006, one posthumously. An enquiry and a commission were asked to investigate the action of the prosecution and the police in each of these cases; the enquiry and commission were asked to look at the court orders that controlled the procedural aspects of each case.

ii. There is provision in the **Austrian** constitution to set up committees of enquiry under which the courts would have to give evidence. No such committees have been established for the judiciary.

iii. In **Germany**, there are similar constitutional provisions at a Federal and state level; although the correctness of a judicial decision cannot be questioned, it is possible to examine what changes are necessary in the light of a particular decision, but there is a considerable reluctance to establish such committees.

iv. In **Japan**, the legislature has no power to investigate the conduct of judges or the conduct of trials.

95. The executive should not attack individual decisions by judges which it disagrees with, as such attacks undermine the independence of the judiciary. Its remedy is to appeal. In the United Kingdom the executive government is under an express duty to uphold the independence of the judiciary.

⁷⁶ Denmark, Finland, Latvia, Netherlands, Norway, Sweden

(3) Relations with the public

(a) Public confidence in the system

96. The issue of monitoring the quality and performance of the judicial system has been discussed in section III. It is essential to the maintenance of public confidence that this is done. But does this go far enough?
97. In some states, surveys are carried out to ensure that the users of the court are satisfied with the service provided⁷⁷. In 2006, Denmark established a collaborative forum where twice annually the Court Administration meets with the professional users of the courts.

(b) Communications and the Press

98. It is now accepted that communications with the public, including the media is an important task.
99. First there is a need to ensure that the public has proper and accurate information about the system. Some states have established a communications unit⁷⁸ with responsibilities for dealing with the media, running a website and producing reports and other documentation informing the public and the media how the court system works. In some states where the Ministry of Justice provides the administration, there is a press office that deals with the interests of the judiciary.⁷⁹
100. Second there is the need to protect the judiciary from attack and to defend judges when unjustly attacked. The CCJE has emphasised the importance of this at paragraph 55 of opinion No 7:

When a judge or a court is challenged or attacked by the media (or by political or other social actors by way of the media) for reasons connected with the administration of justice, the CCJE considers that, in view of the duty of judicial self-restraint, the judge involved should refrain from reactions through the same channels. Bearing in mind the fact that the courts can rectify erroneous information diffused in the press, the CCJE believes it would be desirable that the national judiciaries benefit from the support of persons or a body (e.g. the Higher Council for the Judiciary or judges' associations) able and ready to respond promptly and efficiently to such challenges or attacks in appropriate cases.

101. The responses indicate that several states do not have special arrangements in place⁸⁰. In some countries press attacks are a serious issue and take up a considerable amount of press office time⁸¹.

⁷⁷ In Denmark this is done by the Court Administration; in 2006 the Council in Hungary carried out a poll.

⁷⁸ In Denmark, Norway and Sweden, the Court Administration does this; in Sweden some courts have their own arrangements for communications. In the Netherlands the Council does this; each court also deals with this. In Hungary and the Netherlands, this is done by the Council.

⁷⁹ In Estonia, use is made of the press secretary of the Ministry of Justice or the Supreme Court. In Malta, the Commission for the Administration of Justice publishes an annual report to Parliament. In the United Kingdom (England and Wales), there is a communications office attached to the office of the Chief Justice.

⁸⁰ Ireland, Norway, Sweden.

⁸¹ United Kingdom (England and Wales); the response of Lithuania indicates that the Association of Judges plays a more active role than the Council.

(c) *International relations*

102. In general relations between judges in different states are dealt with by judges. For example, in the Netherlands and Hungary, the Council has the responsibility for this. In the United Kingdom (England and Wales), international relations are the responsibility of the Chief Justice.

103. No particular issues seem to arise from this.

(4) Accountability

104. A wrong decision in an individual case has its remedy by way of appeal and the accountability of a judge for a wrong decision is addressed in this way.

105. The issue of financial accountability for money expended by a Council for the Judiciary or Court Administration is covered by provisions for audit.

106. The judiciary has, however, as a separate power, the duty, as set out in the paper, to conduct the business of the courts efficiently and to enquire into and remedy general failings in the judicial system within the scope of its responsibility. Whether the responsibility is that of an autonomous Court Administration or Council for the judiciary, there is an issue of accountability which needs consideration.

107. It is not clear how the different states deal with this issue, but it is an issue that must be addressed in its own right even though some aspects have been considered in earlier sections of this paper, such as discipline, evaluation of judges and the general performance of the judicial system.

Lord Justice Thomas
March 2007