THE INTERNATIONAL ORGANIZATION FOR JUDICIAL TRAINING IOJT	4th International Conference on the Training of the Judiciary 25 to 29 October 2009 Sydney Australia

Organising Pan-Continental Legal Training - Building Connections to Share Learning

The European Experience

Judge Victor Hall

Secretary-General, Europeanan Judicial Training Network

1. A Network

EJTN Mission Statement:

The EJTN, a body which is independent of all other organisations, comprises the institutions specifically responsible for the training of the professional judiciary within the European Union (EU). It was founded on 13th October 2000, and is a non-profit making international organisation (AISBL) under Belgian law with its headquarters in Brussels. It promotes and organises training programmes with a real European dimension for members of the European judiciary and their trainers. Each year, in conjunction with national training schools, it prepares, circulates and co-ordinates the implementation of a Catalogue containing cross-border training opportunities for other members of the Network. The European Commission has recognised its monopoly for the implementation of the Exchange Programme, which enables participants to experience and learn about other European systems. It is developing a role in providing linguistic development of members of the judiciary Through development of its website it is aiming to provide a distance learning capacity for its members and to provide them with the latest technologically accessed tools to acquire a wide knowledge of the European area of freedom, security and justice. Its website will become a virtual repository of training materials including didactic materials in all forms and formats. It is the only European body which has in membership the vast majority of European judicial training schools, many of whom are bodies independent of national political structures. [1]

[1] From the *EJTN Strategic Plan 2007-2013*

- The European Community is the political outworking of the belief that by living in harmony with neighbouring states, and by co-operating closely in matters relating to security, justice and fundamental freedoms, the excesses of the past will be put aside for the benefit of all citizens.

- At its heart is the law of the European Communities for, as in everything, the Rule of Law is perceived to be fundamental to the establishment and running of the Union. By applying the same laws at the European level, it is perceived that across a continental land mass with a present population of 800 million people in those countries that are in membership, consistency will permit of certainty in relations inter-State and inter-citizen.

- The EU is not yet fully inclusive

- 27 members of the EU 47 countries in the Council of Europe includes the 27 EU countries (nearly all countries in Europe in the CoE[2])

- By various decisions of the Court of Justice of the European Communities ("ECJ" - seat in Luxembourg) the law of the European Communities (Directives and Legislative acts of the European Parliament and decisions of the ECJ itself) European Law has come to have a position of supremacy over the national laws of the Member States such that where there is a conflict the provisions of European Law will apply. Does not yet have the force of Community treaty law but will do under Declaration 17 Treaty of Lisbon (originally Article 1 of the proposed Constitution) if this ever comes into effect.

Genesis and subsequent political iterations of the Network

- Article 61 of the EC Treaty (progressive establishment of an area of freedom, security and justice including measures in the field of judicial cooperation in civil and criminal matters)

- Call made during the December 2001 Laeken European Council, for the rapid setting-up of a European network to encourage training for the judiciary, with a view to helping to develop trust between those involved in judicial cooperation;

- The Commission's Resolution of 24 September 2002 on the establishment of a European Judicial Training Network (EJTN);

- The Hague Programme for strengthening freedom, security and justice in the European Union, adopted by the Brussels European Council on 5 November 2004,

[2] With the exception of Belarus (human rights concerns), Kazakhstan (human rights concerns), and for recognition issues: Kosovo, Abkhazia, South Ossetia, North Cyprus, Nagorno-Karabakh, Transnistria and the Holy See (the latter is however an observer).

and the Commission's communication of 10 May 2005 on "The Hague Programme: Ten priorities for the next five years" . It contained a statement by the European Council that *an EU component should be systematically included in the training of judicial authorities*. While this does not necessarily reflect the supremacy principle that should be uniform across law making bodies and thence to training schools, it reflects the concerns of the Council that insufficient was being done then.

- The Commission's communications of 29 June 2006 on judicial training in the European Union;

- Resolution on judicial training passed under the French Presidency (Presidency currently rotates among member states every 6 months) on 24 November 2008

- The Stockholm Programme likely to be implemented in December 2009 under the present Swedish Presidency making judicial education a major priority

- Articles 81(2)(h) and 82(1)(c) of the future Treaty on the Functioning of the Union, as inserted by the Treaty of Lisbon, which would provide a legal basis for measures aimed at providing support for the training of the judiciary and judicial staff.

<u>"Network" and mutuality</u>

- Central to the expression of political will is the concept of acting together across a broad spectrum - idealistic
- To date, political consensus required but if the Lisbon Treaty finally comes into force qualified majority voting will be introduced across the EU
- Mutuality extends to the judicial arena with the concept of mutual recognition of judgements notwithstanding national differences

2. Implementation

- Creation of the post of a full-time Secretary General and, since 2005, an employed secretariat.
- Offices in Brussels – registered in Belgium as an AISBL with Articles of Association and Rules of Procedure
- Annual General Assembly – 2 days hosted by current holder of the Presidency
- Steering Committee (9 member states)
- Working Groups (each with a convenor elected by the General Assembly):

    - Programmes WG
        - Sub-Groups:
            - Criminal
            - Civil
            - Training the Trainers
            - Linguistics
        - The Catalogue
        - Conferences and workshops (including with other organisations)
        - Responsible for submissions under EU Commission calls for projects
        - Framework partner of EU in criminal law matters

    - Exchange Programme WG
        - EU sponsored and with a recognised European monopoly
        - Piloted 2005
        - C 1,300 judges have exchanged
        - Short, medium and long-term exchanges (ECJ, ECtHR and Eurojust)
        - Expansion plans and linguistics

    - Technologies WG
        - Building capacity for e-learning conjoined with face-to-face training
        - Responsible for the web-site (www.ejtn.eu)
        - Press and publicity
        - e-newsletter
        - Query – judicial competences in technology if required?

    - External Relations WG
        - Liaison with accession States/examination of applications
        - World-wide contact point for EJTN
        - Working with European and other bodies to promote common approaches
        - Promulgation of training events with other European bodies

3. Challenges

Politics drives the Union – quaere independence of the judiciary?

- On a practical, central level is the principle of mutual recognition of judgements and decisions of other jurisdictions across Europe
    - Allied to this, and inseparable from it, is the principle of mutual enforcement of judgements in each member state regardless of where the judgement was handed down
    - Before any of this can happen, however, there must exist such mutual confidence between the judiciaries of the European Union that enforcement of decisions made elsewhere will be as second nature to the judge receiving a request – and that is where the system is likely to break down at the present time
    - Mutual confidence carries with it a recognition that those judges and prosecutors from systems other than one's own have a training and expertise in the legal jurisprudence that is being applied that is broadly similar to one's own such that it is possible to place reliance upon the judicial act that has been carried out without more ado or with only the most perfunctory examination.
    - The principle of common judicial curricula uniformly applied to a standard that is recognisably competent is likely to be of critical importance.
    - Mutual confidence might also depend upon an assurance that the decision which is sought to be enforced has been taken at a level, and by a judge with sufficient experience, that is commensurate to the seriousness of the subject-matter involved.
    - Such structural matters involve considerations more far-reaching than matters of training but inevitably have a part to play in the debate since they cannot be overlooked. Why do we train, whom do we train and to what end do we train? What is the desired end result of the training outside the micro level?
- Mutual confidence must also depend upon the national practices established for judicial training. In relation to induction training. Every member state has a formalised process of such training in which elements of European Law are woven to a greater or lesser degree. Whether or not this is comprehensive and would satisfy the standards applied by national examining boards is perhaps more questionable.

- Insofar as the principle of supremacy is applied by national parliaments and law making bodies, the law as taught on these courses should embody the latest European standards without necessarily mentioning them specifically. Indeed, it might be said that courses entitled "European Law" or some similar epithet might be overlooking the melding of the two law systems that should be happening nationally save where it teaches as discrete subjects the institutions of the EU, its Courts and the procedures for getting to those Courts e.g. for a preliminary ruling or the new urgent procedure for preliminary ruling from the ECJ.

- Of equal concern is the practice of some member states to make continuation training voluntary or to make it compulsory only for judges up to a certain level while exempting those above that level. The potential for gaps within the personal legal knowledge of judicial figures, going right up to senior figures, may be profound, especially where matters of European Community law is concerned.

    - On a national level it might be argued that the higher up the system one practices, the less one is likely to miss, but the same cannot be said with European Law, especially in those cultures where knowledge of such law is not regarded as a priority. In those countries which have a system of *stare decisis* or judicial precedent, such precedents might overlook relevant aspects of European jurisprudence and be used through later decisions to develop the law away from European judicial norms.

    - It is difficult to perceive mutual confidence growing in a soil which does not have uniformity of application or training as one of its nutrients.
    - "Judge release time" – potentially perjorative phrase which implies that a judge who is being trained is not properly at work c.p. other professions;
    - Time made available for training varies widely from country to country

- Governance involves 27 Member States
    - Consensus politics
    - Limits vision because it has to be practical to all
    - Differential in membership fees can cause friction – larger fee>greater say?
    - Capturing the vision
    - Linguistic differences – English and French are the 2 official languages but there are 24 different national languages (query the number of dialects!)

- Participation
    - Varying levels of participation in Member States
    - Depends in part on size of Member States
        - Some smaller states have few resources to devote to training their own nationals let along provide for European activities
        - Some larger States are more self-sufficient and do not engage fully with Network activities
        - Organisational structure may cause imbalance:

- Committees are: Steering Committee (9 Member States); Working Groups (Programmes (14 Member States plus 4 sub groups); Exchange Programme (10 Member States); External Relations (8 Member States) and Technologies (9 Member States)
- In practice some countries are represented on multiple committees while some members do not participate in any
- Imbalance is caused not by the structure but by the inability/unwillingness of some States to involve themselves while recognising the importance of being a part of the Network

o It is a vision thing! Unless the vision of what can be done if all grow and develop the Network together is grasped by the Members, participation is likely to be uneven. Many different factors are at work:
  - Traditional national traits
  - History
  - Political experience both present and past
  - Culture(s)
  - Internally perceived needs
  - The degree to which the European ideal has been grasped by those responsible for national judicial training
  - A slow process of integration with the need to meld the above factors so that everyone is moving forward together

Conclusion

The political, social, juridical and cultural body that is the European Union is a growing and evolving institution. It has yet to gain the acceptance of all its citizenry. Opposition remains. Politically, the concept is being driven forward and slowly opposition is reducing. It is still comparatively young. In the fullness of time it may well be that the integration that is foreseen by the politicians is achieved. The legal systems of the member states have already undergone a sea change as the full implications of membership have become apparent. With the likely acceptance eventually of the supremacy of European Law enshrined in a legal act, judicial authorities across the continent will have to be more aware of, and more trained in, the principles of the jurisprudence than they are now. It will not be enough to rely on an assumption that national legislation is in compliance for the subject areas are too large for that ever to happen in a fully comprehensive fashion.

The challenges are exciting and encompassing. It is in the resolution of them that true progress will be made.

Judge Victor Hall
Secretary-General
EJTN
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