

Colophon

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Contents

COLOPHON	1
CONTENTS	3
1. FROM THE SECRETARY-GENERAL'S DESK	5
2. SEMINAR THE 28TH AND 29TH OF OCTOBER 2004 IN TRIER: ASSOCIATION INFORMATION NETWORK	7
1. ACCESS TO THE ASSOCIATION'S WEBSITE.....	7
2. THE APPOINTMENT OF CONTACT PERSONS AND THEIR ROLE	7
3. INFORMATION ON MEMBER COURTS.....	8
4. PROSPECTS AND DEVELOPMENT OF DEC.NAT AND JURIFAST	8
4.1. <i>HISTORICAL BACKGROUND</i>	8
4.2. <i>CURRENT SITUATION OF THE DATABASES</i>	9
4.3. <i>STRENGTHS AND WEAKNESSES</i>	9
4.4. <i>PLANNED CHANGES TO DEC.NAT</i>	10
4.5. <i>DEVELOPMENT OF JURIFAST</i>	11
4.6. <i>Link with the newsletter</i>	13
4.7. <i>Changes proposed by the General Secretariat</i>	13
4.8. <i>Modifications made on the 1st of March 2005</i>	14
4.9. <i>Future development and combination of Dec Nat and JuriFast</i>	15
5. CREATION OF A FORUM FOR THE RESEARCH AND DOCUMENTATION DEPARTMENTS ...	15
5.1. <i>Background</i>	15
5.2. <i>Current status</i>	16
6. ASSOCIATION DOMAIN NAME	17
7. PUBLICITY FOR THE SITE	18
3. ADVISORY REPORT OF THE COUNCIL OF STATE OF THE NETHERLANDS CONCERNING THE BILL APPROVING THE TREATY ESTABLISHING A CONSTITUTION FOR EUROPE, SIGNED IN ROME ON 29 OCTOBER 2004	19
3.1 A CONSTITUTION FOR EUROPE.....	19
3.2 THE NATURE OF THE CONSTITUTIONAL TREATY.....	19
3.3 THE PRINCIPLE OF SUBSIDIARITY	20
3.4 NATIONAL AND EUROPEAN INSTITUTIONS AS CO-ACTORS	21
3.5 THE COURT OF JUSTICE OF THE EUROPEAN UNION (ECJ)	22
4. PRESENTATION OF THE NEW MEMBERS	23
4.1 THE ADMINISTRATION OF JUSTICE IN CYPRUS	23
4.1.1. <i>General</i>	23
4.1.2. <i>The Supreme Court</i>	24
4.1.3. <i>First Instance Courts</i>	25
4.1.4. <i>The Administrative Jurisdiction of the Supreme Court</i>	27
4.2 SLOVAK REPUBLIC ADMINISTRATIVE JUDICATURE	28

1. From the Secretary-general's desk

The first part of this newsletter focuses on our information network which is based on four pillars - the DEC-NAT and Jurifast databases, the forum and the newsletter. This network constitutes the real core of our Association and represents an excellent tool for achieving the following objectives set out in the statutes:

"The purpose of the Association is to promote within its financial limits exchanges of views and experience on matters concerning the jurisprudence, organisation and functioning of its Members in the performance of their judicial and/or advisory functions, particularly with regard to Community Law.

(...)

Recognising each others' independence, the Association shall promote contacts and exchanges of information between its Members or Observers and with the European Union authorities."

It is therefore very useful for staff from the research and documentation departments of our member institutions to meet up from time to time to discuss ways of improving our information network. As you will see in this edition of the newsletter, numerous suggestions were made at the last meeting on 28 and 29 October 2004 and many of them have already been implemented. However, our systems remain underused (particularly Jurifast and the forum) by magistrates in member institutions simply because they still do not know about them. Meanwhile most of the legal world in general, which could benefit greatly from the information we have gathered, is unaware of the network's existence. The next challenge now is how to raise the profile of our information system and ensure that the maximum number of people both within our association and outside it benefit from the available information.

As you know, the membership of our Association includes six councils of state that fulfil a consultative role on legislation matters. Accordingly, the second section of this newsletter covers the Dutch Council of State's opinion on the bill on the ratification of the Treaty establishing a Constitution for Europe. Given the significance of this issue, we will shortly organise a seminar on the opinions issued by councils of state on this fundamental text.

The third section of the newsletter presents the (administrative) legal systems in two new EU Member States whose supreme courts are members of our Association, namely Cyprus and Slovakia.

What better way to highlight the diversity of our activity and the vitality of our Association than to cover these three issues in one newsletter: the information network, the consultative role of several members on legal matters, and the presentation of new members?

Yves Kreins
Secretary General

2. Seminar the 28th and 29th of October 2004 in Trier: Association Information Network

On 28-29 October 2004 a seminar for the research and documentation departments was held at ERA (Academy of European Law). The main aim of the seminar was to assess the Association's information network and find ways of improving it. The meeting focused on two working papers: a memo by the Secretary-General and a discussion paper drawn up by the Dutch delegation.

The following items, which will be presented in more detail further on, were included on the agenda for the meeting:

1. Access to the Association's website
2. The appointment of contact persons and their role
3. Information on member courts
4. Prospects for and development of Dec.Nat and Jurifast
5. Forum for the research and documentation departments
6. Association domain name
7. Publicity for the site

1. ACCESS TO THE ASSOCIATION'S WEBSITE

The website is hosted by the Belgian Council of State.

Six other members also provide access to the Association's website through links on their own websites.

The Secretary-General expressed his desire for all member websites to carry a link to the Association's site in order to enable wider access to the site in general and the databases in particular.

The representatives of the member courts agreed unanimously that it was appropriate to modify the sites in this way.

2. THE APPOINTMENT OF CONTACT PERSONS AND THEIR ROLE

Each member of the Association has designated a contact person to act as a general representative and who, more specifically, is responsible for dealing with information on case law.

The overriding concern when choosing the contact person must be to ensure continuity:

- in contacts with the member court;
- when collecting decisions and adding them to the database;

- in monitoring the forum.

The contact persons therefore provide an 'image' of their courts for the other members.

Every member appointed a contact person on 1 January 2005. Obviously each member must take the necessary steps to ensure that these data are updated, if need be, by the deadline. (details should be sent to frederik.riebbels@raadsvst-consetat.be)

3. INFORMATION ON MEMBER COURTS

The 'members' section of the Association includes information on each court belonging to the Association:

- name of the magistrate which presides over the court;
- address;
- telephone and fax numbers;
- a link to its website, if applicable;
- a description of the court (composition and structure, legal powers, advisory powers).

The members have been asked to check that the data under this heading is correct and to provide a description of their court (in French or English, no more than four pages) if they have not already done so.

4. PROSPECTS AND DEVELOPMENT OF DEC.NAT AND JURIFAST

4.1. HISTORICAL BACKGROUND

The Association's databases are designed to serve members' information needs regarding legal decisions taken in other Member States relating primarily to the application of Community law.

4.1.1. Dec Nat

The Court of Justice of the European Communities agreed to allow the Association access to most of the information held in its national case law database. The Internet interface which allows public access to this database was developed by the Association's General Secretariat and has been in operation since January 2003.

4.1.2. JuriFast

A proposal to create a rapid reporting system for case law was proposed at a meeting of the research and documentation departments of the Association's courts (Trier, 14-15 November 2002). This system was to be a database contributed to by these bodies directly through the Internet. The system has been in operation since February 2004.

4.2. CURRENT SITUATION OF THE DATABASES

Dec Nat contains references to around 17,000 national decisions.

JuriFast contains 77 national decisions (on 20 October 2004).

4.3. STRENGTHS AND WEAKNESSES

4.3.1. Dec Nat

Strengths:

- *the number of decisions mentioned cover a long period of time (the oldest decision dates back to 1959);*
- *standard management of the data, especially regarding subjects covered;*
- *quality of analysis;*
- *wealth of documentation (references to doctrine).*

Weaknesses:

- *only available in French;*
- *decision texts are not available on the website;*
- *data is not structured with a view to inclusion in a database;*
- *the same case may be included in several files which are not linked to each other.*

4.3.2. JuriFast

Strengths:

- *the most recent data, provided by the courts themselves;*
- *bilingual;*
- *structured database;*
- *direct access to relevant Community decisions and standards;*
- *a summary is quickly made available for each decision.*

Weaknesses:

- *relative lack of uniformity in the way in which subjects are described and summaries are presented;*
- *variable quality of language used;*
- *only a limited amount of data available;*
- *limited search methods available.*

4.4. PLANNED CHANGES TO DEC.NAT

Since the Dec Nat database is directly managed by the European Court of Justice, the Association can only modify those components that are available on the interface. However, various improvements are possible.

4.1. Translation of the database into English

The desire for the Dec Nat database to be translated into English has been expressed on several occasions. The Association's Board, after having ensured that there was no risk of work being duplicated (should the database ever be managed by the Community), expressed its approval and its desire for translation to be undertaken as soon as possible.

The Board decided initially to earmark a budget of €60,000 for this purpose. Since a symposium will not be held in 2005, it will be possible to channel some funds from this year's budget to the translation project.

The decision to have the database translated should be made by the General Secretariat. It is critically important to contract competent translators.

Since the idea of submitting 18,000 documents for translation in their current form had been ruled out, the General Secretariat commissioned a study designed to find ways of keeping the budget earmarked for the translation project within reasonable limits. It was necessary to determine what did and what did not have to be translated and also to identify what could be translated just once and then reinserted back into the database, in order to avoid translating the same expression twice. The results of this study have enabled us to assess – with a large degree of accuracy - the amount of the work to be carried out, which remains considerable in spite of the attempts to reduce the workload. Following various consultations, the General Secretariat suggested giving the work to the specialised translation company which has already done translations for the Association. This work should be completed by the end of 2005.

The matter of updates was also raised (see next point). These will have to be translated regularly.

4.4.2. Updates

The last update issued by the Court was on 30 November 2004. As wished, the Court's documentation department pledged to provide two updates per year.

4.4.3 Link with EurLex

The Celex codes for the provisions of Community law in question appear under a special heading in Dec Nat but cannot be accessed directly. A feasibility study could be carried out into the creation of a small conversion module to provide a link between a Dec Nat file and the provisions of Community law in EurLex.

4.5. DEVELOPMENT OF JURIFAST

4.5.1. Number of decisions listed

The number of decisions which would be included in JuriFast was an unknown factor when the database was first created. The usefulness of such a database, however, primarily lies in the amount of information available. It has been noted that around ten decisions are added to the database each month. It should be possible to substantially increase the number of decisions added to the database whilst also maintaining the required level of interest.

On first of april 2005, 19 of the 25 members had communicated the data required to activate a JuriFast account. It is clearly desirable that all members become involved.

On the same date, of the 19 registered members, only 13 had communicated one or more decisions. The number of decisions entered into the database varied from a single decision to more than thirty. This situation must be improved. For example, it was decided that that all preliminary questions presented by the courts should be mentioned in JuriFast. However, any reading of the Official Journal of the EU shows that this is not the case.

All members are therefore requested to make a special effort, especially those who have registered and have yet to contribute any data.

It is clear, however, that the new members are faced with a unique situation and that less than one year after joining the European Union, their supreme courts have dealt with very few cases involving the application of European law.

4.5.2. Uniformity of data

Because data are entered by the members themselves, it is difficult to ensure that they are always presented uniformly. Experience shows, however, that these differences do not have any great effect on the quality of the database. The following conventions are suggested for future field entries:

- *Courts whose decisions are mentioned:*
 - the decisions mentioned do not necessarily need to be issued by Association member courts but may also be issued by other higher courts.

- *Subject:*
 - maximum limit of 50 words;
 - references to Community law should not be included unless absolutely necessary (this would duplicate details of the decisions);
 - the provisions of national law should not be mentioned unless absolutely necessary.

- *Remarks:*

- the same field is used for French and English therefore bilingual data should be entered;
- data entered should be concise, preferably avoiding reference to national data.

- *Summary:*

- the summary should allow the reader to understand the 'European aspect' of the decision and should be no longer than 1/2 - 2/3 page long (excluding the preliminary question if one exists);
- when a preliminary question is presented, a brief explanation of the case should be provided unless already contained in the question;
- a preliminary question does not generally need to be summarised because it can be found in the published translation of the Official Journal;
- attention must be paid to the quality of language as the summary has to be translated;
- the new numbering system must be used for references to the EC Treaty (Nice 2002).

- *Technical data:*

- use .pdf texts wherever possible;
- do not upload protected .pdf documents and avoid using the "publish in .pdf format" function (or the equivalent) because this prevents users from copying and pasting. Instead use a genuine piece of .pdf printing software.

4.5.3. Discussion of the Dutch delegation's document

The Dutch delegation provided all the members with a discussion document, which lays out its experience and ideas on JuriFast and was designed with the aim of supplementing the working paper issued by the General Secretariat.

Various aspects of the working paper attracted the attention of the members and met with their approval in principle.

It mainly addressed the following points:

- the importance of not being limited to the rulings of a country's own court but also incorporating the rulings handed down by other supreme courts;
- the reasons determining which rulings to include in JuriFast:

- * preliminary ruling: rulings which are to be included systematically, except when dealing with matters relating to the same subject¹;

- *ruling on interesting matters relating to Community law, possibly in relation with

¹It was agreed in the meeting that it was sufficient to mention this in the 'comments' field .

national law;

* the ruling is a good example of the way in which the court applies European law in specific circumstances.

From the discussion, it emerged that there are generally similar reasons for including a decision in both the Dec.Nat and JuriFast databases, since strict standardisation is not really feasible and maybe not even particularly desirable as far as JuriFast is concerned.

- how the summaries are designed:

* since the summary is a document which is physically separate from the decision, it is important to specify what it refers to by indicating the Member State, the court, the particulars of the parties involved and the subject, date and reference of the ruling;

* the summary itself must define the context of the case and provide information on the reasons for the action, the point of view of the court and the provisions of Community law and ECJ case law referred to in the ruling. For preliminary rulings, it is appropriate to mention, as soon as possible, the reference to the publication of the question in the Official Journal of the European Union.

4.5.4. Translations

Translations of subjects and summaries from French into English are provided by a specialised translation company.

Translations of subjects and summaries from English into French are undertaken by the General Secretariat.

The time period for publication of preliminary questions in the Official Journal allows the official translation to be used within a time period similar to that of obtaining a translation, thus simplifying the process and reducing costs.

4.6. Link with the newsletter

The most interesting decisions entered into JuriFast are systematically included in the newsletter. Consequently, it is no longer necessary to submit decisions for publication in the newsletter.

4.7. Changes proposed by the General Secretariat

4.7.1. Posting of a summary of decisions and the development of additional search functions

Under the heading "Latest decisions transmitted", JuriFast displays every decision taken from the dtabank, including those more than a year old.

In future, the screen will show the most recent decisions (ten or fifteen, for example) in the current form (five decisions per page) whilst a simplified list, containing, for example, 25 decisions per page, will show all the decisions contained in the database (including the most recent).

A new "advanced search" screen will also be developed to allow searches:

- by court
- by Member State
- between two dates
- using index marks used in Dec Nat.

The index marks will be allocated by Robert Quintin subject to the approval of the file author.

Details will continue to be posted in the current manner with two exceptions for preliminary files:

- efforts will be made to come to an agreement with the Court so that the file reference number appears as soon as it is allocated;
- a link to the Official Journal will be created to give access to the full text of the questions presented in each of the Union's official languages. This will require an additional column for the necessary code.

4.7.2. Extension of the types of decisions to be included in the database

It was decided that, assuming the implementation of JuriFast in relation to Community legislation produced satisfactory results, its scope would be extended to include national decisions related to the application of the European Convention on Human Rights and the Charter of Fundamental Rights.

In reality, a decision referring to Article 6 of this Convention has already been mentioned in JuriFast (Bundesverwaltungsgericht, Decision 4 B 68.03 of 25/09/2003). This is not a particular problem, apart from the fact that a link with this Convention has not been created yet. The system could be extended to include this Convention. It will also be necessary to extend the search functions to include this Convention.

4.8 Modifications made on the 1st of March 2005

4.8.1. Search screen

Additions have been made to the 'search' screen. In addition to its original functions, which enabled searches based on the provisions of European law, it is now possible to search by:

- preliminary question and/or decisions without preliminary reference;
- Member State;
- date;
- period between two dates (also taking account of the date of the subsequent decision);
- subject.

4.8.2. Screen display, full details of the decision

- summaries in French and English appear as links on the words 'résumé' and 'summary' and no longer as small flags;

- the Member State and the court will be presented in a similar way for two decisions: the decision by the national court asking for clarification on a certain point of European law and the subsequent decision by the national court(separated by a hyphen);
- the subject of the subsequent decision has been removed (it was redundant);
- the subject of the case is now displayed outside the main box, at the top of the page.

4.8.3. Link to Court of Justice documents

It is now possible to create a link to Court of Justice documents on its website if they not directly available on EurLex. Simply inform the Secretariat which will take action if a judgment or order of the Court is not accessible when a preliminary case is being created or modified.

4.8.4. Link Jurifast - Eurlex

JuriFast was modified to allow decisions to be linked to provisions of Community law which are available on EurLex (for example, the European Convention on Human Rights and the texts relating to the EU-Turkey Association Agreement). However, this is quite a technically complex operation, meaning that this type of link cannot be created directly by the user. Instead, it will have to be created upon request by the General Secretariat.

4.8.5. Other changes

The other changes -- still in the planning stage -- are being examined in the General Secretariat.

4.9. Future development and combination of Dec Nat and JuriFast

After freely exchanging points of view, the participants noted that the two existing databases each had their own advantages and their own reason for existing and being developed. The links between the two databases will enable the user to make the best use of their resources without having to carry out pointless searches separately in the two databases. Given this situation, merging the two databases does not seem desirable or even useful. And besides, it would be virtually impossible to do.

5. CREATION OF A FORUM FOR THE RESEARCH AND DOCUMENTATION DEPARTMENTS

5.1. Background

Independently of the creation of a database for national case law, the research and documentation departments decided to set up a forum based on electronic bulletin boards.

The network could primarily benefit research and documentation centres as well as magistrates by allowing them to exchange information on comparative law that is otherwise difficult to access but useful for certain cases.

Secondly, it could be used by departments in institutions working on consultation assignments in order to share information within the bounds of confidentiality applicable to each institution.

Finally, this network could also serve as a discussion forum for any subject of common interest to the research and documentation departments.

Users register for the network online. The application is submitted to the forum administrator (General Secretariat) who then contacts the representative in the relevant institution to request validation of the application. The forum administrator then authorises access. Security is therefore guaranteed.

5.2. Current status

A forum was set up on the Association's website. It has been operational and ready to use since the meeting in Trier in December 2003.

This meeting discussed which individuals should have access to this private forum. Two options were proposed:

- access could be extended to a large number of individuals and include all magistrates in the member institutions;
- access could be limited to employees of the research and documentation departments in the relevant institutions.

The first option was selected and this was approved by the Board.

5.2.1. Design features of the forum

The forum is based on a widely available freeware tool "phpbb". It can be configured to ensure that only registered users gain access. Registration is initiated by the user and requires permission from the administrator. This guarantees privacy.

Several forums can be created in order to group discussion topics together (for example: general affairs, Association activities, administrative disputes, legislation etc.). New discussions can be opened in each forum and the different responses from participants can be grouped together.

The system offers many different functions found on such forums, including:

- the option of the user being alerted by e-mail when a participant has responded to a subject he or she has opened;
- the option of searching forum messages by keyword or author;
- the option of seeing new messages that have been added since a user last visited the site.

Because "phpbb" is widely used throughout the world, the forum's interface is available in all of the European Union's official languages. Each user can therefore use the forum in his or her own language.

Questions and answers should be entered in English since this is the most commonly used language in the member institutions.

5.2.2. Schedule

1. Designation of a contact person in each member institution who is responsible for validating user registrations.
2. Setting up the forums. The General Secretariat could suggest initial categories and experience will show how these forums can be refined and new forums created as necessary.
3. Informing the target audience about the forums and the inclusion of the forums on the Association's website.

The forum has been operational and part of the Association's website since the beginning of 2005. By 1 April 2005, 33 users had registered, leaving 19 messages on 14 subjects.

The following categories were created by the General Secretariat:

- *General*

Activities of the Association

Questions and reports on the activities of the Association.

Activities of the member courts

Questions and reports on the activities of the member courts.

- *Administrative courts*

Administrative actions

Do you want to ask your colleagues in other member courts a question on administrative actions? Do you have an important piece of information on the subject? These discussions take place here.

- *Councils of State*

Advisory powers

Do you want to ask your colleagues in other member courts a question on advisory powers in legal matters? Do you have an important piece of information on the subject? This is the place to do it.

The members are encouraged to spread the word about the forum within their courts so that it can become an efficient information network. The success of this kind of project depends directly on the number of active users involved.

6. ASSOCIATION DOMAIN NAME

One or several acronym(s) must be chosen and the process for registering .eu domain names must then be initiated and followed up.

The domain name juradmin.eu has already been pre-registered. In mid-November, the priority registration phase will be concluded and the Association will then be able to confirm this registration. The European Union has decided to give priority to trademarks that have already been registered but this is unlikely to cause any problems for juradmin.eu.

The European Commission has been slow to implement this and at the moment it is likely that the domain registrations for the general public will begin sometime between January and March 2006.

7. PUBLICITY FOR THE SITE

The participants agreed that too much publicity for the site in its early stages (particularly for JuriFast) could be counterproductive. As things stand, the information that the users can find here is such that it seems appropriate to improve the 'visibility' of the site, essentially by making the most of the opportunities provided by the relevant search tools on the Internet. The translation of Dec.Nat makes this publicity even more important.

However, it has also proved essential for everyone to encourage the members of their own courts to consult and use the site via the Intranet. Information meetings have already been organized in some courts and it would certainly be useful to systematize them since the amount and quality of information found on the site are at stake. Publicity within each Member State is also appropriate and certain methods have been mentioned such as a letter to the administrative authorities or cooperation with magistrate conferences. It is also clearly necessary to make contact with the legal world as a whole (universities, students, professional associations and so forth).

3. Advisory report of the Council of State of the Netherlands concerning the bill approving the Treaty establishing a Constitution for Europe, signed in Rome on 29 October 2004

3.1 A Constitution for Europe

In its advisory report on the bill approving the Treaty establishing a Constitution for Europe, the Council of State concentrated on the Treaty's significance as the source of a European constitutional system which assigns a key role to the citizens of the Union along with the member states. Among the most important questions raised by the Constitution for Europe is the relationship between the European constitutional system and that of the Netherlands. The Council advises the government to examine the effects of European integration on the constitutional framework in the Netherlands, and to consider how the decision-making processes in the European and national legal orders can be linked more systematically than in the past.

A number of elements of the Council's detailed advisory report have been selected for inclusion here. The sections below deal consecutively with the nature of the Constitutional Treaty, the principle of subsidiarity, the role of national institutions as co-actors in the development of European law and policy, and the problem of the Court of Justice's workload.

3.2 The nature of the Constitutional Treaty

Where the nature of the Constitutional Treaty is concerned, the Council pointed out that on the one hand it aptly concludes and codifies fifty years of European institutional development, while on the other hand it ushers in a new departure. On this new departure, the Council writes:

"Viewed as a starting point for further development, the Treaty is primarily significant for what it establishes: a *constitution*, which, as a binding constitutional document encompassing the entire constitutional order, is without precedent in the political history of Europe. More than the existing treaties, the Constitutional Treaty, through the way it is structured and organized, emphasizes the *citizens* of Europe, as those by whose will – albeit in parallel to that of the states – the Union is established, according to Article I-1. For the first time, the fundamental rights of citizens of the Union are to be systematically anchored and protected in the Union's primary law. Various provisions strengthen the democratic nature of the constitutional system, while at the same time it is significant that jurisdiction is vested in the Court of Justice of the European Union (ECJ) regarding European decisions that are made, for instance, in the area of the criminal law. This strengthening of the European Union also brings the concept of 'citizenship of the Union' into sharper focus: the more vigorously and noticeably the Union manifests itself, the more significance EU citizenship will acquire as *European* citizenship (cf. Article I-10, para. 1), provided that democracy and the legal order are safeguarded.

This strengthening of the Union includes framing a common European foreign and defense policy and investing the Union with full legal personality. Furthermore, the simplified revision procedures in

Articles IV-444 and 445 underscore and strengthen the independent nature of the Constitutional Treaty and distinguish it from the usual concept of a treaty, even though the Constitution as such has its roots and foundations in the law of treaties. It may be added that the Treaty significantly enhances the level of democracy of the European Union and the transparency of European decision-making. It gives far more powers to the European Parliament, and it accords greater recognition to the role of national parliaments as co-actors in the European decision-making process, especially in the Protocol on the role of national Parliaments in the European Union.

That the Union is based on citizens and states also follows from the way the Treaty was prepared and negotiated, in a climate of openness quite unprecedented in the European context. Both Conventions – the first, presided over by Roman Herzog, which drafted the Charter of Fundamental Rights (now part II of the Constitution), and the second, presided over by Valéry Giscard d'Estaing – included representatives of the national parliaments (something hitherto unheard of in negotiations on a treaty). Citizens too played a substantial role in this process.

The ambivalent features of the Constitution for Europe make it clear that the European Union, as things now stand, does not belong in the traditional category of federal states or confederations, but is rightly defined as a Union of the citizens and states of Europe (Article I-1) with its roots and foundations in the law of treaties.

In transferring certain powers to the European Union, the member states have relinquished part of their sovereignty, in exchange for which they have received a say in the larger whole.

The Constitutional Treaty for Europe emphasizes this close relationship between the European Union and the member states' systems, for instance in its provisions on the involvement of national parliaments (including testing compliance with the subsidiarity principle) in the European decision-making process. But this is not the only manner in which the interdependence of the member states and the Union is expressed. The Union cannot function without the member states, and the member states can no longer function without the Union. This means that the Constitution for Europe must be viewed and applied in combination with national constitutional arrangements and practices. This does not detract from the Constitution for Europe's status as a fully-fledged constitution, but it does emphasize the uniqueness of the European Union and of this constitutional document".

3.3 The principle of subsidiarity

In relation to the principle of subsidiarity, which is laid down *inter alia* in Article I-11, para. 3, Article III-259, and in the procedures in the Protocol concerning the role of national parliaments in the European Union, as well as in the Protocol on the application of the principles of subsidiarity and proportionality, the Council pointed out that this principle does not merely set limits, as might be inferred from the texts concerned, but also imposes obligations.

On this subject, the Council observed:

"One of the principles enshrined in the Constitution is that of subsidiarity. In the context of the development of European constitutional law, this concept has been defined increasingly narrowly as a basis for limiting European powers in relation to national or sub national powers. But the principle of subsidiarity does not just define limits; it also imposes obligations.

Subsidiarity is above all a criterion used in appraisals, on the basis of which it is decided in what cases the adequate fulfillment of public responsibilities must be ensured by public authorities – and by which layer of public authority – and in which cases such matters can just as well (or better) be left wholly or in part to civil society. This principle also states that where the public interest is at stake, public authorities cannot choose to stand on the sidelines. What is needed is a proper division of powers not just between different layers of government, but also between government and civil society organizations. This means that the principle of subsidiarity requires, more than anything, a good division of powers in the field of protecting public interests, in the private as well as the public sector. The Council considers it important, in 21st-century Europe, not to lose sight of these crucial dimensions of the principle of subsidiarity, and advises the government to discuss this matter in its explanatory memorandum.

The meaning ascribed to the principle of subsidiarity is crucial to the new role that the Constitutional Treaty envisages for national parliaments in safeguarding subsidiarity and proportionality in the EU's actions. This role is worked out in greater detail in the protocols referred to above. In the new system, national parliaments must be kept informed about the European decision-making process. It is they that will test compliance with the subsidiarity principle. The proper screening of proposed European legislation for compliance with the subsidiarity principle will not necessarily erect a barricade preventing matters from being regulated at EU level. Rather, it will often involve the complementarity of norms developed by the EU, by the member state (or some part of it) and by civil society and professional organizations.

The decisive question for European legislation should be how the coexistence of a multiplicity of national legislatures can be assured in a single common market and a single area of freedom, security and justice.

Once a country has opted for integration into the European Union, it is important that its legislative bodies should see themselves not just as consumers of European law, and as such subject to its binding force, but equally as co-actors in the development of the legal systems of the member states and the European Union, which are interwoven in so many ways. After all, the European legal order cannot be developed and be effective without the cooperation of the legislature, executive authorities and courts of the member states".

3.4 National and European institutions as co-actors

In the context of co-actor ship of national and European institutions, the Council dwelt in particular on the changing role of the national state institutions, in relation to the European institutions, in the formation of European law. Regarding the situation in the Netherlands, it noted:

"The changes whereby all sorts of things are no longer controlled exclusively by autonomous national law but by a combination of Community law and national implementing legislation have proliferated such that the co-actor ship of European and national legislatures must now be seen as a feature of the landscape. This 'Community 's legislative chain' must be examined in its entirety to decide what role Dutch actors must play at each stage, from the preparation of European legislation to the publication of national implementing legislation. In general, this means that if the Netherlands is to exert effective influence on decision-making, the debate on its position must be conducted at the earliest possible stage. This applies not only to policy-making at the ministries, but also to the States General, advisory bodies, civil society organizations and other parties involved in decision-making.

The Council therefore considers that it would be desirable to introduce a more institutionalized cooperative arrangement between the government and the States General into the Community's legislative chain".

3.5 The Court of Justice of the European Union (ECJ)

"In relation to the ECJ, the institutional changes made by the Constitutional Treaty are modest in nature. However, the Treaty radically expands the ECJ's powers in a number of areas, such as the criminal law. This will further increase its workload. The Council has repeatedly expressed its concern about the increasing length of time it is taking for cases to be heard by the ECJ, and the consequences for the administration of justice in Europe. It has urged far-reaching changes and made several suggestions to improve matters. Those who fear that the legal protection system will grind to a halt, may well be proved right in the foreseeable future. The first thing to be done to tackle this problem could be to use the scope created by the Treaty of Nice and the supplementary measures for which provision has now been made.

The Council welcomes the decision to introduce a specialized court to hear cases involving European officials. Several changes have already been made to the ECJ's Rules of Procedure within the scope created by the Treaty of Nice, and the ECJ itself has taken internal measures that will expedite proceedings. Given the expected influx of cases, however, these measures fall far short of what is required.

The Council observes that the 'Hague Programme' asks the Commission for a proposal to amend the ECJ's Statute to ensure that requests for preliminary rulings concerning the area of freedom, security and justice are dealt with promptly and correctly.² The Council advises the government to address this matter in the explanatory memorandum on the act approving the Constitutional Treaty. The government should explain how this all-important speed in the judicial system can be achieved without causing unacceptable delays elsewhere. The Council will also consider other possible ways of reducing the time taken by proceedings."

² Annex I to the Presidency Conclusions (Brussels) of 4/5 November 2004, point 3.1.

4. Presentation of the New Members

4.1 THE ADMINISTRATION OF JUSTICE IN CYPRUS

Authors : Judge Yiannakis Constantinides and Judge Takis Eliades of the Supreme court of Cyprus

4.1.1. General

(i) Historical background

The island of Cyprus in the northeastern part of the Mediterranean lies forty miles away from Asia Minor, sixty miles away from Syria, about two hundred miles away from Egypt and the Greek island of Rhodes. This strategic location rendered Cyprus the envy of its neighbors which led to the continuous invasion and occupation of the island by various conquerors. This situation lasted up to the 19th century when Turkey ceded Cyprus to the English government and the island became eventually a British colony. Eighty years of British rule were terminated in 1960, when Cyprus became independent.

(ii) The law applicable

As a result of the British rule from 1878 until 1960, the English legal system was introduced and many laws were enacted in an effort to transplant the doctrines of common law and equity in Cyprus. Clear examples of these are afforded by the adoption of the Criminal Code, the Contract Law and the Civil Wrongs Law. Practical and wider considerations advocated the preservation of the English legal system after 1960, when Cyprus became independent. So, by virtue of the provisions of s. 29(I)(b) of the Courts of Justice Law (14/60) all the Courts apply

- *The Constitution of the Republic,*
- *The laws which have been retained by virtue of Article 188 of the Constitution,*
- *The principles of Common Law and Equity, and*
- *The English Laws which were applicable in Cyprus before 1960.*

(iii) The Judges

- *Supreme Court*

The President and the other 12 Judges of the Supreme Court are appointed by the President of the Republic and they hold office until they attain the age of 68. A Judge of the Supreme Court shall be retired on account of such mental or physical incapacity or infirmity as would render him incapable to discharge his duties, and may be dismissed for misconduct. By virtue of a custom, before the President of the Republic makes an appointment to the Supreme Court, he seeks the views of the Supreme Court as to who should be appointed. The suggestions of the Supreme Court recommending

the appointment from Judges of the first instance courts, are usually adopted. This practice was consistently followed.

- *First instance courts*

In order to qualify for appointment as a District Judge, one has to be a registered advocate with six years practice in the legal profession and of high moral standing. First instance judges are appointed, transferred, promoted by the Supreme Council of Judicature, which is composed of the members of the Supreme Court. First instance Judges hold office until they attain the age of 63.

4.1.2. The Supreme Court

The judicial system in Cyprus is based on the provisions of the Constitution of 1960 which established Cyprus as an independent state. The Constitution of Cyprus includes the relevant provisions of the European Convention of Human Rights and Fundamental Freedoms (which was adopted in Cyprus in 1962), including amongst others

- The right to life and corporal integrity,
- The prohibition of torture,
- The right to liberty and security of a person,
- The right to a public and fair trial,
- The right to freedom of thought, conscience and religion,
- The right to freedom of speech and expression,
- The right to property, and
- The right to equality before the law.

The Supreme Court has the following jurisdictions:

- *Appellate Court*

The Supreme Court has jurisdiction to hear and determine all appeals from all inferior courts in civil and criminal matters. The Court can uphold, vary, set aside or order the retrial of a case as it may think fit. The Court can draw its own inferences from the facts drawn by the trial Court and in certain exceptional cases may receive further evidence.

- *Administrative matters*

The Supreme Court as the only administrative court in the country, has exclusive jurisdiction to adjudicate on any recourse filed against a decision, act or omission of any organ, authority or person exercising any executive or administrative authority on the ground that it violates the provisions of the

Constitution or any law or it is in excess or in abuse of any power vested in such organ, authority or person.

- *Prerogative Orders*

The Supreme Court has exclusive jurisdiction to issue the prerogative orders of habeas corpus, mandamus, prohibition, quo warranto and certiorari.

- *Admiralty*

The Supreme Court has jurisdiction to hear and determine admiralty cases.

The original jurisdiction is exercised by a single judge and an appeal against his decision lies to the Full Bench of the Supreme Court.

- *Elections*

The Supreme Court as the Electoral Court has the power to hear and determine petitions concerning the interpretation and application of the Electoral Laws.

- *Constitutional matters*

The Supreme Court has jurisdiction to adjudicate as to whether a law is compatible with the provisions of the Constitution or any conflict of power or competence which arises between any organs or authorities of the Republic. In addition the Supreme Court has jurisdiction to hear a recourse by the President of the Republic as to whether a law passed by the House of Representatives is repugnant or inconsistent with any provision of the Constitution.

4.1.3. First Instance Courts

First Instance Courts include the District Courts, the Assize Courts, the Rent Control Tribunal, the Industrial Tribunal, the Military Court and the Family Courts.

4.1.3.1. The District Courts

- *Civil Jurisdiction*

There are six District Courts, one in each of the six towns of the island. Two of them (the Famagusta and the Kyrenia District Court) are since the Turkish invasion of the island in 1974, under Turkish occupation and their jurisdiction has been taken over by the Nicosia and Larnaca Court. Each District Court has jurisdiction to hear and determine all civil actions,

- Where the cause of action has arisen wholly or in part within the limits of the district where the Court is established, or
- Where the defendant at the time of the filing of the action resides or carries business within the limits of the Court.

- *Criminal Jurisdiction*

A criminal offence may be tried by a President of the District Court, a Senior District Judge or a District Judge sitting alone or by an Assize Court. A single Judge has jurisdiction to try summarily all offences punishable with imprisonment for a term not exceeding five years or with a fine not exceeding €50.000 or both.

In addition to the above a Judge may order a person who has been found guilty of a criminal offence to pay compensation not exceeding €3.000 to the person injured by the offence. It must be noted that a Judge with the consent of the Attorney-General can assume jurisdiction and try summarily any offence. In such a case the punishment to be imposed cannot exceed the punishment and compensation which he is otherwise empowered to impose.

4.1.3.2 The Assize Court

An Assize Court (there are now four Assize Courts) is composed of three Judges and has jurisdiction to try all the criminal offences which are punishable by the Criminal Code or any other law and has the power to impose the maximum sentence provided by the relevant law.

4.1.3.3 The Rent Control Tribunal

The Rent Control Tribunal (there are now three Rent Control Tribunals) has jurisdiction to try all the disputes which arise from the application of the Rent Control Laws, which include amongst other matters, the payment of rent and recovery of possession. A Rent Control Tribunal is composed of a President (who is a judicial officer) and two lay-members representing the tenants and the landlords

4.1.3.4 The Industrial Tribunal

The Industrial Tribunal (there are now three Industrial Tribunals) has jurisdiction to entertain applications by employees for unjustified dismissal and redundancy payments. It is composed of a President (who is a judicial officer) and two lay-members representing the employers and employees.

4.1.3.5 The Military Court

The Military Court has jurisdiction to try military offences under the Criminal Code and any other law committed by members of the armed forces. It is composed of a President (who is a judicial officer) and two assessors who are appointed by the Supreme Council of Judicature from a list of military officers.

4.1.3.6 The Family Courts

The Family Court (there are three Family Courts) has jurisdiction to take up petitions concerning the dissolution of marriage as well as matters which relate to parental support, maintenance, adoption and property relations between spouses provided that the parties are residing in the Republic.

By virtue of the provisions of Article 111 of the Constitution family matters were adjudicated by ecclesiastical courts, in an effort to safeguard the rights of the Greek Orthodox Church and other

religious groups like the Maronite and Latin Communities (which belong to the Catholic Church) and the Armenian Community (which belongs to the Armenian Church). Article 111 has been amended by the First Amendment of the Constitution Law (Law 95/89) which provides that every matter relating to those matters which belonged to the Greek Orthodox Church, is to be adjudicated now by the Family Court. The Family Court is composed of the President and two lawyers of high professional and moral standing. The President is appointed by the Greek Orthodox Church and the other two members by the Supreme Court. As the Greek Orthodox Church, aggrieved by the removal of its jurisdiction to a civil court, failed and/or omitted to appoint the President of the Family Court, in accordance with the provisions of Law 95/89, the Supreme Court has appointed the President of the Family Court.

The situation is rather delicate and various attempts to bridge the difference between the church and the state, have so far failed.

Jurisdiction to determine religious matters, divorce and judicial separation proceedings and matter affecting children (as for example legitimacy, maintenance and education) of the Turkish Cypriots was given to the Turkish Family Courts (Chapters 338 and 339). However, as a result of the Turkish invasion of Cyprus in 1974, the application of the relevant laws concerning Turkish Cypriots was suspended by various laws as long as the anomalous situation resulting from the Turkish invasion continues.

4.1.4. The Administrative Jurisdiction of the Supreme Court

By virtue of the provisions of Article 146 of the Constitution, the Supreme Court of Cyprus has exclusive jurisdiction to review judicially every administrative act, decision or omission. Such jurisdiction covers the whole area of governmental and administrative action in the public sphere, but excludes acts, decisions or omissions of public authorities relating to the private rights of individuals.

An application for the annulment of an administrative act will be entertained, provided that the following prerequisites are satisfied:

- *The act is an executory one. The administrative act must be an executory one productive of legal consequences affecting the rights or obligations of the subject. Preparatory acts, acts informing as to the state of the law and acts confirmatory of earlier executory decisions cannot form the basis of review .*
- *A legitimate interest is adversely affected. A legitimate interest of the subject must be prejudicially affected directly by the act or omission. The concept of "interest" is not similar to the concept as applied in civil law. It must be concrete of a financial or moral nature. In this respect the subject's interest must be distinguished from the interests of the general public. No actio populari is allowed.*
- *Proceedings are instituted within 75 days. The proceedings for annulment must be taken within 75 days from the date when the decision challenged is published, or if not published, from the day when it comes to the knowledge of the applicant.*

In the exercise of its administrative jurisdiction, the Supreme Court may confirm an administrative act or decision or declare it as null and void. In the case of omissions, it may declare that such omissions ought not to have taken place and that whatever has been omitted should have been performed. Any decision given is binding on all courts, organs or authority and must be acted upon by those concerned.

It must be noted that the jurisdiction of the Supreme Court is limited to the review of the legality of the act and cannot go into the merits of the decision under review and substitute the decision of the administrative organ with its own decision. Such an act would violate the strict separation of powers safeguarded by the Constitution. Decision making in the field of administration rests entirely within the province of the executive branch of the government.

4.2 Slovak Republic Administrative Judicature

Author: Sergej Kohút, Chairman of Administrative Board

Administrative judicature in the Slovak Republic is an integrated part of courts; it is therefore not an autonomous system.

The Civil Procedure Act establishes the subject matter jurisdiction of separate courts within the structure of judicature in Slovakia, thus the District Courts are Courts of First Instance, Regional Courts as Courts of Second Instance and finally Supreme Court of the Slovak Republic.

Regional courts provide for the principal link within administrative judicature in terms of subject matter jurisdiction.

Courts of first instance are competent in matters concerning examination of decisions taken by administrative authorities, subject to explicit obligation imposed by law. Such acts, however, are only few.

Supreme Court of the Slovak Republic holds the subject matter jurisdiction in the following:

- Examination of decisions taken by the state central administration authorities and other authorities with the nation-wide competences, subject to explicit obligation imposed by law. Under such circumstances it assumes the role of court of first instance.
- Decision taking on recourses against decisions by Supreme Court of SRI where this court assumes the role of court of first instance.
- Decisions on recourses against decisions by courts of second instance
- Regional Courts providing the court case concerns the subject matter of administrative nature.
- Acts and decision taking on extraordinary appeals submitted by Attorney General of SR in cases where decisions were taken before the 31st of December 2003.

There is a great number of dossiers of administrative nature which are currently dealt with by courts in Slovakia and these involve, as concerns the subject matter, as many as 90 different acts of material law and the same number of law concerning procedural nature, thus the scope is very large.

Administrative authorities proceed in accordance with Act No. 71/1967 Coll. of Laws while taking decisions on respective subject matters, adhere to a precept of procedure of their own or combine these with administrative rules of procedure.

The courts proceed pursuant to the Civil Procedure Act that has a separate section - Section V - designated as "Administrative Judicature", which is crucial for decisions of the administrative judicature. Should these separate provisions fail to provide for a direct solution of some issues, the court shall revert to general sections of the Civil Procedure Act.

In view of the organizational structure, it is Supreme Court of the Slovak Republic that is deemed to be the superior body of administrative judicature. This court has established a special administrative panel for decisions in administrative matters.

The Regional Courts have established the separate division for this purpose. Therefore, it can be concluded that judges are specialized in administrative judicature as a whole, not according to separate sectors.

In addition to decision taking related activities the Administrative Board of Supreme Court of the Slovak Republic issues judicative documents and comments in matters of administrative nature and organizes seminars and training sessions for judges involved in administrative judicature, publishes relevant literature and along vertical line this court assumes the role of a central court with in administrative judicature.

Presiding Judge is the head of the Administrative Board.

The Administrative Board has several senates consisting of three judges and one senate of five judges and the latter takes decisions on appellate proceeding against decisions by Supreme Court of the Slovak Republic.

Currently, there are 16 judges who are members of the Administrative Board of the Supreme Court of the Slovak Republic. This number, however, is not adequate compared to rising number of cases and performance of other tasks assumed by the board.

Ministry of Justice of the Slovak Republic as the central authority for administration of courts and legislation body has been preparing an amendment to the Civil Procedure Act dealing, in addition to other matters, also in respect of the Administrative Board, whereby all cases of the administrative nature should be first dealt with by a court of first instance and Supreme Court of the Slovak Republic should take decisions exclusively with regards to recourses and extraordinary remedies.

This draft proposal has not yet been accomplished in terms of legislative completeness and submitted to the National Council for the approval process to begin.

In administrative judicature, the courts examine, following the judicial action, or recourses, the legitimacy of decisions and proceedings taken by the state administration authorities and take action in case these authorities show unreasonable inactivity, against unlawful steps by the state administration, proceed in cases related to enforceability of decisions taken by foreign administrative authorities and cases concerning elections.

The principal rule in connection with examination of decisions of administrative authorities by courts is based on the verification whether acts by administration authorities and their decisions are compliant with respective law, or whether the decision these authorities have issued establish, modify or cancel authorizations or obligations of physical persons or legal entities, or whether these interfere directly with rights, interests protected by law or obligations by persons and legal entities.

The above activities involve investigation of respect to human rights as defined in Constitution of the Slovak Republic and decisions by the European Court of Human Rights in Strasbourg.