



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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Dear Mr. Chairman,
Dear Ladies and Gentlemen,

The subject, "Relations between the Ministry of Justice and the Judiciary" is a demanding and comprehensive one. I should like to thank you for affording me the opportunity of making a contribution to the discussion from the point of view of the Free State of Bavaria. For reasons of time, however, I believe it will be expedient if I confine myself to the essential question as to how a judicial department can shape optimally the external environment in which the tasks of courts and public prosecutor's offices are performed. This pertains essentially to organisational issues.

The most important task of a judicial department is to safeguard the functional reliability of the administration of justice, and to improve it if possible. Of course, this is not about exerting any influence on individual proceedings and the way these are handled by judges and public prosecutors but, as I have already said, it is about shaping in an optimal way the external environment in which the tasks of courts and public prosecutor's offices are performed. For this purpose, organisational jurisdiction over courts and public prosecutor's offices has in our system been assigned to the judicial department, just as part of budgetary control; i.e., the authority to allocate, within the framework of the budget of the ministry of justice, the budget funds apportioned by Parliament for the discharge of the duties of the judiciary, and to distribute the same to the subordinated authorities.

In that process, a judicial department, headed by the minister of justice, will always be in a certain predicament. On the one hand, it is responsible towards Parliament and the general public for the due and proper discharge by the courts and public prosecutor's offices of the duties involving the administration of justice. It is expected to organise authorities within its area of operation so as to ensure processes as efficient and close to the general public's interests as possible. The budget funds available are to be distributed equitably, and in line with requirements. Finally, a judicial department will have to safeguard the efficiency and the fulfilment of high quality demands on the judicial system even in situations of strained resources.

On the other hand, the situation will be too different in individual courts and public prosecutor's offices for any centralised specification to be imposed by the ministry with regard to all administrative measures. There will be differences in terms of both the type and scope of tasks to be carried out in the administration of justice, as well as in respect of equipment, allocation of office space, and staffing. For that reason, organisational

specifications, the use of budget funds, and other measures taken by a state's judicial department will always need to take into account the specific local situation in a given place so that the ministry, as the top administrative level, cannot be accused of deciding "from a bureaucratic ivory tower" and "from the top down" only. Therefore, a balance must be sought between centralised landmark decisions (for the safeguarding of consistent enforcement) and decisions by subordinated authorities on their own responsibility (for the safeguarding of room for manoeuvre in making decisions). There are two groups of cases, which may be used as examples to explain how this works in practice:

Since 1998, the Bavarian State Ministry of Justice has, in its area of operation, implemented decentralised budget responsibility statewide. The underlying principle is the independent allocation by individual courts and authorities, on their own responsibility, of part of the available budget funds, with those courts and authorities being at the same time exempted from certain restrictions of budgetary law:

Thus, for instance, a mutual ability to provide coverage is intended to enable courts and authorities to use their respective appropriations for improvements (e.g., an authority may partly refrain from making use of funds made available for business travel or general expenses, and use non-committed resources for purchasing office equipment).

It is also in the scheduling of the employment of funds that authorities will be able to act on greater responsibility of their own. Thus, for instance, they will be able to retain residual funds obtained through savings to use them selectively for certain major investments in the next budgetary year.

Not included in decentralised budgeting will be, e.g., receipts from fines and penalties or fees, as well as any legal expenditure such as the cost incurred for associated lawyers or the remuneration of experts, so as to avoid even an impression of any undue influence being exerted upon judicial independence or the observance of the principle of mandatory prosecution.

The decentralisation of budgetary responsibility has turned out to be absolutely positive. In addition to improved flexibility in the execution of budgets, it is also motivation and cost-consciousness on the part of employees that are being enhanced.

Another example of how the ministry of justice provides a guiding function without patronising subordinated authorities pertains to the organisation of supportive functions in courts and public prosecutor's offices. The traditional working style in the areas of registry and chancery is characterised by a rigid division of labour. This results in awkward job paths, avoidable transport of records, and other delays in the scheduling of proceedings and finding of records. It was in such a situation that the State Ministry of Justice obligated courts and public prosecutor's offices to organise their supportive functions in future in the form of so-called service units in order to streamline procedures and relieve authorities from unnecessary work. In that process, we refrained deliberately from stipulating in detail how these units should be organised; rather, it was merely the main characteristics of those service units that were specified:

Firstly, a spatial allocation to a judge, public prosecutor, or judicial officer, which avoids long ways, a confused management of records, and a lot of search efforts,

Secondly, personal assignment; i.e., the establishment of clear contacts so that even in large-size courts, judges and service personnel will know each other, and everyone will know who to deal with,

Thirdly, holistic handling; i.e., the lifting of the strict division of labour as it used to exist. In principle, all employees of a service unit should be able to process a record comprehensively and conclusively. This will increase employees' responsibility for each step, as well as personal satisfaction. Team spirit and addressing the individual abilities of each employee in a service unit will be indispensable, and are promoted particularly by the judicial department.

Of course, fundamental organisational change like that cannot be implemented from one day to the next. In many places, rather, there are objective obstacles such as building locations or reservations on the part of employees unwilling to put up with changes in their professional environments, which stand in the way of the rapid implementation of service units. Such cases will require patience, tact and sensitivity, as well as imagination so that solutions in line with local conditions can be found.

Such organisational change must be accompanied by selective training measures. Decentralised budgetary responsibility can be borne in a responsible manner only by those who are aware of the new requirements under budgetary law, and who are able to think, and understand things, in terms of economic efficiency. Similarly, one cannot expect a service unit to function when no training has been provided to those involved. And, initially, such training will need to be professional training for those who will need to grow into coping with a service unit's individual steps of activity in the first place. On the other hand, a changeover from a rigid division of labour to holistic processing will pose a mental problem requiring team spirit on the part of all involved. This is another field for training.

The implementation of decentralised budgetary responsibility and the introduction of service units, as fundamental organisational principles, are based on policy decisions made by the ministry of justice. The necessary training measures will need to be adapted to those decisions. That is why the design of those training measures is a policy task and, hence, a ministerial task. The purpose is to communicate the philosophy behind those organisational decisions. Implementation of the measures in situ may then be left to the individual courts and public prosecutor's offices.

The concepts of training in capacity for teamwork, training in living organisations, and training in change-over management address an area which, in addition to traditional professional training, has gained in importance: i.e., social competence. In addition to the areas mentioned above, that area also includes issues of personnel management as well as the representation of courts and public prosecutor's offices towards the outside world, including press contacts. Not all people have a congenital ability to act in a motivating, convincing, and charismatic way. To a certain extent, that can be learned. The judicial system, on the one hand, depends on motivated employees who are ready to serve and, on the other hand, needs a positive portrayal of its work towards the outside world. Considerations and concepts promoting both are part of the essentials of judicial policy and are therefore, in our view, a task to be performed by the ministry. Those considerations and concepts, of course, must come to life, and will need to be applied, by the individual courts and public prosecutor's offices. Therefore, it is hardly surprising that within the Bavarian judicial system, some 30% of all training measures deal with subjects involving social competence. 50% is constituted by

purely professional training, with 20% accounting for interdisciplinary training.
An in-depth account of this, however, would be another subject to which I should not like to digress, for reasons of time.

Thank you very much for your attention.