

Palermo February 2008

MEDEL'S AUDIT PROJECT CONCERNING JUDICIAL SYSTEMS

I –Introduction

We need to better understand how different judicial systems interpret and concretely apply the recommendations of the United Nations, the Council of Europe and the European Union regarding the independence and the effectiveness of judicial guarantees, as well as the manner in which citizens assess such systems.

For that reason, MEDEL must have an objective, more realistic and critical vision of the judicial institutions of European countries.

Official reports about the functioning of the judicial systems of various countries do bring a viewpoint. The organizations members of MEDEL could, nevertheless, have a completely different vision. An analysis by a group of foreign experts could also be different.

The difficulties faced by new European democracies are well-known. We have learned in the course of recent MEDEL initiatives that the magistrates of such countries are those who hold a more critical vision of national realities, for they experience basic difficulties daily, while at the same time hoping for a change of the system.

Furthermore, certain members of MEDEL – those who belong to “old” democracies and believe having already accomplished a certain degree of perfection – have maybe lost the capacity to analyze, with a certain distance, neutrality and free of prejudice, the characteristics and the shortcomings of their own system.

We need to help those who endeavor to build a democratic judicial system, those who fight to improve it or to prevent its deterioration, as well as those who have fallen asleep under the protecting shade of the walls of the old Courthouse without having traveled the road of democratization.

We need to overcome the stage of declaring the theoretical principles or that of the mere support and participation in different institutional working groups of the Council of Europe or the European Union, but also start defending a concrete vision of MEDEL of the different solutions found in each country, and influence the position of each of our organizations with regard to its national system.

Moreover, an audit of the national system conducted by foreign experts allows a better understanding of the global reality and the innovative paths traveled by the Law and each judicial system in an era of global turmoil.

This audit assignment should be carried out each time by a team of two or three experts and enable active participation of a greater number of magistrates in the activities of MEDEL, while allowing to get acquainted with the viewpoints and the goals of our organization.

II – Goals of the audits

The goals of the audits could be the following:

1 – **Collecting information** based on a questionnaire and then organizing a visit in the given country in order to allow the evaluating team to request additional information by means of discussions with the main national players. Finally, draw up an evaluation report about the functioning of the judicial system in relation to European criteria – especially regarding the case law of the European Court of Human Rights, works accomplished in the framework of the Council of Europe and the suggestions of the MEDEL;

2 – **Provide critical assistance and expertise**, urgent when needed, in the requesting states, on the occasion of reforms and changes concerning the fundamental principles of democratic justice;

3 – **Collect information about progressive experiences** of certain countries and communicate the results obtained;

4 – **Bring closer the judicial cultures** of different magistracies, as well as the professional relations between judges and other justice professionals; allow a cultural and technical approach promoting the development of mutual confidence.

III – The means:

In order to achieve the above described goals, MEDEL should develop the following means:

1- **Schedule each year** one or two audits with the advice and the internal logistical support of MEDEL organizations of the countries visited ;

2- In each association member of MEDEL, **one or several contact persons** should be able to contribute to the audit program;

3- **Develop a *vade mecum*** as guide for the method of work of the auditors;

4- **Prepare a uniform questionnaire** axed towards the issues of particular interest for us and allowing the comparison of different systems with the standard principles appearing in the treaties, resolutions and recommendations, as well as with the principles supported by MEDEL.

5- Itemize **reliable non-governmental organizations** capable of helping the auditors in each country during their visit ;

IV - The procedure

The procedural method itself should be carefully prepared.

This method should avoid the trap of the corporate vision of problems. On the contrary, it should give a voice to as many civil society organizations as possible (human rights leagues and associations, specialized journalists, trade unions...), capable of expressing the different viewpoints existing in society.

National organizations of visited states should then be tasked with:

A – Collecting information:

Send to experts appointed to carry out the audit the main texts and documents (Constitution, legislation pertaining to the organization of the judiciary, important legal texts, statistics, etc.) necessary for understanding the system;

B – Draw up a Self-Evaluation Report;

C – **Organize the visit** of experts, especially meetings with officials and representatives of the civil society;

E – Help the experts in writing the report;

F – **Circulate** within the national organization and the agencies that have collaborated in the audit **the report approved by the Steering Committee of MEDEL**. Provide for circulation or find contacts to enable MEDEL to circulate the report in the national press outlets of the visited state.

V – Structure of the questionnaire

Judges:

1 – High Council of the Magistracy: assessment of its composition, powers and functioning; assessment of the appointment, appraisal and discipline of the judges, namely regarding their independence;

2 – Organization of jurisdictions: assessment of the autonomy, the possibilities of external interferences, evaluation of functioning;

3- Implementation of the principle of natural judge, specialization, assignation of cases.

4- Assessment of the role played by tribunals in the control of legality, constitutionality and conventionality.

The Public Prosecutor's Department:

1 – Autonomy;

2 – Assessment of the criminal policy (implementation of public action, orientation of cases), namely regarding the principle of equality of citizens before the Law; to what extent the role of the Public Prosecutor's Office is controlled by the judge in setting up and filing the cases?

3 – Assessment of the role played by the hierarchy of the Public Prosecutor's Office;

4 – Assessment of the appointment, appraisal and discipline of the magistrates of the Public Prosecutor's Office:

Education of the magistrates

1 - Assessment of the status of bodies in charge of the education of magistrates;

2 - Guarantee of the right to initial and continuous education of magistrates

3 - Assessment of the quality of education

Judiciary Police:

1 – Functional dependence during criminal investigations;

2 – Control of criminal investigation activities.

Access of citizens to justice:

- 1 - Access to jurisdictional assistance;
- 2 - Proximity of courts;
- 3 - Language, access to and understanding of court decisions;
- 4 - Efficacy – time and constraints for the execution of decisions.

VI- Main texts

- Basic Principles on the Independence of the Judiciary Adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan from 26 August to 6 September 1985 and endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985
- Recommendation n°R(94) 12 of the committee of ministers to member states on the independence, efficiency and role of judges
- European charter on the statute for judges (1998)
- Elements of a european statute of the judiciary (Palermo declaration), Medel, 1993
- The role of public prosecution in the criminal justice system (recommandation rec (2000) 19 of European council
- Declaration of principles concerning the public prosecutor, Medel, 1996.