



REPUBLIC OF SLOVENIA
Ministry of Justice

Judicial Forum: Relations between Ministry of Justice and Judiciary Bled, 7 and 8 March 2002

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This conference is a continuation of the initiative, which started at the judicial forum in Bavaria several years ago. It is a form of regional cooperation, essential also for the endeavors of the Pact of Stability.

The topic to be discussed at this Forum carries a particular importance for the newly established democracies of Eastern and Central Europe. These countries, which are striving to establish just and functional states, are currently in the process of reforming their judiciary and the courts. It is, therefore, of great importance to bring forth a discussion on the theoretical as well as the practical level, regarding the relationship between the Ministry of Justice as a part of the executive, and the judiciary as an independent branch of government. The question of the relationship between the two branches is significant not only from the national point of view, but also from the point of view of the accession to the European Union. For the later, it is necessary to assure a fully functional judicial system, which guarantees legal protection to individuals and economic actors, is able to prevent the most dangerous forms of crime, and contributes substantially to the prevention of corruption. Thus, the intensive adjustments of the judicial order, the introduction of new mechanisms, and the aspirations to improve the administration of justice are, under the circumstances, more dynamic and of more significance in the newly established, as in the old and stable democracies.

The aim of this Forum is to exchange the views and experiences, which relate to the various and diverse relationships between the executive Ministry of Justice and the courts. In particular, the aim is to compare the procedures of formulation of the laws, and of the

everyday functioning of the judiciary. I suggest, that we proceed with our discussions in at most constructive manner. Thus, we should concentrate our debates on specific and practical questions regarding the ways of cooperation between the Ministry of Justice and the judiciary, their functioning, and the translation of their objectives into reality.

The starting-point of our topic should be the principle of the division of powers, which has lately been complemented with the maxim of "checks and balances." The independence of the judiciary, as a sovereign branch within the government, does not necessarily preclude its exclusive separation from the executive. It is not at all controversial, that the Ministry of Justice should carry some responsibilities in assuring the proper functioning of the judiciary. Effective work of the Ministry of Justice is one of the essential preconditions for the effective work of the judiciary and thus the courts. The essential question to be addressed is, therefore: "What competences does the Ministry of Justice have in the relationship towards the judiciary?" and "How does the Ministry realize these competences and objectives?"

Although the relationship between the two branches is arranged differently in every country, the proposed discussion can give us an understanding of these differences, and can assist particularly those countries, which are planning to carry out legislative reforms. Above all, it is crucial to recognize, *which* normative solutions assure the most effective and incontestable cooperation between the branches. That means, not only the legislative, but also the practical work of the Ministry and of the judiciary should be emphasized. There are several questions, which need to be addressed:

Firstly, there is the question of financing of the judiciary. This is in several countries either completely within the competence of the Ministry of Justice, or the Ministry can exert a relatively large influence over the government's decision about the funding of the judiciary.

Secondly, there are questions relating to employment. A particular emphasis here is placed on the cooperation of the Ministry in the appointment of judges, the assurance of appropriate judicial staff, and in the selection of the courts' presidents.

Thirdly, the area of the functioning of judiciary and the Ministry's inspection of the latter must be examined. There are various mechanisms implemented for the purpose of the Ministry's examination and evaluation of the courts' effectiveness. The questions, which arise

here, however, relate to the competence of the Ministry in case of reported irregularities (i.e. unusual length of procedures), and to the prevention of the independence of the judiciary.

All of the already mentioned questions relate also the relationship between the Ministry of Justice and the judiciary, particularly in respect with the formulation of legal regulations assigning the capabilities of the Ministry. Although the Ministry forms all the relevant regulations, these have to be structured in such a manner, as to ensure their effective functioning in the hands of their executors, the judges. Consequently, this stipulates a tight cooperation between the Ministry and the representatives of the judiciary, particularly in the area of rights and responsibilities of judges.

The main assignments of the relationship between the Ministry and the Courts are as follows: the assurance of the effective functioning of the judiciary, the modernization of the judiciary, and the improvement of its efficiency. These assignments are, of course, tightly connected among each other, and depend greatly from good cooperation between the Ministry and the Courts, as well as the proper functioning of the legislative branch.

For the purpose of more practical demonstration of the dilemmas, allow me to draw to your attention a few problems, which we have experienced and are dealing with in Slovenia. Despite the judicial reform in 1995, there are several areas of judiciary, which need restructuring. One of these areas is the procedural legislation, in which we would like to eliminate the obstacles that complicate legal procedures. This was partially achieved through the Law on Civil Procedures, but further amendments and revisions are still required.

In Slovenia we still need to carry out an extensive reform of the Penal Procedural Law, particularly in the areas regarding the functions of the police, of public prosecutors, and of investigators in the pre-criminal procedures.

In the preparation and formulation of all respective laws, the Ministry of Justice in Slovenia cooperates closely with the experts from the field of justice, as well as with judges from various levels of courts. Let me mention a few of the important actors with which we cooperate closely. These are: the Supreme Court, the Judicial Council, the Judicial Association/Union, etc. Every one of these institutions presents its own view on a particular question, which contributes to the plurality of opinions. Although this plurality can, and does,

lead to lengthy discussions and reconciliation of viewpoints, we believe that such cooperation affords quality and effectiveness in the functioning of the judiciary.

Within the judiciary itself, several programs for the elimination of the court case backlogs were proposed and implemented. These programs were supported also by the Ministry of Justice, and were later incorporated in the Ministry's legislative programs. The Ministry strives to provide all the financial means, the necessary equipment, and a sufficient number of qualified and trained staff for these programs. Equally, the Ministry endeavors to avoid the unnecessary radical changes; that means that the Ministry tries to build on the solid bases of experience and praxis, in order to allocate the available resources as effectively as possible.

With various legislative mechanisms, such as disciplinary actions and supervision of judicial work, the Ministry of Justice attempts to promote responsible work of judges. A need for more adaptable and mobile judges also became apparent. The mobility of judges should, above all, prevent the occurrence of new case backlogs, particularly in smaller courts of the first instance.

All such restructurings and modifications of the judiciary are, of course, subject to reconciliation and productive discussions. It is perhaps important to notice, that also the executive branch of Slovene government actively participates in resolving various contradictions of opinion. The members of the parliament, who are to a large extent influenced by stereotypes, are usually very critical not only towards our proposals, but also towards the judiciary itself.

An important area of cooperation between the Ministry and the judiciary is also the education of the judges. The Ministry of Justice and the Supreme Court of Slovenia have, several years ago, established the Center of Education in the judiciary. In the context of this program, representatives of all levels of courts, including the representatives of the Constitutional Court, are actively involved. The topics chosen for this program are a matter of consolidation among all the representatives of the courts and the Ministry. It is, therefore, in the interest of the Ministry, to propose and implement topics, which relate to the improvement of the judiciary, of the judicial procedure, employees, etc. This year, the main emphasis is

given to management in the judiciary, which is associated with the education of the Presidents of the Courts.

For the smooth functioning of the courts, informational technology is of great importance. In Slovenia, the responsibility for the informatization of the judiciary lies within the competence of the Supreme Court. The Ministry, on the other hand, is responsible for all other equipment of the courts.

Furthermore, one should not neglect the importance of international cooperation. In this respect, the cooperation with Germany was, and remains, of great importance for Slovenia. In the context of the EU accession negotiations and relevant twinning projects, the cooperation between the two countries emphasized the modernization of the judiciary. Within this framework, two conferences were held last year. Foreign experts, representatives of the judiciary, the Ministry and the Parliament put forth a number of proposals for the improvement and further developments of Slovene judiciary. A large number of these proposals and recommendations were already implemented and met. Some, however, either require more time to implement, or are a permanent assignment of the Ministry and of the judiciary.

As I have often mentioned, a good relationship between the judiciary and the Ministry is pre-conditioned with a good relationship and contacts between the highest representatives of all branches. Such contacts are very well established in Slovenia. As an example, let me mention the meetings among the highest representatives of all three branches of government: the Presidents of the Parliament, of the Government and of the Supreme Court. These meetings are intended to provide room for discussion of the most important topics, which lie within the competence of all three branches.

As the Minister of Justice, I often visit individual courts across Slovenia. Particularly I concentrate on those, which are suffering under a large number of case backlogs. With Presidents of the courts, I then discuss the actual situation and try to reach viable solutions. The attempt is, to provide the courts with adequate infrastructure, equipment, and personal, in order to improve the functioning and the efficiency of the courts.

Let me now summarize a few important points:

The Ministry of Justice, as a part of the executive, carries the responsibility of assuring the effective functioning of the judiciary. The Ministry must, therefore, have adequate means to fulfill and realize its obligation. At the same time, the independence of the judiciary must be respected and protected, through appropriate legislation and other legal acts.

With this I would like to conclude, and again welcome you at this Judicial Forum in Slovenia. I hope the discussions of the next few days will bare fruits of productivity, and will assist all the participating countries in their everyday work within the field of justice.