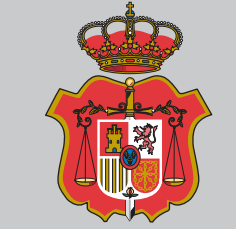


Livre blanc sur la formation continue des juges

CONSEJO GENERAL
DEL PODER JUDICIAL



White paper on the ongoing training of judges



CONSEJO GENERAL
DEL PODER JUDICIAL

White paper on the ongoing training of judges

WHITE PAPER ON THE ONGOING TRAINING OF JUDGES

Approved by the Plenary Session of the General Council
of the Judiciary held on 17 January 2007



CONSEJO GENERAL DEL PODER JUDICIAL

CENTRO DE DOCUMENTACIÓN JUDICIAL

Any total or partial reproduction of this book is prohibited, including computer processing, or any form of distribution through photocopies or registers, or electronic, mechanic, or other procedures, without prior written permission of the copyright holders.

© CONSEJO GENERAL DEL PODER JUDICIAL
C/ Marqués de la Ensenada, 8 - 28071 MADRID

Depósito legal: M. 26.439 - 2008

Imprime: LERKO PRINT, S. A.
Paseo de la Castellana, 121. 28046 Madrid

SUMMARY

INTRODUCTION	9
I. Objective: Towards a new ongoing training model ..	11
II. Background	17
1. Justification	17
2. Description of preparatory works	18
 AGREEMENT OF THE PLENARY SESSION OF THE GENERAL COUNCIL OF THE JUDICIARY, HELD ON 17 JANUARY 2007, ON THE APPROVAL OF THE WHITE PAPER ON THE ONGOING TRAINING OF JUDGES	21
 WHITE PAPER ON THE ONGOING TRAINING OF JUDGES	25
I. Adaptation of the ongoing training system to the Or- ganic Law on the Judiciary	29
1. Overview	29
A) The need for ongoing training. The bureaucratic model as opposed to the professional model of judge	31
a) Judicial training and independence	34
b) Ongoing training as a complement to self- training	35
B) The mandatory versus voluntary nature of on- going training	36

a)	The professional duty of all judges to undergo training	37
b)	Voluntary training as a general rule in comparative systems	37
c)	Analysis of article 433 bis of the OLG	39
d)	Exceptional cases in which ongoing training should be mandatory	40
C)	The effect of training on judges' professional careers; professional promotions	41
D)	The role of ongoing training in specialisation	45
E)	The Ongoing Training Plan as a basic training tool	49
a)	Specialised Plans	50
b)	Evaluation of Specialised Plans	52
2.	Current status of the Ongoing Training system in the Judiciary School	53
3.	Conclusions and proposals	58
II.	Rationalisation of available training	61
1.	Overview	61
A)	Reduction of the training provision	61
B)	The role of the Judiciary School	63
a)	Monopoly in the management of the Ongoing Training Plan	63
b)	The Ongoing Training Service as directly responsible for training	66
C)	Planning of ongoing training	67
a)	Design and programming of activities: the Education Committee, the Governing Chambers of the High Courts of Justice and consultancies	68
b)	Judges' participation in designing their own training	69
c)	The budget allocated to Ongoing Training	70
d)	Methodology as a key component of the Training Plan	71

e) Training content.....	73
f) Selection of directors, coordinators and lecturers; the task of trainers	74
g) Judges as beneficiaries of training	76
h) Training and performance evaluation	77
D) Flexibility of the training plan	77
a) Less rigidity in training provided.....	77
b) More flexible method formats	78
2. Current status of the ongoing training system of the Judiciary School.....	78
3. Conclusions and proposals	82
III. Monitoring and evaluation of ongoing training activities	85
1. Overview.....	85
A) Why an evaluation?.....	85
B) What should be evaluated?.....	86
a) Evaluation of training programmes and methods	86
b) Assessment of trainers	87
c) Evaluation of knowledge acquired by participants	87
C) How is an assessment made? Methodology ...	88
a) Compilation and evaluation of the information.....	88
b) Internal and /or external assessment	89
c) Evaluation techniques	89
d) Definition of standards or indicators	91
e) Judges' associations.....	92
D) Effects of assessment on the training cycle ...	92
2. Present status of the Judiciary School Ongoing Training system	93
3. Conclusions and proposals	93
IV. Application of new technologies for improving training of judges: virtual training	96
1. Overview.....	96

A)	From distance learning to virtual training	96
B)	What do the new information and communications technologies bring to judicial training?	97
C)	Disadvantages	100
D)	Instruments	101
E)	Assessment of virtual training	104
F)	Judges' Extranet	104
G)	The Judicial Documentation Centre (CENDOJ)	105
2.	The current status of the Judiciary School in the Ongoing Training system.....	105
3.	Conclusions and proposals	106
V.	International dimension of training.....	108
1.	Overview	108
A)	Inclusion in judicial training of the international dimension of the jurisdictional function	108
a)	International dimension of the jurisdictional function	108
b)	The European Judicial Area and judicial training	109
c)	Benefits for the judge	112
B)	International bodies concerned with improvements in the training of Judges	113
2.	Present status	113
A)	General	113
B)	Participation in activities of international bodies	115
a)	European Judicial Training Network (EJTN)	115
b)	Latin American Network of Judiciary Schools	116
c)	Council of Europe: Lisbon Network.....	117
d)	International Organisation for Judicial Training (IOJT).....	117
3.	Conclusions and proposals	118
VI.	Summary of conclusions	119
Notes	125

INTRODUCTION

Javier Martínez Lázaro

Member of the Judiciary School Commission
of Spain's General Council of the Judiciary

INTRODUCTION

SUMMARY: I. OBJECTIVE: TOWARDS A NEW ONGOING TRAINING MODEL. II. BACKGROUND. 1. Justification. 2. Description of preparatory works.

I. OBJECTIVE: TOWARDS A NEW ONGOING TRAINING MODEL

Spain's Organic Law on the Judiciary grants Spain's General Council of the Judiciary competence on the Ongoing training of judges.

The revised Organic Law on the Judiciary, as amended by Organic Law 18/2003, of 23 December, introduced a new article, 433 bis, which advocates a novel system for Ongoing training, intended for all members of the Judicial Service. It makes the General Council of the Judiciary responsible for ensuring that all judges receive one-to-one, specialised and high-quality Ongoing training, by establishing individual training programmes, specific for each Judge and Senior Judge.

To this end, the Council must establish a Ongoing Training Plan, in accordance with regulations, that implements the training system and the specialised programmes for each member of the Judicial Service.

It should be added that, as a ground-breaking innovation, such training shall be assessed for the purposes of career advancement and professional promotion.

The current training system, first applied some fifteen years ago, uses up a considerable amount of the Council's energy and budget. It is basically coordinated through the National Training Plan, which includes the various courses, seminars and other training activities planned throughout the year. The National Plan is supplemented by Regional Plans, which are drawn up under the framework of the High Courts of Justice in collaboration, where appropriate, with the Autonomous Communities that are signatories to judicial training agreements.

In line with the National and Regional plans, various extraordinary training activities are carried out for a whole host of reasons: agreements with other institutions, initiatives from various Council members and commissions, etc.

Besides such general activities, there are other more specific ones provided for under the Organic Laws which are intended for various groups, such as those which result from jurisdictional changes, access to the judicial profession for lawyers and specialisation. On the other hand, the Supreme Court and the National Court in Madrid rely on specific training programmes and budgets.

The Judicial School Commission is made up of five Council members and the Director of the Judicial School, assisted by the Training Service's lawyers and responsible for the overall supervision. The Pedagogical Commission, in which judicial associations take part, performs certain assessment roles in the selection of courses and speakers for the National and Regional Plans, although not in the case of extraordinary activities, which are exclusively approved by the Judicial Commission.

The aim of Ongoing training is to provide refresher courses and new legal knowledge, to ensure that members of the Judicial Service are constantly up to date technically. It also attempts to provide the crucial knowledge of reality expected from those

who decide on legal disputes among their fellow citizens, disputes which necessarily stem from society.

The Ongoing training system took its present form in 1990. Its structure meets simple criteria and its core is made up of generally three-day courses that focus on a specific issue. The system is supplemented with seminars, involving a smaller number of participants, and with specific activities deriving from agreements signed with various institutions. Directors of courses or seminars, usually members of the Judicial Service, are appointed by the Judiciary School Commission. They have complete freedom to choose their speakers and to structure the contents of their courses or seminars.

The current training system is voluntary; irrelevant to both professional promotion and performance assessments; not compulsory because once a person is admitted to the Judicial Service, his/her knowledge needs no further verification; general, because there are no individual training projects; open, because there are no specific requirements for course attendance and plural, as a reflection of the very plurality of the Council.

In addition to all this, it should be pointed out that the training system has, over time, turned into a collection of courses and seminars lacking any logical consistency. There have been no long-term projects with any specific plans nor any assessments made on the results of the various yearly training plans.

Moreover, Ongoing Training Plans are not solely oriented towards meeting the needs of preparing judges but, as a consequence of the system itself, also frequently arise for other reasons: political projects, projects relating to the General Council of the Judiciary, and professional-association action projects etc., all influence and determine the contents of Training Plans.

This lack of consistency is worsened by the numerous extraordinary activities that crop up on the sidelines of plans and interfere with them by superimposing activities, duplicating some of these and making others unnecessary. It is not un-

common for judges to refrain from taking part in a course because another one has been scheduled, for some odd reason, on the same dates.

In this regard, the tasks given to lawyers making up the Ongoing Training Service have no bearing on quality training projects. They are limited to managing courses approved in other spheres but do not act as a true body of teachers, capable of detecting training requirements, devising projects to deal with these or assessing the results obtained.

This imbalance is particularly notable because, notwithstanding the considerable budget spent on such training, there are no courses available to provide training for those who wish to specialise. It is paradoxical that the specialists are those who –in theory– have a higher training in specific subjects, and yet training plans are kept from providing the very resources required for specialising. Underlying all this is the concept of specialisation not as a higher level of knowledge but rather as a closed body or *numerus clausus* of judges.

Despite all these flaws, which are tightly bound to a model which has developed little even in the present legal handling of training, successive yearly training plans have played an important role. They have contributed towards raising the level of knowledge of the Judicial Service, they entail considerable motivation in studying and acquiring new knowledge and they promote legal debate, often at a high level, on a large variety of issues. Disseminating courses by publishing various conferences and seminars provides many judges with extremely useful work tools on issues that are generally highly topical. All this proves to be of good value and provides a high level of satisfaction for most of those taking part in the various training activities scheduled by the Council. The system's wear and tear had already been noticed by the last General Council of the Judiciary, which, on giving a positive assessment of the training system in its *White Paper on Justice*, then added immediately afterwards that since the system had been in force for seven years, it would be

appropriate to amend the Judicial Service's Regulation and make it an expressly professional obligation for judges to remain –throughout their professional careers– adequately able to perform their jurisdictional roles, with the General Council of the Judiciary being responsible for coordinating the necessary Ongoing training programmes to ensure that all judges can meet this duty.

This concern is also reflected in the amendment made to the Organic Law on the Judiciary by Organic Law 19/2003, which introduced Article 433 bis, the contents of which we have already referred to.

It also established, through a Resolution adopted by the Plenary Session of 15 December 2004, that the current General Council of the Judiciary should task «the Judicial School Commission with carrying out the appropriate work for scrutinising, in a White Paper on Ongoing Training for Judges, the requirements of the Judicial Service in this area and the perspectives that it would be advisable to deal with in order to improve the current model».

In approaching this task, the Judicial School Commission could not ignore the obligation placed on the Council, as set down under Article 433 bis of the Organic Law on the Judiciary, to draw up a set of Ongoing training regulations that contain the aims, contents and priorities of such training.

Before these regulations may be drawn up, the Plenary Session's requirements must obviously be satisfied through the drafting of a White Paper that establishes the main principles to which the regulations must subsequently be subject to. And it is here that we find a new problem: in Article 433 bis, the Organic Act establishes the main principles for Ongoing training but these cannot be applied until certain amendments to the organic law itself have been made. It sets down general criteria that may shape the subsequent regulations and even serve as reference points to legislators in suggesting the possibility of introducing amendments granting the Judicial Service a larger role in Ongoing training.

We have not overlooked that an effective Ongoing training project for judges implies changes to the organisation and concept of the Judiciary itself. Making the training attractive and linking judges to Ongoing projects for the improvement of their knowledge and praxis all entail defining profiles for the various posts according to the knowledge and experience required; re-defining specialisations; improving professional promotion systems and reorganising current Council administrative apparatus tasked with training.

In short, these are the very issues that have been discussed in the drafting of this White Paper. It was agreed that a member of the Judicial School Commission should be appointed for this purpose. Given the stated requirements, the work method was not confined solely to preparing a yearly training plan or even to drawing up draft regulations. It aimed to highlight the main features that had to be present in the system so that, once approved by the Plenary Session, where necessary, it could establish the appropriate statutory amendments and requisite regulatory drafting.

Obviously, no one could disregard the complex situation of the General Council of the Judiciary, which has been an obstacle to votes on and approval of the significant regulatory amendments initially envisaged, such as the Organisation and Running Regulations, the Judicial School Regulations, the deep reforms of the Judicial Service's Regulations and others.

The system followed for drafting the recommendations that make up the preparation of this text came about following a broad discussion and exchange of views. It was hoped that its participants would include members of the Judicial School Commission, lawyers working both in Ongoing Training and in Initial Training and Recruiting, lawyers from other services in this Council such as the Inspectorate or Judiciary, who could offer useful suggestions. Some of the participants produced texts that have been incorporated as annexes to this Paper; others provided personal opinions. This paper is a collection of ideas

and recommendations. Its first two chapters attempt to fathom out the obligations set down in the current version of the Organic Law on the Judiciary, by framing them within a consistent new training system model. The most serious flaws in the current system are analysed and there are suggested corrections for rationalising the training offer.

The last three chapters study three essential issues for any training system: its assessment, the use of new technologies; and, given the increasing inter-relation of regulatory and judicial systems, the international dimension of training.

Mention should be made of the work carried out by the court reporters, His Honour Judge Joaquín DELGADO MARTÍN, Head of the General Council of the Judiciary's Central Services and His Honour Judge Ignacio Ubaldo GONZÁLEZ VEGA, Head of the Ongoing Training Section. While I am ultimately responsible for this study, as delegated by the Judicial School Commission, it would never have been completed without their technical contributions and dedication. We hope that the text will at least serve to open up an essential debate on the Ongoing training of judges and help bring about progress in defining a project whose ultimate goal is to achieve a justice system capable of constantly improving its own quality and therefore of safeguarding the rights and interests of its citizens.

Because, all in all, this is what the Organic Law on the Judiciary has tasked us with, in requiring new Training Regulations, and this is our present constitutional role as the judicial governing body.

II. BACKGROUND

1. Justification

The Plenary Session of the General Council of the Judiciary adopted the following resolution on 15 December 2004:

49.º. *To entrust the Judicial School Commission with carrying out the appropriate work for scrutinising, in a White Paper on Ongoing Training for Judges, the requirements of the Judicial Service in this area and the perspectives that it would be advisable to deal with in order to improve the current model.*

In short, this is about analysing the basic elements in a modern system which is suitable and effective in the management of training (1).

2. Description of the preparatory work

The central office of the General Council of the Judiciary's Ongoing Training Service in calle Trafalgar, Madrid, hosted several working meetings on the training system's requirements and improvements, on 6 and 7 October and 7 November 2005. Among those invited were the members of the Judicial School Commission, professionals either directly or indirectly involved in training issues, members of the Pedagogical Commission and representatives of judicial associations.

To this end, the Director of the Judicial School Commission, His Honour Judge Fernando SALINAS MOLINA, attended, as did the Members of said Commission, His Honour Judge Faustino GUTIÉRREZ-ALVIZ CONRADI, His Honour Judge Javier MARTÍNEZ LÁZARO and His Honour Judge José Luis REQUERO IBÁÑEZ; the Head of the Judiciary Service, His Honour Judge Francisco Gerardo MARTÍNEZ TRISTÁN; the Head of Recruitment and Initial Training Service, His Honour Judge Félix Vicente AZÓN VILLAS; the Head of the Ongoing Training Service, Her Honour Judge Ana Victoria REVUELTA IGLESIAS; the Head of the Ongoing Training Section, His Honour Judge Juan Carlos ARCE GÓMEZ;

(1) OBERTO, <<http://www.geocities.com/CollegePark/Classroom/6218/jerusalem/abstract.htm>>.

the Head of the Planning and Analysis Service of Judicial Affairs, Her Honour Judge Celima GALLEGO ALONSO, and Counsel at the Inspectorate Service, Her Honour Judge Raquel BLÁZQUEZ MARTÍN.

Acting as representatives of the various jurisdictions and as members of the Pedagogical Commission were: His Honour Judge Carlos GRANADOS PÉREZ, on criminal matters and Her Honour Judge Milagros CALVO IBARLUCEA, on civil matters.

For Judicial Associations: His Honour Judge Dimitry Teodoro BERBEROFF AYUDA, representing the Professional Association of Judges; Their Honours Judge María Victoria ROSELL AGUILAR and Judge María Teresa CONDE-PUMPIDO TOURÓN, representing the Judges for Democracy Association; representing the Francisco de Vitoria Association, their Honours Judge Juan Pedro QUINTANA CARRETERO and D. Antonio VIEJO LLORENTE; and representing the Independent Judicial Forum, Her Honour Judge Concepción Mónica MONTERO ELENA.

Acting as court reporters: His Honour Judge Joaquín DELGADO MARTÍN, Head of the Central Services, and His Honour Judge Ignacio Ubaldo GONZÁLEZ VEGA, Head of the Ongoing Training Section.

As for the materials and reports which served as guidelines and basis for the discussion, to which valuable contributions were made by the various working groups, the following are included: the article dealing with a new model for Ongoing judicial training, written by the Court Reporter, His Honour Judge Javier MARTÍNEZ LÁZARO; the report «*Ongoing Training of Judges as a professional obligation*», by the Director of the Judicial School, His Honour Judge José Francisco VALLS GOMBAU; the principles set down in the document «*Towards a new model for the Ongoing training of judges*», drafted by the Ongoing Training Counsel, His Honour Judge Ignacio Ubaldo GONZÁLEZ VEGA; and the work «*Ongoing Training, Professional Promotion and Specialisation*» by the Inspectorate Service Counsel, Her Honour Judge Raquel BLÁZQUEZ MARTÍN.

AGREEMENT OF THE PLENARY SESSION
OF THE GENERAL COUNCIL OF THE JUDICIARY,
HELD ON 17 JANUARY 2007, ON THE APPROVAL
OF THE WHITE PAPER ON THE ONGOING
TRAINING OF JUDGES

To approve the text submitted by the Judiciary School Commission, entitled “White Paper on the Ongoing Training of Judges”. The Plenary Session commends its member D. Javier Martínez Lázaro for his coordination tasks, explicitly thanks all those who have taken part in the preparation in this document, and welcomes all suggestions explicitly put forward at the Meeting, which will be incorporated into the final version.

WHITE PAPER ON THE ONGOING TRAINING
OF JUDGES

WHITE PAPER ON THE ONGOING TRAINING OF JUDGES

SUMMARY: I. ADAPTATION OF THE ONGOING TRAINING SYSTEM TO THE ORGANIC LAW ON THE JUDICIARY. 1. Overview. A) The need for ongoing training. The bureaucratic model as opposed to the professional model of judge. A) Judicial training and independence. B) Ongoing training as a complement to self-training. B) The mandatory versus voluntary nature of ongoing training. a) The professional duty of all judges to undergo training. b) Voluntary training as a general rule in comparative systems. c) Analysis of article 433 bis of the OLJ. d) Exceptional cases in which ongoing training should be mandatory. C) The effect of training on judges' professional careers; professional promotions D) The role of ongoing training in specialisation. E) The Ongoing Training Plan as a basic training tool. a) Specialised Plans. b) Evaluation of Specialised Plans. 2. Current status of the Ongoing Training system in the Judiciary School. 3. Conclusions and proposals. II. RATIONALISATION OF AVAILABLE TRAINING. 1. Overview. A) Reduction of the training provision. B) The role of the Judiciary School. a)

Monopoly in the management of the Ongoing Training Plan. b) The Ongoing Training Service as directly responsible for training. C) Planning of ongoing training. a) Design and programming of activities: the Education Committee, the Governing Chambers of the High Courts of Justice and consultancies. b) Judges' participation in designing their own training. c) The budget allocated to Ongoing Training. d) Methodology as a key component of the Training Plan. e) Training content f) Selection of directors, coordinators and lecturers; the task of trainers g) Judges as beneficiaries of training. h) Training and performance evaluation. D) Flexibility of the training plan. a) Less rigidity in training provided. b) More flexible method formats. 2. Current status of the ongoing training system of the Judiciary School. 3. Conclusions and proposals. III. MONITORING AND EVALUATION OF ONGOING TRAINING ACTIVITIES. 1. Overview. A) Why an evaluation? B) What should be evaluated? a) Evaluation of training programmes and methods. b) Assessment of trainers. c) Evaluation of knowledge acquired by participants. C) How is an assessment made? Methodology. a) Compilation and evaluation of the information. b) Internal and /or external assessment. c) Evaluation techniques. d) Definition of standards or indicators. e) Judges' associations. D) Effects of assessment on the training cycle. 2. Present status of the Judiciary School Ongoing Training system. 3. Conclusions and proposals. IV. APPLICATION OF NEW TECHNOLOGIES FOR IMPROVING TRAINING OF JUDGES: VIRTUAL TRAINING. 1. Overview. A) From distance learning to virtual training. B) What do the new

information and communications technologies bring to judicial training? C) Disadvantages. D) Instruments. E) Assessment of virtual training. F) Judges' Extranet. G) The Judicial Documentation Centre (CENDOJ). 2. The current status of the Judiciary School in the Ongoing Training system. 3. Conclusions and proposals. V. INTERNATIONAL DIMENSION OF TRAINING. 1. Overview. A) Inclusion in judicial training of the international dimension of the jurisdictional function. a) International dimension of the jurisdictional function. b) The European Judicial Area and judicial training. c) Benefits for the judge. B) International bodies concerned with improvements in the training of Judges. 2. Present status. A) General. B) Participation in activities of international bodies. a) European Judicial Training Network (EJTN). b) Latin American Network of Judiciary Schools. c) Council of Europe: Lisbon Network. d) International Organisation for Judicial Training (IOJT). 3. Conclusions and proposals. VI. SUMMARY OF CONCLUSIONS.— NOTES.

I. ADAPTATION OF THE ONGOING TRAINING SYSTEM TO THE ORGANIC LAW OF THE JUDICIARY

1. Overview

Until the reform of the Organic Law on the Judiciary by the Organic Law 19/2003 of 23 December, there was no precept among the numerous articles of the law expressly referred to ongoing training. There were, however, one or two isolated rules referring in an incidental manner to ongoing training, such as

those on changes in the jurisdictional order (art. 329) which mention the *specific and mandatory training activities* which judges must undergo when taking up posts in the labour, contentious-administrative or juvenile orders, having previously served in the civil or criminal sectors; or in the precept concerned with the *Centre for Judicial Studies* (1) (art. 434), which detailed the functions of that organisation, although in this case the training mentioned also concerns members of the Public Prosecution Service, the Court Administrative Office and other personnel in the service of the Administration of Justice.

The aforementioned Organic Law 19/2003 of 23 December introduces a new title V (*Ongoing training of judges*) in book IV (*Judges*) concerned with the ongoing training of judges, with a single article 433 bis (2). This precept contains the main guidelines for a new model of ongoing training. This model incorporates significant aspects into the system, such as linking training to the professional services in respect of promotions, introducing specialised and individualised five-year plans for all members of the Judicial Service, or submitting for regulatory development by the General Council of the Judiciary an Ongoing Training Plan specifying training objectives, content and priorities.

The State Pact for the Reform of Justice in Spain (3) is its immediate precursor. Its declared objectives included encouraging training of the corps and personnel in the service of the Administration of Justice. In the case of the Judicial Service three tools means were provided to achieve this aim, namely, initial training, ongoing training and training and adaptation procedures.

Until this reform, ongoing training was regulated only by Regulation number 2/1995 of 7 June of the Judiciary School (4) (arts. 22 to 30), which addresses general organisation in the Chapter on the Ongoing Training Service. The voluntary nature of training is one of its main principles, unless there is an express legal provision to the contrary, and so is the irrelevance of training activities for the purpose of professional promotion, obtaining higher rank and, in general, in the professional career of all judges.

Unfortunately, it has to be said that the introduction of the aforementioned article, incorporating significant and interesting innovations into the ongoing training system, has not been accompanied by the requisite reforms in the same Organic Law when addressing questions of promotion to higher ranks, or the provision of appointments to specific posts in other parts of its articles. This inevitably limits the scope and content of the reform.

The textual interpretation and regulatory development of this precept requires further debate on this new model of ongoing training, which is aimed at all groups and organisations relating to the Judiciary, such as the Ministry of Justice, political groups with parliamentary representation, professional associations and society in general, and not merely members of the Judicial Service. It is important to remember that the training issue does not merely affect judges, since their level of professional skills is a first order public interest and inevitably has an effect on the State and society in general.

Therefore we need to establish the principles on which this new training model is to be based, highlighting the points on which there is consensus among all representatives of the Judiciary, and in the case of those issues where various solutions have been put forward, these should be duly raised.

A) *The need for ongoing training.*

The bureaucratic model in contrast to the judge's professional model (5)

The basic premise must, of necessity, be consistency in the selection procedure, initial training and the ongoing training of judges. Each of these stages responds to specific objectives and should be varied in content and method. In any case, an ongoing training system should aim to acquire, bring up to date and improve legal knowledge and other matters relating to the performance of judicial duties. However, it should be understood

that the system should not be merely designed to cover gaps in the basic knowledge of judges, since these should have been eliminated earlier through an effective selection procedure and initial training.

The former premise is undeniable in a country such as ours, which is part of the European continental legal tradition (France, Italy etc.), and which has inherited what may be termed a «bureaucratic model of judge» (6). The basic profile for judges in this judicial model is based on their selection through public competition designed to evaluate the institutional knowledge of major legal matters and aimed at young people who are just out of university. Previous professional experience, for example as lawyers, is accorded little or no importance. Professional socialisation generally occurs within the judicial organisation; in other words it is there where judges learn their trade (7). Judges thus recruited are «general practitioners»; therefore it is presumed that during the course of their work they are able to perform a wide range of duties within the judicial organisation. Thus, judges (or senior judges in the event that their duties performed go beyond those of ordinary judge) are not selected for a specific task or for a special post but for a fairly wide range of duties: for example, judging criminal, civil, commercial, family cases or even in some countries, carrying out the duties of public prosecutor. They tend, in addition, to change post frequently in the course of their professional career (8). Obviously this general principle differs from country to country depending on the influence that the Judiciary School may have in the training of judges, and with length of initial training also varying.

This contrasts with Anglo-Saxon judiciaries (or professional model of judge), which tend to select judges who have already been trained in practical terms, generally in the forensic profession. Entry into the judicial service in these cases occurs at a relatively late stage of the judicial career and is perceived as a reward for a successful prior career. As Christopher PITCHERS indicates, in England and Wales there is no such thing as a judicial

career as judges are not appointed before the age of forty or forty-five, depending on the level of seniority (9). The fact that they are well-known personalities in the professional legal sphere enables a more focused selection, concentrating on the overall profile of the future judge, and in particular, the system permits his/her initial appointment to an elevated position, for example to an appeal Court or even a Supreme Court. In addition, since the task of recruitment takes place in the context of a specific post, the final choice may take into account, at least initially, the specialised competence of the candidates.

As may be assumed, in systems proper to bureaucratic judiciaries such as that of Spain, selected judges will be required to perform their duties during a career spanning forty years. And in addition they will change their post or specialisation. Furthermore, the laws change just as society does. It is therefore essential to offer them the possibility of bringing their knowledge up to date, reflecting on the changes in society, facilitating their retraining in the event of change in judicial duties, enabling them to specialise. This is the reason why in such systems «the institution of a Judiciary School plays a prominent role» (Miguel CARMONA) (10) and is responsible for both initial and ongoing training (11).

Even in the United Kingdom where, as we have seen, the judge recruitment procedure does not favour an ongoing training system, there is a rise in initiatives in this area of increasing judges' knowledge and skills (12). In particular, ongoing training of professional judges is ensured through the Judicial Studies Board. Full-time judges receive on average three and a half days' training every year.

As the Consultative Council of European Judges states in its Opinion no. 4 (2003) on initial and ongoing training of judges at a national and European level «Such training is made indispensable not only by changes in the law, technology and the knowledge required to perform judicial duties but also by the possibility in many countries that judges will acquire new

responsibilities when they take up new posts» (13). The aforementioned opinion justifies this need by stating the fact that society has the right to benefit from a well-trained judge.(14)

With respect to the beneficiaries of ongoing training, namely judges, in a survey carried out by the Centre for Sociological Research in 1997 (15), 58% deemed this training to be «very important» and 35.6% deemed it to be «quite important». Only 2.3% considered the training to be «not very important» and the number considering it to be «not important at all» was an extremely reduced one.

a) Judicial training and independence

The training of judges is inextricably linked to independence and efficiency of the judiciary. Various countries have been made aware of this and in international organisations over recent years the issue of judicial training has been accorded special attention when addressing the status and independence of judges. An example of this are the Basic Principles in the independence of the Judiciary adopted by the United Nations in 1985 (16) and the texts of the Council of Europe adopted in 1994 (Recommendation no. R [94] 12 on the independence, effectiveness and the role of judges (18) in addition to the Consultative Council of European Judges (Opinion no. 1 (2001), on standards concerning the independence of the judiciary and the irremovability of judges (19).

A well-trained senior judge is a more independent judge (Giacomo OBERTO (20). In other words, an extremely proficient judiciary school is a requisite factor for strengthening the judiciary and for ensuring independence of the judge, and at the same time guaranteeing the rights of citizens (Franco IPPOLITO) (21). This highlights the instrumental nature of ongoing training. When the independence of judges is thus legally proclaimed and protected as an essential feature of their legal status, a radical autonomy is being declared for each judge in their interpretation and

application of the Law; however, at the same time, if the content of the constitutional prescription proscribing any arbitrariness by of those who hold any kind of public power is not to remain an empty declaration, it is clear that this must be a responsible autonomy and therefore a properly trained autonomy which in general is based on the security that judges, in applying and interpreting the rule, possess in their acquired knowledge all the elements of comprehension of the particular conflict they are resolving. A profound knowledge of law on the part of the judge is therefore a guarantee for citizens that they will not be judged according to opinions or even personal whims, but according to the legal system (22).

b) Ongoing training as a complement to self training

It is possible to distinguish between training designed by those responsible for governing judges and senior judges through the appropriate training plans and programmes, and training designed by the judge himself when addressing his own training needs or professional vocation. The two are compatible, and article 433 bis of the Organic Law of the Judiciary precisely seeks this complementary compatibility encouraging judges to participate more in designing the training programmes devised by the General Council of the Judiciary, in accordance with their specific needs.

The ideas expressed in the previous section on ongoing training being indispensable and also contributing to a more independent judiciary, do not entail the exclusion of self training. On the contrary, it provides a necessary contribution to the permanent acquisition of knowledge (23) and 68.2% of those surveyed considered this to be the case in an opinion poll carried out by the General Council of the Judiciary (24). As Carlos GARCÍA VALDÉS (25) indicates, ongoing training will always presuppose a considerable personal effort on the part of the judge. Obviously

judges undergo training on a daily basis in the course of their duties, resolving cases submitted for their consideration, by consulting legal databases, case law and the works and articles available to them in scientific literature.

However, basic educational practice shows that taking part in debate, practical and group study and, in short, the technique of active participation of students, is an essential requirement for adequate professional training. In addition, training activities provide a magnificent opportunity for sharing and exchanging experiences with colleagues from different categories, holding other responsibilities and duties and assigned to various locations in Spain. For this reason Opinion no. 4 (2003) of the Consultative Council of European Judges (26) highlights the opportunity for organising judicial training in such a way that it will cover all levels or categories in the judiciary, as this will encourage an exchange of points of view and different experiences, avoid hierarchical tendencies and keep all members of the judicial profession abreast of the difficulties and concerns of its various sectors, as well as promoting cohesion and overall consistency in the judiciary.

*B) Mandatory versus voluntary nature
of ongoing training*

When addressing the issue of mandatory or voluntary ongoing training, it is appropriate to differentiate between two different plans, that of *lege data* or a textual interpretation of the innovative article 433 bis OJ and that of *lege ferenda*, developing a theoretical plan for the scope and consequences of what at the present time is simply a professional duty, namely, the requirement that all judges update their training on a permanent basis.

a) The professional duty of all judges to continue their training

It is clear that all judges should be capable and apt not only on entry to the judicial service but also throughout their professional career. To this end the General Council of the Judiciary is required to ensure that all judges receive adequate skills for performing their duties throughout their service (27). From this perspective all judges or senior judges are entitled to receive from the responsible body, in our case the Judiciary School, adequate training of an appropriate quality while they remain in the Judicial Service. However, at the same time it is important to recall the professional duty incumbent on all judges to ensure that they are professionally capable of carrying out their work.

Opinion no. 4 (2003) of the Consultative Council of European Judges comments in respect of initial and in-service ongoing training (28) that quite apart from the basic knowledge they need to acquire before they take up their posts, judges are «condemned to perpetual study and learning». The aforementioned opinion survey refers in a generalised way to the consideration of ongoing training as a professional requirement and at the same time as the right of all judges (29).

b) Voluntary nature of training as a general rule in comparative systems

In most of Europe (30) the voluntary nature of ongoing training of judges is a general feature except in some Eastern countries (Estonia, Moldova, Hungary and Romania) where it is mandatory. In Portugal (31) and some Länder in the Federal German Republic (32) only judges who have just entered the judicial service are required to undertake complementary training in the first years of their career.

In France (33), a country which has a long tradition in this area, participation in training activities is voluntary. However, when first initiated it was mandatory for judges who had recently graduated from the National Judiciary School to undertake two years of ongoing training per annum for the first eight years following their appointment (34). For other judges training was optional.

Opinion no. 4 (2003) of the Consultative Council of European Judges, having recommended that ongoing training should as a rule be governed by the idea of the judges' taking it up in a voluntary manner, states that it is unrealistic to make in-service training mandatory. The fear is that it would then become bureaucratic and simply a matter of form. The suggested training must be attractive enough to induce judges to take part in it, as participation on a voluntary basis is the best guarantee for the effectiveness of the training. Voluntary attendance is the best guarantee of the effectiveness of this training (35).

Nevertheless, the aforementioned opinion recommends that, exceptionally, ongoing training should be imposed in specific circumstances (36) and as an example it cites when a judge takes up a new post or a different type of work or functions or in the event of fundamental changes in legislation.

In Spain the State Pact for the Reform of Justice (section 6) since it addresses training in the Judicial Service, distinguishes between ongoing training, which will permit «increased knowledge of specific subjects and extended knowledge in order to assist specialisation» and the implementation of general and intense training and adaptation processes «in particularly significant subjects, specifically those resulting from wide reaching legislative reform.» In this latter case it is clear that the question is not one of specialisation but rather one of an occasion such as a wide-reaching legislative reform which will require an in-depth knowledge in order to apply it.

In respect of these adaptation processes, the White Paper on Justice raises the possibility of establishing mandatory ongoing

training activities in the case of legislative reforms with an important emphasis on jurisdiction (37). In addition it indicates the possibility of establishing the mandatory nature of training for newly qualified judges for at least two years following entry in the judicial service, when they would be required to participate for an annual period of at least ten days in ongoing training activities, or at least to concede sufficient importance to their participation in training activities which have been specifically designed for them (38).

Finally, the State Pact for the Reform of Justice in its section 7 on salaries provides, amongst other issues, that «the salary system shall be redesigned providing an incentives model which will ensure financial independence and *encourage training, performance and assumption of greater responsibilities*» (39). From this regulation it may be inferred that the aforementioned Pact establishes the voluntary nature of ongoing training, this being a means of providing incentives in the salary system.

c) Analysis of article 433 bis OLJ

Within the strictly legal framework we need to recall, as we have previously indicated, that article 433 bis OLJ is an isolated precept which is in no way aligned to any of the articles –in the same Organic Law– regulating aspects of the professional career, such as promotion to a higher rank, professional promotion or assignments to specific posts. We should not lose sight of the caveat in the Organic law affecting the judicial statute, pursuant to article 122 of the Spanish Constitution, thus restricting the field of action of the regulation. Regulatory development may only be able to regulate ancillary aspects of ongoing training linked to the professional career such as assessment of objectives of the specialised training plan; however, to some extent it will be able to regulate issues which are an integral part of the judicial statute proper (advancement in rank, promotion or assignment

of posts). Therefore, it is only possible to impose mandatory ongoing training in those cases where the Organic Law of the Judiciary has thus established. Currently the only provision expressly stipulated is that referred to in the changes in the jurisdictional order of article 329 OLJ (specific and mandatory training activities). In all other cases training shall be voluntary.

As a result mandatory ongoing training may only be established by extending it to other cases such as those indicated in article 329, through the reform of the OLJ as it affects the statute of judges, and not through regulatory means. Meanwhile, pursuant to article 433 bis, the General Council of the Judiciary will be required to ensure that all Judges receive ongoing, individualised, high-quality specialised training throughout their professional career.

d) Exceptional cases in which ongoing training should be mandatory

The voluntary nature of training should, as a general rule, prevail in the ongoing training of judges. However, as an exception and with the subsequent amendment of the OLJ, ongoing training should be mandatory in certain cases: when a judge accepts a new post or undertakes a different or special type of work or duty, changes in the jurisdictional order, training activities in the event of legislative reforms having a significant effect on jurisdiction, regular courses to keep all members of the Judicial Service abreast of developments, retraining courses in cases of maternity leave or special services, and complementary and specific training, including activities aimed at judges from the last two entry intakes, and senior judges who in the past two years have entered the labour and contentious-administrative systems. All of which is without prejudice to any other cases arising as a result of legislation in force.

C) The effects of training on the professional career of judges: professional promotion

GUARNIERI (40) indicates that the judiciaries of continental Europe tend not to differ radically from public authority bureaucratic services, that is, they have a closed career or civil service system (41). Having entered the service, judges are classified according to a hierarchy of grades in which promotion is based on varying degrees of seniority and merit, often as defined by senior members of that hierarchy.

We should therefore question whether other criteria should be included, along with seniority, such as merit and training, in matters of promotion through ranks and professional promotion in general. In other words, how much should ongoing training affect the professional career of judge? Article 4.1 of the European Charter on the Statute of Judges establishes a promotion system based on the quality and merit shown by the judge in the performance of his duties, when this is not based on seniority.

Furthermore, the conclusions of the 6th meeting of members of the European Network for the exchange of information between persons and entities responsible for the training of judges (Lisbon Network) states that «On one side, participants considered that training may be truly fruitful if not influenced by career considerations, on the other side it seemed possible to envisage some form of relevance of participation to training for assignment of a judge or a prosecutor to some specific functions (e.g. juvenile or family law court). Aside from this latter possibility, the only solution to give some weight to training could be that participation in itself, objectively considered, may however be taken into account for professional evaluation.» (42) The latter occurs in France, where the National Judicial School submits a note listing the training activities undertaken by each judge, with this information entered in their individual dossier and later taken into account by the authorities responsible for their career progress.

The connection between training and professional promotion raises doubts in some quarters (43). It is held that what was until now an end in itself, i.e. the judge's training, will become an instrument for professional promotion for participants. In other words training would cease to be an instrument for the performance of judicial duties and would simply become a tool for achieving promotion.

In reality, the objective has a dual purpose, that of training judges and promoting those who have been trained. Both ideas should be mutually reconcilable in providing specific training for access to a particular post or assignment, and professional promotion, together with remuneration (44) in order to encourage training.

In Spain, the State Pact for the Reform of Justice, in section 5 on the Judicial Service, contains the aforementioned ideas by establishing that a new Statute of Judges should be drawn up which will address the following criteria: (...) c) It will strengthen and promote the idea of career, which will gain ascendancy over the exclusive criterion of seniority. It shall incorporate criteria of merit, training, specialisation, performance and quality of work as factors in promotion, assignment of posts and improvements in salary levels. Entry into the service shall be through single judge courts with less workload and without any specialisation, establishing a minimum period in such posts. Factors apart from seniority, such as training performance or the assumption of responsibilities, shall be assessed by the General Council of the Judiciary. And d) a model will be established for the requirements of each post, conditions for access to specific appointments and specialised bodies, and restriction of the period of time spent in such posts.

And in respect of the provision of assignments, in section 6 on training, the Pact states (among other points) that in terms of the Judicial Service (...) training and demonstrated ability shall be a factor taken into account in the allocation of appointments which shall prevail over the exclusive criterion of seniority.

As may be seen, the Pact incorporates «factors such as merit, training, specialisation, performance and quality of work» (45). GONZÁLEZ PÉREZ believes, however, that of these criteria other than seniority only one should prevail, i.e. training and demonstrated ability in courses organised by the General Council of the Judiciary. The others should be judged in a restrictive manner (46). Furthermore, this author maintains that the criterion of training may be just as objective as that of competitive examination of judges, provided that there are minimum guarantees and that they are adequately structured as ongoing training.

These prescriptions served as a background to the present article 433 bis of the OLJ, which in section 3, paragraph 2, states that «compliance with the objectives of the Specialised Training Plan of every judge shall be assessed by the General Council of the Judiciary according to regulations for the purposes of professional promotion».

In the aforementioned precept ongoing training is clearly linked to professional promotion of judges, prevailing over the exclusive criterion of seniority pursuant to the terms of article 326 OLJ, which states in section 1 that: «Professional promotion of Judges within the Judicial Service shall be based on the principles of merit and ability as well as the aptitude and specialisation in performing the jurisdiction. Certainly, seniority is currently not the only factor to be taken into account in the provision of appointments, particularly following the reform introduced to the OLJ by the Organic Law 19/2003, adding, alongside knowledge of a language and special or Regional Civil Law of special duties corresponding to different appointments».

Autonomous Communities as preferential merits in competitive examinations for courts in their territory (art. 341 section 2, OLJ), the so-called functional specialisation, based on prior experience in the jurisdictional sector, in order to access specific judicial bodies (47).

In the light of the foregoing, it is necessary to make the Judicial Career more flexible, replacing the exclusive criterion of seniority

(48) and incorporating other criteria in order to cover specific judicial posts where duties or responsibility so require, one of which is obviously the ongoing training of judges (49). «The only means of endeavouring to make the rigid scaled mechanisms based on seniority consistent would be to base it on the premise that a greater number of years spent in the service is an expression not only of greater maturity, but also of greater professional ability; therefore only by incorporating ongoing training mechanisms to the list of rights and basic duties of judges will it be possible to achieve a reinterpretation from the perspective of legal equality which would otherwise merely be a personal preference» (50).

Ongoing training should be linked to promotion in the Judicial Service by means of various previously defined means, such as the need to obtain specific credits, for example, in order to access a single judge court which has special characteristics (Central Courts for example), an associated court or to the presidency of a chamber of the Provincial Court, together with other possible assessment criteria. To this effect it would be necessary to define the preliminary requirements for various posts, or the conditions of access to appointments, with a detailed description of the post profile on the basis of preference being given to the most senior candidate who possesses the other requirements established in relation to job posts, or in the calling of the competition. In this way it would be possible to allay many of the fears arising from the proposal to incorporate promotion criteria other than the strictly objective one of seniority.

Obviously it is essential that all should have equal opportunity to attend the pertinent training activities, and this will be achieved through specialised training plans or study plans which we shall refer to below. All those who wish should be able to attend. And it is important to ensure that the criteria are standardised when judging «training and ability» of the participants as well as the nature of the programmes and subjects forming part of the training and its duration.

D) The role of ongoing training in specialisation

«To specialise» according to one of the Spanish Royal Academy of Language's definitions means «cultivate with speciality a particular branch or a science or art».

Specialisation constitutes an essential requirement for delivering justice in all the jurisdictional sectors. Its importance today is clear. In any professional body, and this includes the world of Law, there has, in recent years, been a marked tendency towards specialisation.

In the present regulation of the OLJ there are two specialisation models, one of which we could term as classic, consistent with successful completion of selective tests and functional specialisation resulting from the exercise of jurisdiction in specific work posts. In this respect the Explanation of the Grounds for the Organic Law 19/2003, of 23 December states that «in resolving competitive examinations for access to associated courts there is a marked emphasis on specialisation, basing access on either specific knowledge or prior experience in the corresponding jurisdictional sector, even when such criteria combine with that of seniority».

With respect to the first model of specialisation through selective testing which evaluates specific knowledge, it is necessary to highlight the secondary role of ongoing training in the present system. The participation of the ongoing Training Service in this sector is restricted to the stage subsequent to successful completion of the examinations testing the candidate's knowledge, and in practice it has little or no decisive role in the selection process. The preparation of the competitive examination is based on external training arranged by the candidate and without any involvement of the Judiciary School.

The system's defenders maintain that specialisation in the contentious-administrative system, which has been in existence for fifty years, has produced very satisfactory results. This is a system which is demanding and requires effort, based on the

criteria of equality, objectivity and competence. Substituting it or comparing it with a means of specialisation through ongoing training activities, far from improving the system would be impoverished by it, given the deficiencies in the present training system.

Despite the radical change made to the assignation of posts as a result of the reform of the OLJ with the Organic Law 19/2003 of 23 December, which until then had considered seniority and the «classic» specialisation as essential basis, the expectations generated by the functional specialisation –to which the State Pact refers and which is reiterated by the Explanation of Grounds for the aforementioned reform law– have been restricted by the lack of adaptation of the Service Regulation, the absence of any regulatory development of specialisations, and by the actual wording of the articles of the Organic Law, which has limited the effects of functional specialisation to unnecessary chronological models in the way that they appear regulated, in order to assess training deriving from performance of the judicial function.

Finally, as a third means of specialisation, we have specific training linked to the Ongoing Training Service. Since, as a general rule, judges enter the Service as general practitioners (51), specialisation should be promoted as much as possible in ongoing training. The State Pact, aware of its significance, indicates that ongoing training will enable «a more profound knowledge of specific matters and increased knowledge in a way that will enhance specialisation» (section 6). In this regard GONZÁLEZ PÉREZ states that ongoing training should be an effective system of specialisation provided that it is adequately organised (52).

This new specialisation system linked to ongoing training should be based on a system of credits which will be assigned to the various training activities, in contrast to the traditional system of knowledge testing, which will permit judges to acquire their specialization by completing a specific number of credits previously established in training plans.

This system should in any case be accompanied by compliance with the provisions for a performance evaluation of judges in their respective judicial assignments.

This third means should undoubtedly contribute to promotion of what is known as *sector specialisation*, which is not limited so much to jurisdictional orders as to specific subjects, a profound knowledge of which is essential in defining the profiles applicable to particular posts (disabilities, environment, and domestic violence). This requires identification of the type of cases generally heard in some judicial posts, as well as the type of specialisation carried out in some courts as a result of regulations on distribution (Art. 98 OLJ).

In the specialisation regulation which should be issued by the General Council of the Judiciary pursuant to article 110, section 2, OLJ (53) the issue of specialisation within the Judicial Service should be addressed in depth, and together with the difficulties deriving from selective testing in the civil and criminal orders (54) and the need to make the specialisation system more flexible (separating the condition of specialist from the job post), a major role should be given to training activities organised by the Judiciary School in this area.

Notwithstanding, it is important to underline that the aforementioned ideas on the role of ongoing training in specialisation are not unanimously accepted by all sectors of the Judiciary, and therefore the question remains open for discussion in future debates and papers.

In this context the private vote formulated by Jose Luis REQUERO IBÁÑEZ should be highlighted in this specific area, in the plenary session approving this White Paper.

This is not an isolated opinion but one shared by many members of the Judicial Service, which means that in future an effort should be made to achieve consensus in designing the specialisation model insofar as there are very diverse situations, depending on the different jurisdictional orders, and there are many judges who may find their professional expectations affected.

The aforementioned private vote states «I disagree with the part of the approved text on specialised training and therefore, its reasoning on the issue of specialist senior judges, as in general there is some chaos and confusion between «speciality», «specialists» and «specialised» training. Thus, specialised training is confused (by orders and subject matter) with the organic relevance of specialist judges, or an individualised plan is confused with a specialised plan. An example of the foregoing is the case of the National Court, where an individualised or specific plan for a court is confused and is proposed as a specialisation. All this is largely the fruit of the confusion created today by the Organic Law of the Judiciary, in which specialisation examinations are proposed in the strict sense (these are traditional in the contentious-administrative and the labour system created in 1985), of promotion (Civil and Criminal) to which the Juvenile, and most recently, the Commercial system, should be added.

Furthermore, I consider it misguided that from what are merely training requirements the White Paper enters the realms of the organic and this is done ignoring, for example, the contentious-administrative system, which represents 50 years of speciality and what that means. It is a system which, since 1956, has worked entirely satisfactorily, in a voluntary manner and has led to the admired status of the contentious-administrative jurisdiction. The literature has always praised this speciality, and moreover it has been said that the present Spanish Administrative Law is based on the case law laid down by its specialists.

I therefore disagree with any manoeuvre designed to replace the traditional specialisation which is carried out through selective examination or which attempts to create parallel means by which specialisation is attained through «assiduity» or through years of tenure in a jurisdictional order, or through credits as is proposed, simply by means of attending training courses. Anyone who knows the training courses organised by the General Council of the Judiciary will deduce that they cannot by any means lead to the condition of specialist senior judge. With the proposals of

the White Paper an attempt will be made to apply the logic of a failed system of entry into the Judicial Service –competition based on merit or 4th way of access– to specialisation, removing any idea of personal effort, achievement, and accreditation of knowledge. In short, instead of improving on what has been a success it would be a question of generalising what has been, and remains, a failure.

E) The Ongoing Training Plan as a basic instrument of training

The General Council of the Judiciary shall establish a regulatory Ongoing Training Plan for the Judicial Service which will detail the objectives, content, training, priorities and programming over several years of these activities (art. 433 bis section 2).

It is fundamentally based on the fact that judicial training is an essential part of the competence attributed to the General Council of the Judiciary in judicial policy matters, both constitutionally and statutorily (art 122 EC and 107 section 4, 110 section 2, paragraph e) and 433 bis OJ) The Governing Body of the Judiciary is responsible for defining the objectives of an ongoing training policy and for directing the executive action designed to implement, in the specific public interest, the content of the professional training of judges, which is no more than updating and maintenance of professional skills and the qualified competence which at any given time is deemed functionally appropriate for the satisfaction of institutional purposes entrusted to the Administration of Justice (55).

The Plan will be the basic training instrument by means of which the General Council of the Judiciary provides all judges with ongoing individualised, specialised, high quality training throughout their professional careers so that they are able to

address the task entrusted to them in an appropriate manner, which is, to put it briefly, to offer effective judicial protection. The Plan will need to detail the objectives, content, training priorities and the long-term planning of these activities. It is basically an educational project which will be required to specify the purposes, strategies, quality of training, budget, logistics, time periods etc. In other words, the Training Plan will need to establish the major outlines of judicial training which will then be translated into the specialised plans for each judge.

a) Specialised Plans

Each member of the Judicial Career shall be provided with a Specialised Ongoing Training Plan by means of which, in an individualised manner, over five-year periods, specific training objectives will be planned, ensuring that it is fully adapted to any legal innovations which may affect the performance of judges' jurisdictional duties (art. 433 bis, section 3 paragraphs 1).

As opposed to the general courses designed for all members of the Judicial Service and to annual courses designed for jurisdictional orders, the specialised plan is devised individually for each judge, to be developed over five yearly periods and responding to a number of previously defined training objectives which will serve to guide them professionally.

The advantages of these specialised plans are evident, as they are individualised; they permit personalised monitoring of the use of the training system and how each judge benefits from it; and programming over several years will enable planning of judges' training in the mid term, making the design and duration of the training activities more flexible as well as encouraging more in-depth study and improved knowledge of the plan subject matter; finally, since the plans are specialised, in contrast to the general plans, they will address the specific and varied training needs of members of the judicial service (56).

The credit system as a means for measuring and assessing academic progress is perfectly applicable to specialised plans in the same way as University teaching (57). Each judge shall take a maximum number of credits per year and will need to be authorised by the Judiciary School Committee in order to carry out any other training activities that exceed the maximum number permitted under regulations (58).

The general guidelines for the specialised plans will be established by the Judiciary School Committee. The design of the specific teaching curriculum in the specialised plans (59) will be drawn up by the Ongoing Training Service, subject to general guidelines which, if successfully completed by the judge, will result in the appropriate qualification, approved by the Judiciary School Committee.

This will enable all judges or groups of judges carrying out similar work and whose career trajectory will take a similar form, to propose their own training plan, addressing the particular nature of their jurisdictional duties and their own professional career (60).

The common training content (a composite of the knowledge, aptitudes and skills required to achieve the training objectives) shall be established in the general guidelines of the Judiciary School Committee and shall be included in all specialised plans.

The aforementioned plans shall establish, within each jurisdictional sector, specific and compulsory training activities and (legislative or jurisprudential innovations for example), others equally specific, freely chosen from within each judicial order and with closely linked content (financial crime, criminal enforcement or cybercrime within the criminal order, to cite a few examples) and, finally, some voluntary activities of a multidisciplinary nature, common to the whole Judicial Service.

The training actions would be assigned credits which may differ depending on the type of course or seminar, its duration, study and work hours specified by the judge in order to achieve his/her training objectives according to his/her judicial duties, which

represent the judge's workload in fulfilling study programme objectives and which are obtained by successfully completing all the activities contained in his/her specialised plan (61).

The credits corresponding to each training activity shall be established by the Judiciary School Committee, as proposed by the Ongoing Training Service when approving the specialised plans.

Activities which are not organised by the General Council of the Judiciary shall only be taken into account for the purposes of assigning credits when approved by the Judiciary School Committee, following a proposal by the Ongoing Training Service, and at the request of the interested party. For the assessment of these activities, the relevance of the organising body shall be taken into account, as well as the content, interest and updated training which is not provided for in the training plans of the General Council of the Judiciary; as well as the training duration.

In order to fulfil the objectives established in the Specialised Plan, teaching activity shall be taken into account, along with publications of Judges relating to jurisdictional activity and the order in which they serve. These shall be included at the discretion of the Judiciary School Committee, having been proposed by the Ongoing Training Service and at the request of the interested party.

b) Assessment of Specialised Plans

Compliance with the objectives of the Specialised Training Plan of each of the judges shall be assessed by the General Council of the Judiciary in the manner established in the regulations for the purpose of professional promotion (art., 433 bis section 3, paragraph 2).

Due to the importance attached to compliance with objectives for the purposes of promotion, their evaluation is crucial and

should not be limited –obviously– to the number of certificates obtained for attendance at training activities. In any case this assessment should be established on the basis of objective criteria *to avoid falling into arbitrariness, favouritism, or political affinities* (62).

What type of merits should be taken into account? Those which are strictly academic, that is, activities organised by the General Council of the Judiciary? or should masters' courses and Doctorate degrees also be considered? Should the performance of jurisdictional duties be taken into account as a merit? These are questions which should inevitably be asked when considering the assessment of objectives. However, we should indicate –in line with the foregoing on the idea of promoting trained judges– that this assessment should be a compulsory requirement, and not an added merit, for the professional promotion of any judge.

The system of credits described in the previous section may facilitate this task. A credit as a unit of measurement of acquired training represents the amount of work done by the judge to fulfil the objectives of the study programme, and is obtained by completing each of the activities included in the judge's specialised plan.

On this point the requisite reorganisation of the Ongoing Training Service is particularly important, as it should become essentially a meeting of teachers acting in a professional and independent manner, who are able to devise criteria and strategies which will result in the design of a style of teaching and who will define assessment criteria for their own activity and that of the users of the Training Service.

2. Current status of the Judiciary School's Ongoing Training System

At the present time, and in general terms, the ongoing training system is governed by the idea of the voluntary nature of training

(63), except in those cases in which attending training activities is a legally established mandatory requirement, as occurs in changes of jurisdiction, or in the case of successful completion of the appropriate specialisation examinations. For judges in the two most recent entry intakes as well as judges who have recently joined the specialised labour and contentious-administrative specialisations, complementary training seminars have been set up, specifically designed for these categories, at all times respecting their optional nature (64).

The percentages of participation of members of the Judicial Service in training activities are similar to those in neighbouring countries, where ongoing training is also governed by the idea of training being a voluntary option, as in Italy or France. The French National Judicial School takes in approximately 3,500 judges per annum (that is, approximately sixty percent of the judicial corps) in at least one ongoing training activity. In Italy participation in training activities involves around fifty percent of the service whereas in Spain in 2004 it was sixty percent of the service (65).

Currently *training activities have no effect in the professional career of judges* in respect of professional promotion or allocation of posts. There is no benefit whatsoever gained from a salary perspective or that of professional promotion in attending training courses. Attendance certificates, beyond a mention in the judge's curriculum, do not lead to his/her professional promotion, which is dominated by the criterion of seniority. Nor are they taken into particular consideration even for assigning those few posts which are appointed by the General Council of the Judiciary in a discretionary manner.

In *professional promotion*, voluntary upgrading from the rank of judge to senior judge may be achieved by successfully completing selective examinations in the civil and criminal jurisdictions, or by means of specialisation in the contentious-administrative and labour systems. In the former case, the promotion is reserved exclusively to judges. In the latter it is a

common means of specialisation for judges and senior judges although in the case of ordinary judges there is also promotion to a higher category.

Confining ourselves for the present to promotion examinations (those of promotion-specialisation shall be analysed later) by means of successful completion of selective examinations in the civil and criminal jurisdictions, article 312 of the OLJ establishes that these examinations «shall be held in the Judiciary School and shall take into account the degree of skill and legal training of the candidates as well as their knowledge of the different branches of law. These may consist of studies carried out, attendance on courses, drafting of opinions or decisions and their defence before the Tribunal, explanation of issues and reply to the comments of the Tribunal or other similar tests».

The regulatory development of these examinations points to a model of self-learning which bears no relation to the activities proper to ongoing training. In accordance with article 67.2 of the current Regulation of the Judicial Service «Examinations shall consist of successful completion of a theoretical exercise and subsequent attendance on a course to be held at the Judiciary School». Of all the options considered in article 312 OLJ, completion of a theory course is deemed to be the option most similar to that of competitive examination –in its traditional conception–.

The *specialisation* system for judges reproduces in more or less detail, depending on the different ways in which the various specialities are regulated, the model described above, in that it reveals an almost total divorce between the decisive stages of examination and the activities of ongoing training. At the same time the importance that specialisation has acquired in recent years is undeniable, both in the development of different types other than the traditional specialisations (juvenile and commercial) and for the specific weight given to this category in the model for provision of assignments introduced by the Organic Law 19/2003.

There are currently two models of specialisation in the present regulation, the classic one of undergoing selective examinations and the functional specialisation through the performance of service in specific work posts.

When distinguishing between jurisdictional orders, it is important to indicate that regulation of specialisation examinations in the contentious-administrative and the labour orders are similar to the system used for selective examination in the civil and criminal orders. Article 68 of the Service Regulation implies that examinations consist primarily of an explanation and presentation of four lessons chosen from among those included in the programme approved for each calling. And although article 85 establishes that those interested in participating in the specialisation process may accompany their applications with a detailed list of the merits and professional services they deem appropriate, it is also true that what those merits should consist of or how they should be assessed has not been included in the regulations, nor how their possible assessment could be combined with the evaluation of the presentation of the examination themes. All that has been established is that the General Council of the Judiciary shall transfer the documentation to the Examining Board prior to commencing the exercise, so that it may be taken into account when assessing the candidates.

The specialisation examinations for Juvenile Judges do have a completely different profile from the other examination procedures, as in this case it is necessary to undergo a training course at the Judiciary School. These specialised courses shall be convened on a regular basis to be determined by the General Council of the Judiciary, establishing in each case in the corresponding calling, the number of members of the Judicial Service who will be able to participate, and the number of places for the course. Candidates shall accompany their applications with a detailed and accredited list of any professional services and merits they wish to include. The selection of participants shall be made by the Qualification Committee of the General

Council of the Judiciary in the number established in the calling, taking into account overall the personal record and the professional services and merits mentioned by the applicants. Those selected shall be convened to take part in an objective examination consisting of a multiple choice test on topics relating to the teaching material supplied. In accordance with the results of this test, a list of participants shall be compiled of those who will continue to the next theoretical-practical stage, which will take place over three months in three monthly periods. Finally, for successful completion of the specialisation course, the applicant is required to pass a final assessment test involving theory and practical material.

Another completely different model has been devised for the commercial specialisation. Similarly, in this case the interested parties must accompany their applications with a detailed and accredited list of the professional services and merits they wish to add, although the General Council of the Judiciary, when convening the selection procedure, shall approve the bases for the procedure, in which the maximum grade which can be awarded for alleged merits shall be decided, according to the following scale: a) Years of effective performance of judicial functions in the civil and labour jurisdictions. b) Doctorate in Law and the grade obtained, including the academic record. c) Scientific and legal publications. d) Teaching activity and academic qualifications obtained in higher education institutions. e) Lectures and papers given at conferences and other scientific meetings. f) Completion of specialised courses or programmes, preferably within the framework of training activities organised by the General Council of the Judiciary. In this respect it is important to emphasise that this is the only occasion on which the regulation of specialisation examinations considers a specific reference to training activities organised by the General Council of the Judiciary.

Currently, *training is of a general nature* in the sense that activities are programmed generally for all judges as well as for

the various jurisdictions. In addition, the format of the different training activities is the same for the whole judicial group apart from the time and organisational opportunities available to different judges. The plans are devised annually and therefore as a general rule they do not extend beyond one academic year nor enable further more advanced learning.

3. Conclusions and proposals

(1.1) Training of Judges is *necessary* as an integral part of the jurisdictional function and should therefore be of an ongoing nature, without prejudice to the variability of its content.

- The General Council of the Judiciary shall guarantee all judges ongoing, individualised and specialised high quality training throughout their professional career.

(1.2) The *purpose* of ongoing training should be to ensure that judges attain a high professional capacity, as a guarantee of their independence and impartiality.

(1.3) The main source of training for judges is the performance of their jurisdictional duties, which is an essential complement to ongoing training.

(1.4) In deontological terms, ongoing training is not only a right but principally the *professional obligation* of every judge throughout his/her career.

- Failure to comply with this duty shall result in the absence of any professional advantages (such as improvements in salary levels, professional promotion, specialisation and assignment of posts).

(1.5) In legal terms, as a general rule, the ongoing training of judges should be governed by its *voluntary nature*. However, as an exception and with the subsequent amendment of the OLJ, ongoing training should be mandatory in certain cases.

Exceptionally, ongoing training may be mandatory in the following cases: when a judge accepts a new post or undertakes a different type of work, or when there are special changes in the jurisdictional order, or training activities relating to legislative reforms which will have a significant effect on jurisdiction, regular retraining and update courses provided for all members of the Judicial Service, retraining in the case of maternity leave or secondments to special services, and complementary and specific training including activities aimed at judges in the most recent two intakes and senior judges who have joined the labour and contentious-administrative jurisdiction in the last two years.

(1.6) Article 433 bis OLJ links training with relevant aspects of the service, such as professional promotion, challenging the exclusive criterion of seniority. To this effect it establishes that compliance with the objectives of the Specialised Training Plan for each judge shall be assessed by the General Council of the Judiciary in the manner established according to regulations for the purposes of promotions.

- Due to the reservation of the organic law affecting the judge's statute, it is necessary to amend the Organic Law of the Judiciary itself in respect of professional promotion.
- A basic question is the manner in which compliance with those objectives is evaluated, which –obviously– should not be restricted to computing certificates of attendance at training activities. In any case, this assessment should be established on the basis of objective criteria *in order to avoid any arbitrariness, favouritism or political affinity* (66).
- This evaluation should constitute a requirement and not simply a merit, for the purposes of promotion and access to specific judicial posts.

- The credit system, taken from university studies, may help this work of evaluation.

(1.7) Despite recognition of the excellent results provided by the specialisation based on successful completion of a test of knowledge, there are other *means of access to specialisation* which, together with this classic means, add to the professionalism of our judges.

- Regulation of specialisation by selective examination should incorporate all the elements contained in article 312 OLJ, paying particular attention to an objective assessment of the professional career and participation in specific ongoing training activities, in contrast to valuing strictly memorised content. It would be interesting in this respect to assess the experience of specialisation examinations of Juvenile Court Judges and the subjects proper to commercial courts.
- Functional specialisation based on the performance of the work, which, when regulated, will need to polish any awkward elements (lack of consistency in defining the time requirements for tenure in the post, setting of time constraints on the performance of the duties to the period immediately prior to the date of the calling of the examination, or the computation of half of the performance of the duties in mixed courts, to name just a few examples) creating a consistent system for the provision of places.
- Specialisation by means of specific ongoing training activities should be based on a system of credits which will be assigned to the various training activities and which will enable judges to acquire the speciality on completion of a specific number of those credits, as previously established in the training plans.
- This innovative system should, in any case, be accompanied by compliance with provisions which, in terms of

assessment of their performance, are required of judges in their respective judicial assignments.

(1.8) Nevertheless, it is necessary to make the specialisation system more flexible, thus enabling senior judges to specialise without being obliged to immediately take up a specialist position: by removing the requirement to enter a competitive examination within a specific period, so as not to lose the speciality. In addition, specialisation should allow a preference for specific assignments; however, it should not be possible to reserve these totally. In addition the issue of specialisation in the civil and criminal orders should be addressed.

(1.9) The General Council of the Judiciary should establish regulations for an *ongoing training plan for the judicial service* detailing the objective content, training priorities and long-term planning of these actions (art. 433 bis section 2).

(1.10) Each member of the Judicial Service should be provided with a Specialised Ongoing Training Plan by means of which, over five-year periods, their training objectives will be programmed, ensuring that they remain fully abreast of any legal innovations which could affect their jurisdictional duties (art 433 bis section 3, paragraph 1).

II. RATIONALISATION OF AVAILABLE TRAINING

1. *Overview*

A) *Reduction of available training*

At the present time, the Judiciary School provides an enormous amount of training to members of the Judiciary; this overabundant

provision, which is unmatched by any other civil service sector, gives rise to a number of negative consequences; such as replication of the content as well as teaching personnel, distancing from the strict purpose of training –on frequent occasions– and its use in sectors of activity other than that of training.

It is therefore necessary to adequately adjust the training provided to the real training needs of judges. The present situation would seem to indicate a need for some reduction in the provision available. More activities are offered than are actually requested by judges. Annual programming of more courses and seminars does not necessarily imply a correlative increase in the number of applicants. It is appropriate here to point out that there is a stable percentage fixed at around 35% of the Judicial Service which, for various reasons (some of them very specific), does not take up the training offered by the General Council of the Judiciary. It is even more essential to structure the provision of training in order to maintain the academic quality standards required in all the activities organised by the Judiciary School, particularly if the training plan is intended to affect the professional promotion of its participants, as established in the OLJ.

Furthermore, in recent years there has been a proliferation of «extraordinary training activities», many of which are organised during the year, unconnected to the annual programme. This makes continuous training planning inconsistent, and implies serious organisational problems and difficulties in selecting participants in accordance with equal policies, as well as raising a serious risk of fragmenting the Ongoing Training Service.

In order to avoid these dysfunctions, the activities, as their name indicates, should be held in extraordinary circumstances, since they are not part of the Training Plan and should be adjusted to the criteria approved by the Judiciary School Committee on 5 May 2003, supplementing the same Committee's decision of 18 March 2003 restricting in any case their number. These criteria are as follows:

1. Extraordinary activities shall be planned in calendar four-monthly periods and shall be approved in the months of January, May, and September, a minimum of sixty days prior to their implementation.
2. Criteria to be taken into account for approval of those activities which imply costs are:
 - a) Relevance of the organization submitting the proposal;
 - b) Content, interest and updated training not included in the training plans of the General Council of the Judiciary;
 - c) Existence of budgetary availability in the proportion funded by the Council;
 - d) Participation of the Council in the design of the programme and
 - e) Appointment of speakers by the Council.

When these two final requirements are not met, judges may be authorised to undergo courses, when this does not involve any cost for the Council, that is, exemption from the payment of a registration fee and with travel, maintenance and accommodation costs borne by the course organiser, and also provided that the activity is of interest for the judicial service.

B) The role of the Judiciary School

a) Monopoly in management of the Ongoing Training Plan

The Judiciary School –pursuant to article 433 bis section 4, OLJ– shall devise the programmes and hold training courses included in the Ongoing Training Plan of the Judicial Service, and may therefore hold training activities in a decentralised

manner in autonomous regions or provinces, and through collaboration, if appropriate, with expert bodies and institutions in providing the training in question.

The aforementioned precept indicates the division of roles when designing and carrying out the Ongoing Training Plan. On one hand «the General Council of the Judiciary shall establish a regulated Ongoing Training Plan for the Judicial Service which will provide details of the objectives, content, training priorities and long-term programming of these activities» (section 2) and on the other, «the Judiciary School shall devise programmes and provide training courses included in the Ongoing Training Plan of the Judicial service ...» (section 4) and finally «compliance with the objectives of the Specialised Training Plan for every judge shall be assessed by the General Council of the Judiciary as established in the regulations, for the purpose of professional promotion» (section 3). Therefore, at various times in the design and management of the Ongoing Training Plan, different bodies of the General Council of the Judiciary intervene; in some cases it is the Plenary Session or the body which has been delegated (this is normally the Judiciary School Committee), and at other times the Judiciary School. The former is responsible for establishing the main content of the training plan, that is, it defines the *educational project* (purposes, strategies, financial costs etc) and evaluates compliance with the objectives of the specialised plans of every member of the Judiciary Service in terms of promotion, and the School undertakes an equally important task, which is that of providing the guidelines defined by the Plenary Session of the Council. This last task involves what is known as the architecture of training, consisting in training needs, assessing the quality of training, devising the programming for every activity and setting the profiles for each post, together with other services of the General Council of the Judiciary and the High Courts of Justice.

It is appropriate here to highlight the fact that the Organic Law entrusts the task of developing programmes and holding

training courses contained in the Ongoing Training Plan exclusively to the Judiciary School. However, the fact is that the Ongoing Training Service, by the very nature of its extensive topics and subjects, affects other services of the General Council of the Judiciary. Thus, the Domestic and Gender Violence Observatory, the Insolvency Law Monitoring Committee or the International Relations Service are affected, to name just three examples. There is a trend in certain cases to keep training activities within their respective sectors. This is evident in the case of extraordinary activities, where the initiative and planning in many cases does not involve the Judiciary School, apart from procedures for programming activities in which the Educational Committee is involved in an advisory capacity, which includes representatives from judicial associations as well as various jurisdictional orders.

This should not, however, imply that the Judiciary School relinquishes in any way its authority over ongoing training. It is required to develop the objectives, content and programming contained in the Ongoing Training Plan established by the Plenary Session of the General Council of the Judiciary. The members and services concerned with carrying out training activities shall present their proposals to the Judiciary School Committee for their inclusion, if appropriate, in the aforementioned Training Plan.

The question is not a trivial one. What is at play is either the strengthening of the Judiciary School, a key element and one which is fundamental for the General Council of the Judiciary –in the words of the White Paper on Justice (67)–, or a fragmentation of the service, handing over management of the numerous training endeavours to different members, monitoring committees of various laws and services involved. If the aim is to ensure consistent and rationalised planning and management of the system, it is essential to respect the role entrusted to the Judiciary School.

b) The Ongoing Training Service as directly responsible for training

In this division of roles among the various bodies of the General Council of the Judiciary (Plenary Session, Judiciary School Committee and Judiciary School) it would be appropriate to draw attention to the task of the Ongoing Training Service. This should be responsible for the following duties (68):

- a) Planning, organisation execution and assessment of the activities and Ongoing Training Specialised Plans of the members of the Judicial Service and other persons who, without being members of the judiciary, do carry out jurisdictional functions. In addition, it is responsible for carrying out activities designed for other professionals involved in the Administration of Justice.
- b) Preparation of collaboration agreements on matters of ongoing training of Judges with Autonomous Communities and public and private institutions.
- c) The proposal for selection of directors, teachers and speakers for the training activities, as well as the Judges attending the courses.
- d) Supervision of compliance with budgets, programmes and provisions relating to the Ongoing Training Service
- e) Creation of an annual publishing plan in any format deriving from ongoing training activities, to which effect the Ongoing Training Service will submit to the Judicial Documentation Centre the material deriving from the activities for their publication and dissemination.
- f) Any other duties delegated by the Director of the Judiciary School.

In this work of planning, programming, execution, assessment and management described in the current Judiciary School Regulation (arts. 22 and 24) (69) and the Draft Regulation of the

Judiciary School of 5 March 2004, the role to be undertaken both by the Service Director and the Section Heads should be that of authentic Heads of Studies and performing as such their duties of training directors. These tasks are detailed in the Judiciary School Regulation: The Director of Ongoing Training proposes for the Director of the Judiciary School «*plans, programmes activities and agreements created in its service*» (art.26). The Heads of Section of State Training and Decentralised Training are responsible, within the scope of their respective authorities, for the following duties: design of the contents for courses, seminars, workshops and other training activities; organisation, direction and assessment of courses and other training activities; and the directorship of studies in each of the fields of ongoing training (art. 29).

In its tasks of programming activities and selecting teaching staff, this technical body is assisted and advised by the Education Committee (art. 30 of the Judiciary School Regulation).

Other duties should be added to these, such as proposals for assessing users of the training system; quality control of the service provided to ensure *educational effectiveness*, the proposal, if appropriate, for awarding credits or other benefits or recognition by the system; proposals for assessment of the system operation which will enable the appropriate amendments to be made. The members of the Training Service shall also be subject to regular assessment.

C) Planning of ongoing training

The basic premise of this issue is that, the more that training is linked to progress in the judicial service, the more rigorous the planning and assessment of that training should be. Those high standards of quality should be present throughout the whole procedure of setting objectives, determining training priorities, programming activities, selecting content and appointing directors and lecturers for the activities planned.

Pursuant to the terms of article 433 bis of the OLJ, in drawing up the Ongoing Training Plan and the Specialised Plans, several bodies of the General Council of the Judiciary should be involved, representing judges, judicial associations and other professionals working in the field of Justice.

It should also be noted that programming of training activities may be carried out not only at a state level but also in a decentralised manner, through territorial Plans designed in the context of the High Courts of Justice, in collaboration, if appropriate, with the Autonomous Communities which have training agreements with the General Council of the Judiciary, and the same may be said for activities organised in collaboration with other bodies and expert institutions providing the training in question.

It is necessary to involve the Autonomous Communities in training programmes for judges based on the idea of their commitment to the Administration of Justice, and on the need to encourage collaboration with public authorities, professional associations and civil society by means of collaboration agreements and conventions for joint design of training activities and participation of judges, and other individuals involved in the administration of Justice in such activities, as well as professional groups related either directly or indirectly with judicial activity (70). All of which is designed to achieve the ultimate goal of reforming the OLJ, which is none other than improving training quality and ongoing qualification of our judges.

- a) *Design and programming of activities: the Educational Committee, Governing Chambers of the High Courts of Justice and consulting companies*

One of the most important roles in designating educational objectives and planning of activities is that assumed by a consultative body within the Judiciary School: the *Educational Committee*.

This Committee, given its strictly judicial composition (71), is designed to encourage Judicial Service members to participate in planning the work carried out by the Ongoing Training Service, substantiating the programmes proposed by directors with contributions from professional associations and judges who are specialists in the various jurisdictional orders.

However, in order to ascertain the full training needs of judges, it is essential to include in the Committee not only judges and judicial associations in a direct role, but also professionals from the world of law, who in one way or another are concerned with the Administration of Justice (lawyers, public prosecutors, clerks of the court, university professors, notaries etc).

In addition, the services of *consulting firms* should be obtained in order to *analyse training needs* as the first step in planning and identifying the objectives of the Training Plan. Obviously the appropriate profiles for each work post would be borne in mind.

In view of the need to increase knowledge of the autonomous regional legal systems, special civil law and, in general, private institutions of the Autonomous Communities, *the Governing Chambers of the High Courts of Justice* should have a relevant role in territorial and decentralised planning of Ongoing Training. Their participation could be achieved by appointing some of the members of the territorial Education Committees.

*b) Judges' participation in the design
of their own training*

All judges should be encouraged to participate in the design and execution of training plans. The White Paper on Justice (72) has already recommended emphasizing more active participation of judges in ongoing training (in design, methodology, content etc). In this respect it is important to mention that one of the main reasons for the acceptance of ongoing training by members

of the judicial service has undoubtedly been joint participation in training programmes and the basic requirements thereof (for example, their voluntary nature).

Therefore it is fundamental to encourage collaboration, not only of institutional bodies through which Judicial Service members and professional associations participate in defining ongoing training programmes –the Educational Committee, Autonomous regional ongoing training committees, groups of experts– but also of all judges who are interested in giving their opinion (73) so as to clearly identify training needs. The demand for certain activities rather than others is another means of discerning the training interests of judges, and in this respect the training programme should be flexible, repeating popular activities several times so that all those interested are able to participate, and in other cases cancelling those activities which are less sought after. To summarise, specialised training plans, both in their objectives and content, should be designed in a joint manner by the Ongoing Training Service and the particular judge interested.

c) Budget allocated to Ongoing Training

The School has a considerable budget. Thus, the budget allocated to the Ongoing Training Service in 2006 was €5,005,541.15. In addition to the contributions made by Autonomous Communities which have entered into training collaboration agreements with the General Council of the Judiciary and other bodies and organisations in activities jointly organised and financed with the Judiciary School.

Bearing in mind the number of judges in the Judicial Service (4,268 on 31 December 2005) a simple calculation shows that approximately €1,200 may be allocated to each judge as part of the ongoing training budget. This is the maximum amount allocated to the specialised training plan for each judge.

In this regard it is important to highlight the importance of giving assistance to members of the Judicial Service –through a system of grants and sponsored funding– in order to carry out training activities which, although not necessarily organised by the General Council of the Judiciary as part of ongoing training plans, are unrelated but nevertheless are of professional interest. Thus, funding for activities such as a Master’s Degree course, preparation for specialisation examinations, research grants or study visits to other countries.

*d) Methodology as a key element
of the Training Plan*

Success of the ongoing training programme depends to a large degree on the appropriate choice of methodology. The educational method should address various factors, including specific content of the various activities, planned objectives, duration, and the actual beneficiaries of the courses, in some cases addressing various specialities and in other jurisdictional orders, or finally, those general purpose activities designed for all judges. In addition, ongoing training methods should differ markedly from those of initial training (74). As indicated in the European Charter on the Statute of Judges (art. 2.3), these should be training programmes and structures which respond to the requirements of openness, competence and impartiality, linked to the performance of jurisdictional duties.

In any case, irrespective of the training methodology chosen, above all it should encourage active participation of all those attending, ensuring that judges, with their active presence, will analyse the problems, seek responses, and if appropriate, reach a common conclusion.

Among some of the diverse training methods available, the following should be mentioned: a) *The course*, that is, the traditional system of talks or conferences given by specialists

and followed by debate and discussion among the participants, a training activity with a general content, vertically structured and tending to supply information on new, legal and other types of knowledge (empty vessel pedagogy) (75); b) *Seminars*, with more interactive methodologies which seek to incorporate knowledge and experience of participants in the design, development and conclusions of the activity c) Mixed methodologies which adequately balance both types of proposal; and finally, d) experimental methodology as in the case of changes in assignment (change of jurisdictional order), applied to real situations, when the student works on specific subjects. Finally, *legal sessions* should be mentioned, that is, analysis of case studies in the guise of a clinic (similar to doctors holding clinics in a hospital) in each of the jurisdictional centres, replacing the boards of judges, in either general or specific sectors. This method is characterised by its horizontal nature and encourages debate and exchange of opinions and experiences among judges holding posts in a specific jurisdiction, providing a progressive standardisation of criteria by participants.

The use of new training methods should be encouraged, such as *ongoing training and new information and communications technologies* (virtual forums, extranet etc), as in large private corporations. Distance learning is an extremely convenient tool for some subjects (economics and accounting for example) which, because of their duration and content, require extended study over time as well as greater dedication, and this is without prejudice to any sessions attended in person –either physically or virtually– which may also be established alongside.

In view of the particular dynamics of language learning we consider that a *system of grants and financial assistance for training* is the most appropriate means, so that judges may attend schools and academies in their place of residence.

In any case, as we have already indicated, judges should be able to request financial aid from the ongoing training service in order to finance, either totally or partially, any type of training

activity which would be useful for their professional career and which has not been programmed by the School.

Other ideas include the fact that the method should also address the structure of training activities. A recommended annual number of hours should be established to be spent on training, and in any case a maximum number of hours, so that there is no dysfunction in the performance of jurisdictional duties, nor should training be perceived as a source of professional discrimination. Furthermore, it is worth considering the possibility of accumulating successive annual quotas of training hours and perhaps extending these hours in exceptional circumstances, such as in the case of preparing a specialisation.

e) Training content

In the conclusions of the 6th meeting of the European Network for the exchange of information between persons and entities responsible for the training of judges (Lisbon Network) (76) section 10 indicates that the programmes and methods for in-service training of judges should include, *inter alia*, topics, such as changes in the law and/or its interpretation by courts, means of alternative dispute resolution –in particular mediation–, technology, medicine, accounting, social sciences, management techniques, and cultural or social phenomena.

There should be a wide range of subjects (77), not simply legal content, which should include, alongside strictly legal questions such as legal amendments, contributions from court interpretation of the law and the development of case law, in order to keep the judge abreast of innovations and to gain further knowledge of different subjects, tackling professional issues (the status of women as justice professionals, or stress and work overload, for example), perfecting procedural techniques and tactics, in this respect alternative modes of dispute resolution –in particular mediation– studying the insertion of judicial work in

society (communications media and the Judiciary, for example) knowledge of subjects unrelated to judicial matters such as technology, medicine, accounting, social sciences, management techniques, cultural or social phenomena.

Training should be designed so that the judge as the beneficiary is able to rule in accordance with the legal system, whilst at the same time being aware of the implications and results of metalegal consequences (78).

Therefore, we consider that matters which should be addressed, by way of example, are as follows: legislative, substantive or procedural reforms; important amendments to case law and legal interpretation; legal matters proper to the various jurisdictions; other legal matters of interest (constitutional law, community law, comparative law, international judicial cooperation); relevant aspects in the sciences and auxiliary skills relating to judicial activity (time management, how to be efficient and manage the workload, communication skills); auxiliary skills relating to performance of the judicial activity (accounting, forensic medicine, psychology, criminology, psychiatry); supplementary subjects (languages, IT) and knowledge of institutions and bodies of interest to the judicial function (study visits).

Special emphasis should be placed on problems of interpretation, argumentation or legal ethics (79) as well as to the obligation to provide specific training on equality and non-discrimination on grounds of sex and on gender violence. In any case, in the aforementioned training courses the focus on victim disability will be introduced (80).

*f) The selection of directors, coordinators and lecturers:
the task of trainers*

The Consultative Council of European Judges in its opinion no. 4 (2003) states that trainers should be selected from among the best of their professions and selected with care by the authority

responsible for training, both for their knowledge of the subjects to be taught and for their reaching ability (Paragraph 35). Due to the influence of ongoing training in the professional career of judges, the standards of quality required in training activities should be an essential parameter. And this should have an effect in the selection of directors and speakers employed in the various training courses, so that –as recommended in the Opinion– they should be highly qualified and possess the communicative skills required to transmit their knowledge.

The selection process should be governed by objective and transparent objectives in order to avoid favouritism or associative affinity. It should respond to strictly educational profiles such as qualifications or professional ability of the persons selected, their specialisation in the subject matter, or their particular relation with the subject, and their educational skills. To this end the proposals put to the Judiciary School Committee by course directors or coordinators should be accompanied by a brief and comprehensive justification of the merits of the selected person and the activities in which that person has been director, coordinator, speaker or lecturer for the ongoing training plan of the Judicial Service, as well as a teaching project for the course or seminar they wish to direct. The project in question will define the *educational resources* (human, technical, educational tools, financial resources etc). The communicative skills of the trainers –insofar as this is possible– should be assessed. In addition, when the director’s activity is complete, he/she should submit a report evaluating compliance with the educational objectives. Obviously, the foregoing requires the role of director of the course or seminar to be redefined.

Notwithstanding the differences, it may be said in respect of the speakers and lecturers that the Ongoing Training Service, if appropriate, should be able to make use of a pool of persons interested in actively participating in an activity –similar to a pool of consultants such as that of the International Relations Service of the General Council of the Judiciary– in any of the

roles indicated above, and such a pool should be created to this effect stating the merits deemed to be of interest to the applicant.

Furthermore, the Decision of the Plenary Meeting of the General Council of the Judiciary of 22 June 2005 is relevant in this context, concerning the need to encourage the presence of women judges, lawyers and other female professionals on Training Courses for the Judicial Service (State Plan and Decentralised Plans) who meet the requirements of the profile, capacity, experience etc. needed for these responsibilities.

The profile of teaching staff requires that ongoing training plans open up to different personalities both from the world of Justice and other scientific and cultural sectors, in order to «avoid judicial endogamy and ensure analysis of problems from different perspectives» (81). Other professionals from the world of Law (public prosecutors, lawyers, university teachers, notaries etc) should be included and also those from other disciplines relating to the judiciary (criminologists, sociologists, psychologists, economists, journalists etc) (182).

The Consultative Council of European Judges in its Opinion no. 4 (2003) recommends that ongoing training organisers in the legal sector collaborate with other professional bodies with common interests (paragraph 35). In our case it is necessary to overcome the current distance between the universities and the Judiciary (83), between the world of theory and that of action, which only come together fortuitously. In this respect the State Pact has already described the need to encourage «a link between the universities and the legal professions» (84).

g) Judges as beneficiaries of training

In order to ensure that all the members of the Judicial Service have the right to and the duty to undertake ongoing training, the General Council of the Judiciary shall facilitate the participation of judges in ongoing training activities by implementing active

and effective procedures for organising their substitution. (85) Training activities should be carried out during periods of professional activity and shall be required to ensure that judges' professional and family lives can be reconciled with their training.

h) Training and assessment of performance

Ongoing training should be taken into account in systems for assessing performance. Modules or any other work evaluation and organisation system should include in their annual hours the periods recommended for self-learning and ongoing training. These systems should ensure that attendance to ongoing training programmes does not cause any salary loss; and, also that the training courses do not hinder in any way the work planned or required in the jurisdictional body.

D) Flexibility of the training plan

a) Less rigidity in the training provided

As opposed to the rigidity with which the state training plan is approved annually, which runs the risk of providing activities which are rarely taken up, and others which, conversely, are requested by a large number of Judges, it is important to make the training on offer more flexible so that if any course is very popular it may be repeated, thus enabling more judges interested in the subject to take part. Similarly, if any activity is not popular it should be possible to cancel it, and, if appropriate, remunerate the work done by the teachers involved, unless due to exceptional circumstances there was some justification to maintain it due to the particular interest for the applicants in question.

Therefore, it would be advisable in certain cases to redesign the training provision in the light of the Judges' applications.

Since they are the ultimate beneficiaries of the ongoing training they should participate in training planning through the degree of interest they have shown in the different activities, which will be evident from the applications for the courses, and the assessment made of the activities in question by means of surveys.

b) More flexible methodology formats

In contrast to activities of a general nature designed for the whole Judicial Service or for various jurisdictional orders and having a single format irrespective of the time constraints and organisational possibilities available to their beneficiaries, it is necessary to make methodological formats more flexible, adapting them to the needs of participants, extending their duration according to content, and enabling the possibility of further learning and knowledge.

2. Current state of the Ongoing Training System of the Judiciary School

The Ongoing Training Plan of the Judicial Service is designed on three levels:

- *State Training Plan*, which includes the various courses, seminars, research groups, study visits and other training activities designed and developed by the Ongoing Training Service.

In specific subjects (legal-economic training, the environment, labour accidents and immigration) there is some decentralisation as a result of agreements entered into with some Autonomous Communities. These are known as *forums*, half the cost of which is borne by the autonomous government concerned.

- *Territorial Plans* are designed within the scope of the High Courts of Justice in collaboration, if appropriate, with the Autonomous Communities which have entered into training agreements with the General Council of the Judiciary.
- Activities organised in collaboration with other entities, bodies and corporations both public and private (including, for instance, the Centre for Legal Studies of the Administration of Justice, the Institute of Public Prosecution Studies, the General Law Council and the AEQUITAS foundation). Some of these have entered into training agreements for a number of reasons (on the initiative of members, monitoring committees of particular laws for example).

The abundance of training courses currently offered by our Judiciary School brooks no comparison with other public bodies, not even within the more elite departments of the Public Authorities. *The number of training courses available may be considered excessive* if we look at the number of programmed activities and the places convened in terms of numbers of Judges and Senior Judges entering the Judicial Service.

Thus, in the ongoing training programme for 2005, 369 activities were carried out with calling of 8,512 places for the 4,268 Judges who on 31 December 2005 were part of the Service (86). In 2004 the figure for activities was a little higher at 401, offering 9014 places for the members of the Judicial Service aimed at 4,318 judges (87). Nevertheless, training activities corresponding to Specialised Legal Training as part of the 2006 State Plan have increased by 44.12% in respect of those approved for 2005 (88).

To this effect the Ongoing Training Service has a *very significant budget allocation*. These resources have increased in recent years. From €2,633,566 budgeted in 2001, the figure rose to €5,800,000 in 2004. This significant increase was due –according to José Francisco VALLS GOMBAU (89)– to the reduction in the costs of the Initial Training Service and to the wish expressed

at that time to transfer funds from initial training to ongoing training which in future would be maintained. And, in fact, these amounts have been maintained in the annual budgetary allocations for 2005 (€5,012,881.94) and 2006 (€5,005,541.15) (90).

The increase in training offered motivated by this substantial budgetary increase has not resulted in a correlative increase in applicants for the courses. Thus, of the 369 activities organised in the training plan for 2005, 2719 judges took part in some of these, that is, 63.71% of the Judicial Service, which was a similar percentage to 2004 (66.63%) (91). In any case it is clear that the increase in training opportunities does not automatically generate a growth in demand, as stated in the General Council of the Judiciary Ongoing Training report, «Proposals for a new model based on data available to the Service».

The wide range of courses also generates some dysfunction in the Ongoing Training Service which affects the running of the Service itself: the problem of withdrawals, bearing in mind that for the 369 activities organised in 2005, there were 3173 Judges applying, but only 2719 participated in some of the activities. The grounds for withdrawal vary from professional to personal reasons. Furthermore, there were a number who did not submit the appropriate cancellation notification and simply failed to attend, and thus it was not possible to allocate their places to replacement students –if appropriate– and in most cases this incurred costs to the Service.

Only in the State Plan for 2005 the percentage of withdrawals was 34.98% and those who failed to attend amounted to 2.63%, that is, of the 6546 judges selected to participate in the various training activities there were 2290 cancellations, whereas in 172 cases the applicant did not attend the activity, nor did he/she justify his/her absence. Finally, the percentage of available places not taken up by judges was 28.48%, that is, *almost a third of the training provision is not covered due to lack of participants.*

Within the broad range of training programmed, another disturbing element is the *large number of «extraordinary training*

activities», that is, those courses organised in collaboration with various bodies and organisations outside the initial planning. In 2004 59 extraordinary activities were planned which caused some distortion in the system (for example, cancellation of an application for one activity in order to attend a new one). In order to rationalise its planning on 5 May 2003 the Judiciary School Committee approved criteria which have remained systematically unfulfilled. These criteria are as follows: a) relevance of the proposing body; b) content, interest and training update which has not been provided for in the General Council of the Judiciary training plans; c) existence of budgetary credit remaining in the portion of the activity funded by the Council; d) participation of the Council in the programme designed and e) appointment of speakers by the Council.

This considerable increase in activities has led –as we have already mentioned– to a repetition of content as well as directors and speakers, and the use of ongoing training for purposes other than those for which they were intended. This is more evident in the case of extraordinary activities, since the initiatives and planning are often organised outside the Judiciary School.

Additionally, there is a *disparity between the activities available in each jurisdictional order* and the number of judges belonging to such order. Thus, the Ongoing Training State Plan in 2005 offered 246 activities with a total of 5,622 places convened. Of these 34.83% were aimed at all members of the Service, irrespective of the sector to which they belonged, and the remainder were reserved preferentially for a specific order (civil 23.98%, criminal 16.29% contentious-administrative 11.66% and labour 13.25%). It is significant that of the 4,268 judges in the service on 31 December 2005, 55.51% were attached to the civil sector, 59.03% to the criminal sector, 10.44% to the contentious-administrative order and 10.33% to the labour order. It should also be added that 1525 members of the Judicial Service work in both civil and criminal sectors.

From a simple reading of the statistical data it may be concluded that, whereas in the specialised jurisdictions the percentage

of available courses was higher than the number of Senior Judges entering the sector, and this is without their opportunity to also participate in multidisciplinary activities, in the case of civil and criminal jurisdictions, which represents more than 70% of the Service, they were only offered 40% of activities as proper to their speciality.

Another factor to be considered is *the rigidity with which the state training plan is annually approved*. Thus, in the ongoing training plan for 2005, 363 judges applied for one course (*Recent criminal reforms*), 115 of whom requested it as a first choice for 45 places. Conversely, in another course (*Community trademarks, models and designs* for example), which although it also offered 45 places, only 24 judges took up the offer and of these only 9 had applied for the course as their first choice. In such cases the course is re-launched again, due to the fact that there is a previously acquired commitment with the Autonomous Regions or other joint organisers of the event, or with course directors and speakers.

The educational format considered in the Ongoing Training Plan programming is varied and based on teaching objectives. At the present date these comprise Workshops, Courses, Seminars, Study Visits, and special legal research groups, Meetings with other legal practitioners and Distance Learning.

3. Conclusions and proposals

(2.1) The Ongoing Training Service of the Judiciary School will devise the programmes and activities for ensuring permanent training and appropriate professional development of all the members of the Judicial Service.

- The Ongoing Training Service will manage an exclusive Training Plan in accordance with the guidelines established by the Judiciary School Committee.

- The members, Committees and Services interested in carrying out training activities shall make their proposals to the Judiciary School Committee for the purpose of including them, if appropriate, in the aforementioned training Plan.

(2.2) The planning and assessment of Ongoing Training should be extremely rigorous in view of the link between training and progression in the judicial service. For this reason high quality standards should be maintained through the entire process of setting goals, determining training priorities, programming activities, selecting content and selection of course directors and lecturers.

- It is important to ensure a correct balance between the training on offer and the genuine training needs of Judges.
- Extraordinary activities should be subject to the criteria approved by the Judiciary School Committee on 5 May 2003, and in any case the number of such activities should be restricted.

(2.3) In order to ascertain the training needs of judges, other professionals should be included in the Education Committee, either from the sphere of law or those who in some way or another are concerned with the process of Justice (lawyers, professors, notaries etc.).

The Governing Chambers of the High Courts of Justice should have a relevant role in the territorial and decentralised planning of Ongoing Training.

In addition, the services of consulting firms should be contracted in order to *define training needs*, having previously identified the profile of each post.

(2.4) Specialised training plans, both in their goals and content, should be designed jointly by the Ongoing Training Service and each judge.

(2.5) The various educational methodologies should ensure the active participation of all those taking part.

(2.6) The selection of course directors and lecturers should be governed by objective and transparent criteria and should respond to strictly educational profiles, namely the professional qualifications or aptitude of the lecturers selected, their specialisation in the subject to be addressed, or their particular relation to the subject matter, in addition to their teaching ability.

(2.7) Training activities should be carried out during professional service and should ensure that professional and family life fit in with training activities.

(2.8) The training available should be sufficiently flexible to ensure that if there is a considerable demand for any particular course, it should be repeated to ensure that more judges are able to attend should they wish to do so. Similarly, if an activity is not particularly sought after, it should be possible to cancel the course having paid the various lecturers for their work, if appropriate.

(2.9) It is necessary to ensure flexibility in method and format, adapting these to the needs of participants, and making it possible to extend duration based on the content and the possibility of improving levels of acquired knowledge.

(2.10) Ongoing training should be taken into account in performance assessment. The modules, or any system of work assessment and organisation, should include the recommended annual number of hours spent on training for self-learning and in-service study.

III MONITORING AND ASSESSMENT OF ONGOING TRAINING ACTIVITIES

1. Overview

Assessment is a procedure involving the compilation and analysis of relevant information describing a specific reality, and the issue of a value judgment on its adjustment to a pre-established reference, to be used as a basis for taking decisions aimed at changing the analysed reality (92). In short, it is a process designed to check and improve the effectiveness of training activity (93); and this is successful when it meets the needs of participants.

A) Why an assessment?

On one hand assessment of training is important for educational purposes, as it is possible to ascertain whether the specific objectives have been achieved; in addition, in organisational and financial terms it is possible to evaluate the viability that the training activity has for the organisation, a question which is paramount in an institution which manages public funds, thus enabling improved control of the resources used.

It may therefore be stated that the assessment is a two-pronged procedure with both aspects being equally relevant, and which should be taken into account in training management:

- Firstly, the compilation and assessment of information on the training activity;
- And secondly the consequences on the actual training cycle deriving from the information assessment.

B) What should be assessed?

Frequently organisations are restricted to assessing participant satisfaction, that is, to discerning their reaction to the various training actions (94) in particular through questionnaires completed at the end of the activity. Although this is an important aspect, specialised literature highlights the existence of other elements which are also part of the assessment, designing complex evaluation scenarios and also indicating that various levels may coincide (95).

In matters of judicial training, the «European Network for the exchange of information between persons and entities responsible for the training of judges and prosecutors» (known as the Lisbon Network) distinguishes three different fields in respect of this question:

- a) Assessment of programmes and training methods
- b) Assessment of trainers
- c) Evaluation of knowledge acquired by participants.

a) Assessment of programmes and training methods

The purpose is to assess the organisation of training activities in its various aspects (documentation, accommodation, methodology, etc)

Various international forums held on judicial training unanimously agree on the need to evaluate these aspects. Thus the Consultative Council of European Judges (CCEJ) recommends (96) that training programmes and methods should be subject to frequent assessments by the bodies responsible for judicial training and the Lisbon Network considers (97) «that in order to continuously improve the quality of training, the organs responsible should conduct frequent assessments of programmes and methods. An important role in this process should be played

by opinions expressed by all participants to training initiatives, which maybe encouraged through appropriate means (answers to questionnaires, interviews)».

b) Assessment of trainers

The Lisbon Network also considers it important to adequately assess the trainers' work; this category includes Directors, Coordinators, Speakers, Rapporteurs, Tutors in long distance learning, etc.

c) Evaluation of knowledge acquired by participants

This is a question of addressing the educational assessment of training, that is, discovering how much participants have learnt, changes in attitude, increased knowledge and/or improved skills as a result of training activity.

This question has been the subject of much debate by the Lisbon Network. The General Report of the 6th Meeting (98) highlights the fact that there was agreement on the monitoring of trainers' performance; however, the issue of assessment of participants' performance was subject to controversy; in addition, section 12 of the Conclusions of the aforementioned 6th meeting states that «while participants agreed that performance of trainers should be monitored, the evaluation of the performance of participants in in-service training initiatives formed the object of discussion. On one side participants considered that training may be truly fruitful if not influenced by career considerations, on the other side it seemed possible to envisage some form of relevance of participation to training for assignment of a judge or a prosecutor to some specific functions (eg juvenile or family law court). Aside from this latter possibility the only solution to give some weight to training could be that participation in itself,

objectively considered, may however be taken into account for professional evaluation».

In the same vein the Consultative Council of European Judges (CCEJ) recommends (99) that, in principle, participation in judges' training initiatives should not be subject to qualitative assessment; adding that their participation may however be taken into account for professional evaluation of judges. As the analysis of responses to the Lisbon Network Questionnaire (100) states, the principle according to which «participation in itself, objectively considered, may however be taken into account for professional evaluation of judges» has been implemented in certain countries: e.g. in Albania, Austria, Belgium, and Romania, where the objective fact that a judge has participated in a training course gives benefits as to transfer of posts (sometimes for specialised positions).

The evaluation of Judges' participation in training activities will be relevant with the application of the Specialised Training Plan devised for each Judge as described in article 433 bis of the OLJ. We should recall that paragraph 3 of section 2 of this precept states that «compliance with the objectives of the Specialised Training Plan for each judge shall be assessed by the General Council of the Judiciary in the regulatory manner for the purpose of promotion and professional upgrades».

As the aforementioned international instruments indicate, this evaluation should be made in a way that ensures total objectivity. To this effect it is essential to analyse the most appropriate form of making an assessment.

C) How is an assessment made? Methodology

a) Compilation and assessment of information

The compilation of relevant data may take place initially during the training activity itself. This would take the form of *monitoring*

and control of the activity, thus ensuring that it is carried out in accordance with the programming, and introducing corrective activities when anomalies arise, and before these may have any undesirable effects on the training quality (101). Adequate use of the instruments designed to this effect may be important to the quality of the training activity.

Secondly, this compilation and evaluation of the information may take place when the training activity has been completed, by means of questionnaires, surveys, interviews etc, which will then be analysed.

b) Internal and/or external assessment

A distinction may be made between internal assessment, that is, an evaluation carried out by the institution responsible for the training, and external assessment made by some other body, organisation or person (evaluator) with no connection to the institution.

The authors emphasise that the two types of assessment are not incompatible; however they should be *interdependent*, so that the internal evaluation is usually the starting point for the second one (102). An external evaluation procedure is currently in progress initiated in the last few years by the Spanish Judiciary School consisting of a project assessing the academic satisfaction of students of the School run by Antoni CASTELLÓ TARRIDA, Professor of the Educational Psychology Department at the Autonomous University of Barcelona.

c) Evaluation techniques

Public and private organisations use various instruments to assess ongoing training. It is important to emphasise that the use of some of these does not preclude the use of other methods;

however the various methods should complement each other and in practice a combination of methods tends to be used (103).

The most frequently used method of assessing the training of Judges is the questionnaire handed to course participants for completion once the training is over; by this means they will evaluate the course overall, assess how relevant the content has been for their professional development and make suggestions for the future, also evaluating the performance of the trainers and speakers. As may be seen, this element is designed to assess the participants' satisfaction (learn their reaction to each training activity) (104). These questionnaires provide the training organiser with extremely useful information on the activity; however, educational experts consider that effective evaluation should attempt to cover other aspects which go beyond the participants' reactions. Furthermore, the degree of reliability is somewhat risky, as only a reduced number of participants reply; therefore the introduction of elements which would encourage completion of such questionnaires could be considered.

Another interesting instrument would be the *Director or organiser's report on the training activity*, containing both a descriptive summary of events and a critical opinion of the course, including any suggestions considered appropriate.

Other evaluation techniques may also be used to make an assessment, such as interviews or surveys devised by experts in this field on the overall evaluation of Judges and/or specific relevant aspects. For example, in Germany (105) participants are given a second questionnaire approximately six months after the training activity has been completed in order to assess the pertinence of training for the Judge's personal and professional progress. And in matters of transparency, in Latvia participants are given a general report on training which takes into account their evaluations and encourages them to provide further assessments in future activities.

In assessing the activities in which it is involved, the *International Development Law Organisation* (IDLO) asks participants

to reply to an «impact evaluation questionnaire» containing legal activities and general information on the use of training received for their professional career, and this questionnaire is given out a year and a half or two years following the completion of the training activity (106).

In any case, *training methods* designed for those organising and managing training activities are also relevant. As the Conclusions of the 4th meeting of the Lisbon Network in Budapest on 25 and 26 October 1999 (on the training of trainers) state: «The assessment of training, and training in methods of assessment, are considered as a factor necessary for the development of the training activities pursued.»

d) Definition of standards or indicators

Scientific literature underlines the importance of creating reference standards. These should not be arithmetical averages derived from other instruments of measurement (for example evaluation surveys or questionnaires, although they could be based on these) but instead values which objectively provide significance (107) with concomitant importance of defining these values.

By applying these standards to training activities it would be possible to automatically derive some consequences, either positive (new editions of the training activity for example) or negative (deciding not to repeat the training activity, or not to select the director and/or lecturer in the future ...). For example, the high demand for attending a specific activity shows that it responds to the needs of judges, and therefore it should be repeated in the future: the objective indicator would consist of a number of applicants being greater by a specific percentage than the number of places allocated; or if the number of applicants is less than a specific percentage of the number of places provided, the activity should be cancelled.

e) Judges' associations

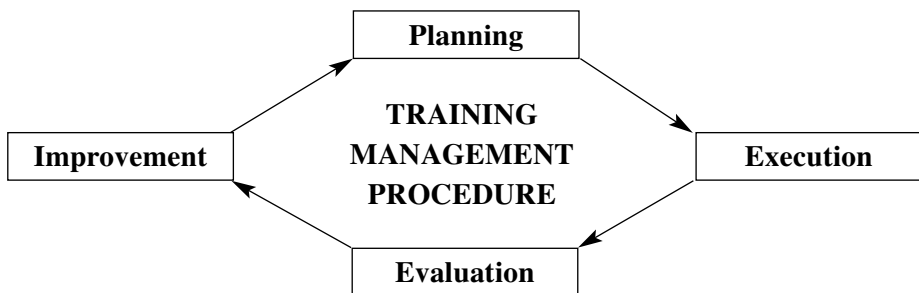
As the 4th report of the Consultative Council of European Judges (CCEJ) (108) states: «Judges' associations can also play a valuable role in encouraging and facilitating training, working in conjunction with the judicial or other body which has direct responsibility».

These associations are also called on to play an important role in assessing training activities, both in the evaluation itself and its effects on the training system. It would be appropriate to consider the sources of participation established to this effect.

D) Effects of assessment on the training cycle

Assessment provides training organisers with the requisite information for improving the training cycle, i.e. what should remain, what should be changed and what should be eliminated. This would involve two stages: the first aimed at assessing the results of the information compiled, that is, for issuing an opinion on results; and a second one, designed to adapt or rectify the training system on the basis of the aforementioned opinion.

Experts highlight the importance of ensuring that the evaluation results have positive or negative effects on the training programming. Thus, the evaluation procedure is one of the key elements in the training management process (109):



2. Present status of the Judiciary School Ongoing Training system

Currently, Ongoing Training activities are assessed by participants by means of a Survey containing the following sections: teaching activity (8 questions), teaching personnel involved (one question refers individually to each teacher and there is another more general question), travel agencies and accommodation.

A summary is then made of the most salient points raised in those questionnaires and these are included in the Ongoing Training Service Report as well as in an annual Report on the status operation and activities of the General Council of the Judiciary and the Courts and Tribunals.

In addition, opinion polls for judges devised by the General Council of the Judiciary in 2001, 2004 and 2005 also included some questions relating to assessment of training.

3. Conclusions and proposals

(3.1) As a general rule organisations should improve procedures, mechanisms and instruments of training evaluation in order to obtain more transparent information on the quality of the different activities, and to ensure that results have effective consequences on the ongoing training system.

- It is necessary to improve the instruments of evaluation used in ongoing training activities organised by the Judiciary School.

(3.2) Although questionnaires provide relevant information, a series of assessment techniques have been developed which will provide further knowledge of the various training aspects.

- Other control and assessment techniques should be devised for the ongoing training system.

- In addition, it is essential to ensure that organisers and managers of training activities are skilled in evaluation methods. It would be appropriate to devise a Training Programme to this effect.

(3.3) During the training activity it is important to have monitoring and control elements which would enable a prompt reaction to any problems arising, which would necessarily result in increased quality of the activity.

- Monitoring and control mechanisms used in the ongoing training activities of the Judiciary School should be improved.

(3.4) International bodies concerned with training have emphasized point to the importance of evaluating the activities of «trainers».

- An adequate assessment of the activities of Directors, Coordinators, Speakers, Rapporteurs, Tutors etc. should be considered, as well as sufficient consequences deriving from that assessment.

(3.5) Specialised literature highlights the fact that an evaluation system should not be restricted to obtaining and analysing information on activities, but it should also ensure that its results have effective consequences on the ongoing training system.

- Adequate operation of the system requires that the results of an assessment of training activities should have effective consequences on planning of ongoing training and on the organisation of future activities.

- For this purpose a Protocol should be established on the Effects of Evaluation on Ongoing Training which would address three areas: trainers, activities and actual planning.
- It would be appropriate to define objective standards for the evaluation of training activities (Objective Indicators of Evaluation) in such a way that their application automatically generates positive or negative consequences on the teaching activity or educational planning.

(3.6) Assessment of Judges' participation in training activities will be important in the implementation of the Specialised Training Plan devised for each judge as described in article 433 bis 2,3 O.L.J.

- This evaluation should be made using instruments which will be entirely objective, and therefore it is essential to analyse the most appropriate methods for carrying out this type of assessment.

(3.7) An organisation should be specifically established, designed to channel the various elements of monitoring and evaluation in the ongoing training system. To this effect, an Ongoing Training Evaluation Committee could be created within the Governing Council with a reduced number of members, and in which judicial associations would be represented with the following duties; monitoring the results of the training activity evaluation instruments, as well as proposing any measures deemed necessary to improve the quality of the training provision.

(3.8) It could be appropriate to create an *Expert Working Group* based on the foregoing conclusions for the purpose of creating a proposal for an «Improvement and Evaluation Plan of the Quality of Training Activities» which would be subject to the approval of the competent body of the General Council of the Judiciary.

IV. APPLICATION OF NEW TECHNOLOGIES FOR IMPROVING THE TRAUBUBG IF JUDGES; VIRTUAL TRAINING

1. Overview

A) *From distance learning to virtual training*

Traditional training has focused on the contact component, that is, the presence of the teacher and the student at the same time in the same physical space. Subsequently the concept of *distance learning* arose, in which teacher and student did not need to be in the same place at the same time; this type of study made use of ordinary mail, and later other techniques such as radio, video or television (110), and even computer tools (CD-ROM, interactive means, etc). At the present time, distance learning is a fully established option in numerous public and private organisations.

Nevertheless, in today's information society, scientific literature specialising in training matters points to the need to make use of the new information and communications technologies (ICT), applying them to training methodology (111). ICTs open up a whole range of possibilities, deriving from advances in information storage and consulting (digitalisation and data compression) as well as establishing communication networks for that information, advances which may be applied to all kinds of data (texts, video sounds and sequences, numerical files, graphics etc.). It is also appropriate to remember that technology in this area develops at an extremely rapid rate and so there will be further technical possibilities with more accessible means of implementation as time goes on.

Therefore, we can define *online or virtual training (e-learning)* as a type of distance learning based on new information and communication technologies (112). Initiatives of this type are becoming increasingly frequent in judicial training, such as, for example, Virtual Forums and the Virtual Community of the Centre

for Legal Studies of the Americas (CEJA); the *Centre de Formation à Distance et de Recherche* (DLRC) organised by the International Development Law Organisation (IDLO) (113); its use by the Commonwealth Judicial Educational Institute (114), and the Virtual Classroom and the Virtual Legal Community of the National Judiciary School of the Dominican Republic (115).

The activities of the RIAEJ carried out through the Latin American Centre for Virtual Judicial Training should be highlighted here; in an initial phase these activities were based on the technological platform of the Mexican Federal Judiciary Institute, although at the present time its status is somewhat uncertain. Given the relevance of its activities, the Judiciary School's various possibilities for participating in promoting the organisation and operations appropriate to this Centre, should be carefully considered.

To this effect the Second Draft of the Strategic Plan for the European Judicial Training Network (11 June 2006) establishes as one of its goals the creation of a reference webpage, development of virtual training instruments, and the provision of a discussion forum for trainers.

B) What do new information and communication technologies bring to judicial training?

ICTs bring not only information functions but also communications functions. Each, either alone or appropriately combined, open up a wealth of possibilities for training methods.

In terms of information functions they enable rapid access to a large number of extremely heterogeneous information sources; especially through use of the World Wide Web (also known as the Internet) taking advantage of the enormous resources provided by the Network.

Furthermore, communications functions (discussion forums, e-mail, chat, electronic blackboard etc.) provide an extremely

flexible means of communicating with the lecturer or tutor or the activity organisers, or even with the Judiciary School itself, in addition to also facilitating communication between the participants. Mention should also be made of how these new technologies facilitate interaction (interactive medium).

Therefore, the main advantages afforded by these new information and communications technologies are as follows:

- They facilitate provision of personalised training based on each participant's profile. It should be remembered that the judge's needs may differ during the course of his/her professional career.
- They permit a better adaptation to each Judge's rate of learning.
- They permit a more appropriate adaptation to the needs of each group of Judges (type of jurisdiction, seniority in the service, particular characteristics of the post etc).
- They facilitate training activities for geographically dispersed groups, as occurs in a judicial service whose members serve the Administration of Justice throughout the Spanish territory.
- They approach and facilitate access to training programmes of a greater number of Judges and at less cost.
- They provide greater flexibility in respect of spatial limitations (they may be accessed from any personal computer connected to the WWW network) and time constraints (timetables) with the subsequent positive effects on reconciling family life and professional duties.
- They may possibly increase the number of participants, as opposed to the greater limitations of contact teaching activities.
- They promote a more proactive attitude in participants rather than the passive stance of listener, and establish a permanent communication mechanism among participants

and teaching staff and tutors; this is particularly important for training of a group as a whole, namely judges with a high degree of competence and responsibility.

- They promote a more proactive attitude in the participant rather than a passive stance of listener and establishing a permanent communications mechanism among participants and teaching staff and tutors.
- They offer access to new and numerous sources of information.
- They considerably increase instruments for monitoring and control of the activity as well as those designed for evaluation.

Another important point is that virtual methods may permit the participation of those Judges who for various reasons do not usually attend training activities in person. Thus the virtual methodology may become a significant tool for facilitating the reconciliation of family and private life, with participation in training activities.

Furthermore, virtual methodology can reduce the number of cases in which a Judge is required to leave the place of his/her appointment in order to attend training activities, thus reducing the need to set up replacement procedures to cover the post during his/her absence.

In addition, it may be very useful in the future organisation of those training activities which attempt to introduce some mandatory elements, or which may have an effect on promotion (art.433 bis 3,2. OLG). To this effect, currently distance training in Civil Regional Law is being evaluated as a preferential merit for specific appointments.

Furthermore, the flexibility afforded in terms of time and space by virtual methods means it is an extremely useful tool for organising training activities for Judges from other countries. One such example is the Virtual Course on «The Brussels I and II Regulations» an activity which has been held on the Virtual

Campus of the Judiciary School since 2005, in which Judges and Public Prosecutors from 10 European States have taken part and which have been very successfully evaluated by the European Commission (116), as well as the activities carried out through the Latin American Network of Judiciary School (RIA EJ).

Finally, it is also important to note that virtual methodology is more appropriate for long-term training courses as it optimises the advantages offered by this type of training; as well as those designed for the learning or acquisition of knowledge content, as opposed to those activities primarily concerned with drawing conclusions, exchanging experiences, creating protocols and other similar activities.

C) Disadvantages

Specialists point out that the main disadvantages (117) lie in the high cost, as well as the somewhat detached nature of the medium. Nevertheless, this statement should be looked at more closely.

Firstly, from a financial perspective, this new methodology makes costs more viable especially in respect of organisations in which training activities are provided on a fairly stable basis, as occurs in the case of the Judiciary School, as it obviates the need for any changes. In this way if an activity is evaluated positively it will not be expensive and it will be relatively simple to repeat the course on subsequent occasions.

Furthermore, it is also true that the student may feel somewhat isolated, which can have a negative effect on motivation. However, virtual training provides instruments which permit student interaction, which, if properly used, can help to overcome this problem. This is without prejudice to the fact that, as will be seen later, it is advisable to use a mixed format of virtual and contact techniques in the same activity.

Finally, we should point out the difficulties arising from the fact that a proportion of members of the judicial service are not familiar with the use of Internet tools. However, it is also important to remember that the requirements for taking part in a virtual activity are extremely simple, the need for a personal computer (PC) with an internet connection via a telephone line (modem); and the knowledge required to access the virtual training activity is not complicated.

D) Instruments

These new technologies permit, firstly, the design of methodological areas based solely on tools available through the web. However, they may also be used as a complement to activities attended in person, in particular in cases in which training takes place over time.

ICT tools used in the training method include:

- Virtual Course: the organisation of an entire training activity on a specific subject extending over time, based on a programme with a series of subjects prepared by lecturers or teachers; and with tutors responsible for motivating and assisting in the activity (11).
- Virtual Forums: virtual forums for discussion and consideration of a selected subject, or discussion of problems raised by a new law or the operation of a particular type of court.
- Virtual Community: group of tools which permit geographically dispersed members of the judicial service to communicate with each other (for the purpose of reaching conclusions, good practices, documents etc) providing them with a restricted work area where they are able to study (part of the Judge's Website or «Extranet») (119).

- Repository of legal documentation: this would contain the lectures (courses) or conclusions (Seminars) of the activities held and attended in person, either the full content or selected items, so that these may be consulted without waiting for hard copy publication or CD-ROM/DVD. In this respect it is particularly interesting for the judicial service to be able to access recently held lectures or conclusions through the network, that is, only a few days later (in particular through the «Judges' Extranet»).
- Virtual Library: this contains material accessed through the net in electronic or digital format (text, audio and video) (120).
- Electronic Newsletter (121), which permits dissemination of innovations and news to all members of the judicial service and/or to those who belong to a jurisdictional order or who serve in specific courts etc.
- Updating of information sources (general or specific themes).
- Dossiers: compiled on a specific question or subject of interest, these may be consulted through the net (in particular through the Extranet). They include bibliographic references, the latest legislation and case law, and the full text of any other kinds of documents.

Furthermore, there is a mode of mixed teaching known as blended learning, combining elements of personal attendance with virtual components. The accumulated experience of the Virtual Campus of the Judiciary School is able to confirm that these mixed formulas work very well and the degree of virtual elements or personal attendance can be varied. Among other things, the ICT tools may be used to extend activities attended personally so that participants may continue in contact to further debate and exchange their experiences and opinions, possibly paving the way to further, more advanced training activities in the same subject.

It must be said that new technologies are proving increasingly useful in disseminating the material generated in training activities among all the members of the judicial service. This material is currently being published in electronic format (CD-Rom, DVD) together with hard copy; however, ICTs enable this to be done much more efficiently, particularly through the «Judges' Extranet».

In the Public Authority training sphere, one notable project is that of the «Virtual Classrooms» run by the Ministry of Public Administration through the National Public Authority Institute and the General Committee for Ongoing Training (122). This project consists of equipping the 68 training centres distributed throughout the Spanish territory with multimedia equipment providing remote satellite and high speed connection with the training activity held in the INAP, and with all the training accessible through the Internet. Students will receive video and audio information slides and other formats and in addition they are able to interact in real time with the teacher through audiovisual means or simply using chat rooms.

The possibility could thus be explored of making use of videoconferencing as a means for providing important interactive communication between students and the professor and/or tutor; either through videoconferencing systems similar to those established in Spanish Courts and Tribunals, or through the use of the Internet for this purpose. As an example, some training workshops organised by the Spanish General Law Council, although, they take place at the premises of a professional Association, permit connection and intervention through videoconference of other centres (123); or the videoconference cycles entitled «Global dialogues» organised by the Foundation for Distance Learning Centre for Technological and Economic Development (CEDDET) (124) in which various current topics are explained and debated that are of special interest to public officials and other institutions.

E) Assessment of virtual training

The particular characteristics of virtual training mean that attention must be paid to some specific aspects in the assessment process (125).

- In online courses it is essential for the students to receive feedback on how they are progressing. This also provides a motivating element.
- In online teaching (although it might seem the opposite) there is a great deal of material available for assessment since much of the communication is written, for example, the number of times the student accesses the Course Web page, resolution of practical case studies, reply to questionnaires on the content of each subject and so on.

F) The Judges' Extranet

The Extranet is a web information dissemination tool integrated in the Judiciary Website <www.poderjudicial.es>; user access is restricted to members of the Judicial Service. It is currently fully operational and its content, although still relatively limited, is undergoing a process of constant growth and development.

The «Judges' Extranet» could be extremely useful for encouraging various aspects which are indicative of the quality of the service provided by the Judiciary School in terms of ongoing training:

- Providing *transparency* in its actions;
- Increasing *accessibility* for members of the judicial service to the ongoing training system:
- In accessing information on training activities and other elements of the system (talks etc).
- And from the perspective of interactivity, submission of applications etc. For example, petitions and applications may be sent by ordinary e-mail from the Extranet (the user

is identified by means of a confidential password); or through the digital signature system (which is currently in an advanced stage of implementation in the General Council of the Judiciary) and which provides greater safeguards for communication.

G) The Judicial Documentation Centre (CENDOJ)

From the perspective analysed in this section there are clearly a number of synergies and common areas of activity existing between the Judiciary School and the Judicial Documentation Centre (CENDOJ) and these should be considered for the purpose of rationalising efforts and making best use of existing resources (126).

With this in mind it should be considered that some countries (such as Canada) have a broad perception of judicial training which encompasses all the professional information received by the Judge (in hard copy or digital audio video format, videoconference, television etc) (127). In short, these are complementary elements providing support in the judges' self-learning process.

2. Current status of the Judiciary School Ongoing Training system

Since 1998, when a Distance Learning Course was held in collaboration with the Universitat Oberta de Catalunya (UOC) for training Senior Judges appointed to the Contentious-Administrative Courts, the number of «Judiciary School Virtual Campus» activities has increased through general or specific collaboration agreements with various Spanish universities, such as the National Distance Education University (UNED), the Universitat Oberta de Catalunya (UOC), and the Institute of Basque Studies at the University of Deusto (128).

The 2006 State Plan for Ongoing Training also includes Distance Learning activities in three areas, strictly legal, economic and languages, with a total budget of 137,507 euros. The following activities have been planned:

- European Union languages: French and English (basic intermediate and advanced levels)
- Contentious-administrative law
- Catalan Civil Law
- Basque Civil Law
- Economics and Accounting (Levels I and II)
- Industrial Property
- Brussels Regulations I and II (129)

3. Conclusions and proposals

(4.1) Bearing in mind the advantages provided by new information and communications technologies, it would seem appropriate to use the enormous potential of these tools to the maximum in the ongoing training of judges, either by using the virtual space as the sole basis for the course or by complementing it with other activities requiring physical attendance.

(4.2) These new technological tools provide far greater flexibility in training activities, making them an ideal means of encouraging participation in training for a greater number of judges, thus making it easier to reconcile family life and study, reducing the costs of replacing the participant, and adapting more effectively to the needs of each individual student.

- In the event of organising training activities containing a mandatory element, or because the training may be linked to professional promotion, in application of article 433 OJ, it would be appropriate to consider the virtual method's advantages for their organisation.

(4.3) The new technologies (ICT) provide Judges with a number of information sources and communications tools which may become relevant instruments for improving self-learning conditions.

(4.4) These new technological tools also offer indisputable advantages contributing to the international dimension of judicial training.

- There is a case for promoting the organisation of e-learning activities in the European sphere, with the Spanish Judiciary School assuming a leading role in this area.
- In addition, the various possibilities for the Judiciary School participation in the Centre for Latin American Virtual Judicial Training should be explored, assisting in its adequate organisation and operation.

(4.5) Making the most of all the wealth of opportunities offered by ICT is closely linked to a rationalisation of material and staff resources required for their implementation. Therefore, a General Framework for Virtual Training should be established which will rationalise the organisation of all these possibilities and the participation of the various bodies in the General Council of the Judiciary.

(4.6) Given the relationship between the Judiciary School and the Judicial Documentation Centre, particularly in respect of the Judges' Extranet, a coordination mechanism needs to be created for the Judiciary School-CENDOJ, which could function at a dual level for increased operability, that is, as a Mixed Committee comprising Members of the relevant Committees in the two organisations; and at a technical level with the participation of Lawyers who provide their services in both bodies, who would be responsible for preparing the work of the Mixed Committee.

V. INTERNATIONAL DIMENSION OF TRAINING

I. Overview

It is difficult to perceive the training system for Judges as a closed structure concerned solely with the internal legal system of the State when, given the context in which the exercise of jurisdiction is currently developing, it acquires an international dimension which may take a twofold direction:

- Firstly, judicial training should include elements which enable the judge to address in an adequate manner the growing international dimension of the jurisdictional function, especially in the European sphere, concerning three areas:
 - Training content
 - Training for the judge and for the trainers
 - Institutional mechanisms for addressing this training
- And secondly, participating in international institutions designed to improve Judges' training.

A) Integration in judicial training of an international dimension of the jurisdictional function

a) International dimension of the jurisdictional function

Globalisation of economic and social relations, combined with the massive development of the media, have led to an increase in personal travel and trading between businesses, to marriages and partnerships between nationals of various countries, as well as to the consumption of goods and services from other countries, and thus, increasingly, conflicts are arising with elements which may affect another country. Furthermore the repercussions on

society overall and on the judicial system in particular deriving from the growing phenomenon of immigration are also important elements to be considered.

This reality affects the performance of jurisdictional duties, as the presence of an international component in a conflict will complicate its resolution by the courts, with difficulties affecting access to justice and the progress of the proceedings themselves, as well as the prosecution of cross-border crimes committed by organised bands.

An adequate judicial trading system is required to address this international aspect of jurisdiction. From this perspective it is appropriate for training to cover matters relating to international judicial cooperation, as well as in the most important international conventions, both bilateral and multilateral, ratified by Spain, in particular those dealing with Human Rights (130). And in this regard the importance of training in foreign languages plays an important role.

b) The European Judicial Area and judicial training

The nature of political, social and economic development in Europe has further increased the need to address the international aspect in judicial training, especially due to the free movement of capital, goods, services and citizens in the European Union.

With the Treaty of Amsterdam (1997) the process of creating a European Judicial Area was initiated, its basic milestones being the Vienna Programme (1998) and the Council of Tampere (1999) as well as the recent Hague Programme (2004). This process is based on respect for the diversity of national judicial systems, so that the courts of each State are responsible for exercising the jurisdictional function in procedures with a cross-border component, applying their internal legal system and/or Community Law. Its basic objectives are firstly, recognition of the effects of judgments issued by courts of other Member States

(principle of mutual recognition); and also the coordination of action between judicial authorities of different countries (improved cooperation or judicial assistance).

The cornerstone of constructing a European Judicial Area is the principle of mutual recognition, according to which judgments in a Member State shall be valid in compliance with their national legislation and shall be recognised and enforced in any other Member State without control, or with a very restricted control on the part of the judicial authorities of the country in which they are enforced (131). This principle is based on mutual trust between States, both from an abstract perspective (in the functioning of their respective judicial systems) and from a specific standpoint (between jurisdictional authorities required to collaborate in the process) (132). Thus, as stated in the founding Charter of the European Judicial Training Network (133) «the effectiveness of the European Area of Justice requires a good understanding by members of the judiciary of legal and judicial systems in other Member States, as well as national, European and international instruments concerning co-operation». According to the Communication of the Commission to the Council and Parliament on mutual recognition of judgments in criminal matters and strengthening of mutual trust between Member States (19-5-05) «The effect of developing the mutual recognition principle is to give judgments an impact that extends well beyond national borders» and it adds that «the European dimension of the judicial function must be fully integrated into syllabuses at all stages of the careers of judges and prosecutors».

Furthermore, one of the main instruments designed to improve cooperation is the direct transmission between judicial authorities of applications for international judicial assistance without the intervention of the Central authority, which has been taken up in the criminal sector (134) and in civil and commercial matters. Direct transmission implies greater flexibility in processing; however, this also means that Judges involved in providing judicial assistance may find themselves in a much more complex

scenario, as on one hand internal judicial assistance poses technical difficulties which require the Judge to be familiar, not only with internal Spanish law, but also with the specific applicable international convention and its statements or reservations, as well as possibly the internal law of the other State involved. (135); on the other hand, the issue of language raises the need for direct transmission of adequate translation and linguistic training instruments; finally, Judges need to have easy access to the most recent information (address, telephone, emails etc) of courts in other Member States of the European Union.

Judicial Authorities in the various European Union member States are thus called on to play an important role in the construction of the European Judicial Area. As GÓMEZ MARTÍNEZ states «European Integration at a judicial level, and the creation of a European judicial area, require new attitudes, the assumption of new concepts regarding the function of judges who are no longer acting on a national level but in a European dimension» (136).

The training of Judges cannot remain removed from this phenomenon, but must address it from a dual perspective. Firstly, it is necessary to *prepare the Judge to perform jurisdictional duties in the European context* in which cross-border elements frequently occur, and European Union regulations need to be applied in a growing number of cases. As section 43 of Report no. 4 of the Consultative Council of European Judges (CCEJ) states «Whatever the nature of their duties, no judge can ignore European law, be it the European Convention on Human Rights or other Council of Europe Conventions, or if appropriate, the Treaty of the European Union and the legislation deriving from it, because they are required to apply it directly to the cases that come before them». And secondly, judicial training is required *to contribute in a decisive manner to consolidating the process of construction of the European Judicial Area*, with significant effects on the protection of the rights of European citizens.

In this respect training activity programmes should include material on European Union Law and provide activities designed to encourage contact and exchange between the Judicial Authorities of the various EU member states. In short, improved mutual knowledge increases the trust required for effective operation of the principle of mutual recognition.

The way forward for the European Judicial Area is found in the «Hague Programme for strengthening freedom, security and justice in the European Union» which was approved by the European Council held in Brussels on 4 and 5 November 2004 (138). This Programme is fully aware of the Judge's prominent role, establishing that «Strengthening mutual confidence requires an explicit effort to improve mutual understanding among judicial authorities and different legal systems» adding that «networks of judicial organisations and institutions, such as the network of the Councils for the Judiciary, the European Network of Supreme Courts and the European Judicial Training Network, should be supported by the Union». And it also indicates that «Exchange programmes for judicial authorities will facilitate cooperation and help develop mutual trust. An EU component should be systematically included in the training of judicial authorities».

c) Increasing the Judge's knowledge

This international component of training determines not only the acquisition of knowledge, thus providing improved conditions for addressing procedures with a foreign component, but also the Judge's own personal enrichment, as he/she will be better prepared to perform his/her jurisdictional duties in the cases heard. In addition, as GUARNIERI (139) rightly asserts, «the comparative analysis of judicial systems is an essential step in understanding the real nature of the national system and its limits».

B) *International organisations designed to improve the training of Judges*

Participation in these organisations provides the opportunity to exchange experiences and to joint consider problems, which, of necessity, will enrich the judicial training system. Section B of paragraph 2 enumerates the institutions of this type in which the General Council of the Judiciary is involved.

Bearing in mind the historical, geographic, social, economic and cultural peculiarities of the Spanish State, the Judicial School will undertake the important work of linking the European and Latin American networks in matters of training.

2. *Present status*

A) *General*

Firstly, there are a *growing number of activities* which, since they affect this international dimension of jurisdiction, are included both in the State Plan and in Decentralised Training.

In addition, the General Council of the Judiciary is provided with various *permanent instruments* which may be framed in this international context:

- Firstly, training activities have been held in Community Law through the «Permanent Forum for European Judicial Studies» based in Murcia: Judicial Application of European Community Law and Seminar on the Comparative Study of Judicial systems through Legal Language (which has a theory and a practical stage). The 2006 State Plan provides for an Advanced Stage of this last seminar on linguistic training.
- The Study Forum on Immigration based on a Convention entered into in 2004 between the General Council of the Judiciary and the Government of the Canaries.

- Distance learning course in Community Languages (English and French) offered through the Virtual Campus of the Judiciary School.
- Other activities are also taking place in conjunction with border countries (bilateral seminars or cross-border meetings with Portugal and with France).
- The activities provided through the European Network of Judicial Training (ENJT).
 - Activities organised by judicial training bodies of other Member States of the European Union and which take place outside Spain.
 - The European Programme for Judicial Mobility (also known as «Judicial Erasmus»). This opportunity, which is part of the State Plan for Ongoing Training, was set up as an experiment in 2005, and it is planned to increase its availability in 2006. In principle, the mobility element will consist of a two-week training visit (10 working days) to be spent in a court of another member state of the European Union whose language will be familiar to the applicant (140).

One notable course is the Virtual Course on «Brussels Regulations I and II». This training activity has been taught on the Internet (the Virtual Campus of the Judiciary School) simultaneously in Spanish, French and English, in which 95 Judges and Prosecutors from 10 Member States or Member candidate states took part. The evaluation report carried out by the European Commission (141) highlighted the fact that this is an extremely innovative activity and indicated that it has been implemented in a very satisfactory manner, adding that similar initiatives should be given special impetus and support by the European Commission.

In recent years the budget designed to cover costs of activities included in this international dimension of judicial training has increased considerably. It would therefore be pertinent to consider the adequate nature of the material and staff resources provided

by the General Council of the Judiciary for these activities, both from a quantitative point of view (number of hours used by the Council Personnel ...) and from an organisational perspective (rationalisation of resources).

B) Participation in activities of international bodies

At present, the Spanish Judiciary School participates in activities of the organisations detailed below:

a) European Judicial Training Network

The EJTN (142) arose from the need to create a European area for training correlative to the gradual implementation of the European judicial area. The diversity and importance of the European dimension in training judges has led to those responsible for this task in various member States to gradually coordinate their programmes and activities, which indicated a lack of contacts and the urgent need to create a stable framework of relations which would encourage the creation of a common judicial culture indispensable for the correct functioning of jurisdictional cooperation mechanisms. It comprises the Judiciary Schools and bodies responsible for training judges in the Member States of the European Union. It takes the form of an international non-profit-making association, subject to Belgian law, and its operations have been funded since 2004 by the European Commission. It is governed by a founding charter adopted in Bordeaux on 13 October 2000 and revised in Copenhagen on 6 December 2002. From June 2005 it has had a permanent Secretary responsible for administration of the Network located in Brussels.

Firstly, the ENJT enables judges and public prosecutors of a State to participate in training activities organised by bodies in other countries belonging to the Network; in Spain the State Plan

for Ongoing Training includes activities held in other States of the European Union which Spanish judges may attend. In addition, there is an Exchange Programme for Judicial Authorities in which Spanish judges have taken part since 2005.

The «Hague Programme for strengthening freedom, security and justice in the European Union» (2004) expressly invites the Commission to urgently prepare a proposal designed, on the basis of existing structure, to create an effective network for training judicial authorities in both the civil and criminal sectors.

b) Latin American Network of Judiciary Schools

The RIAEJ (143), created at the 6th Latin American Summit of Presidents of Supreme Courts and Tribunals of Justice held in the Canary Islands in 2001, includes judiciary schools and public centres and judicial skills units of the Latin American countries, in addition to Latin American judicial training institutions of a regional nature. Spain has a significant role as a member of its Governing Board. In order to achieve their aims these organisations carry out the following activities:

- Ensuring coordination and cooperation between members
- Encouraging exchange of experience and information on programmes, methodologies and judicial training systems
- Creating computerised support in the form of websites (reference indices, databases etc) using resources provided by the Latin American Network of Information and Judicial Documentation (IBERIUS)
- Promoting innovative skills areas by setting up and managing the Latin American Centre for Virtual Judicial Training
- Organising training activities for trainers
- Formulating programming and carrying out training and skills programmes

- Promoting adequate functioning of the Latin American judicial area through training activities which increase knowledge of the judicial systems of member countries.
- Making progress in establishing a common judicial culture
- Any other activities analogous to the above.

c) Council of Europe: the Lisbon Network

Within the Council of Europe and originating from a multi-lateral meeting held in Lisbon in 1995 on the training of judges and public prosecutors in Europe, the «European Network for the exchange of information between persons and entities responsible for the training of judges and prosecutors» (known as the Lisbon Network) was created. (144)

This Network meets regularly to discuss matters of common interest in judicial training (professional obligations and ethics, international conventions, selection of judges, training of senior judges and professional qualifications etc).

d) The International Organisation for Judicial Training (IOJT)

The «International Organisation for Judicial Training» is based in Israel and is an association of judicial training institutions from 61 countries, including the Spanish Judiciary School. Its purpose is to promote the creation of judicial training institutions, to encourage respect for the law and the rule of law, to exchange experiences in education and training matters, and to develop mechanisms for exchange between judges.

According to its Statutes it is structured round an Assembly General, the Board of Governors, the Executive Committee, the Chairman, Vice Chairmen, Secretary General, the Treasurer and other Committees. The Executive Committee, which holds the

powers of the IOJT in between meetings of the Board of Governors, comprising a Chairman, Secretary General Treasurer and three other members, one of which is a Member of the General Council of the Judiciary (Josep Alfons LÓPEZ TENA).

3. Conclusions and proposals

(5.1) The changes affecting the world in the 21st century have important consequences on the performance of the jurisdictional function, giving rise to a new judicial culture which goes beyond the narrow framework of national legal systems. The training system for Judges cannot ignore this phenomenon and must also assume an active role in preparing members of the judicial career to face this new reality.

- From an overall perspective it is necessary to ensure an appropriate structuring of the General Council of the Judiciary bodies in order to address the international dimension of judicial training, providing these organisations with sufficient material and personal means to this effect, ensuring appropriate coordination of its various services.

(5.2) The presence of an international component in judges' training not only permits them to perform their duties in a more efficient manner in any cases having a cross-border component, but it also contributes to increasing their own professional skills, preparing them more effectively to practice jurisdiction in proceedings of all kinds.

(5.3) Since Judges are required to play a prominent role in the effective construction of the European Judicial Area, it would be appropriate to take into consideration the stepping up of activities both in matters of European Union law, and also in exchanges between judicial authorities of different countries, in order to increase mutual knowledge of their systems.

(5.4) The creation of international organisations and institutions in matters of judicial training permits the exchange of experiences and access to information on instruments designed to improve skills, and therefore the active participation of the Spanish Judiciary School in their activities should be positively valued, consolidating or providing incentives for its presence in the governing bodies.

- Given the heterogeneous nature of the forums and sources of knowledge, the participation of the General Council of the Judiciary in these institutions should be rationalised in order to improve results. For this purpose it would be necessary to establish Strategic Guidelines, which could be updated on a regular basis.
- In particular, an information system should be established which would guarantee adequate management of information and documentation generated by all those international bodies, which would make it possible to share information with all those responsible for the management of judicial training in Spain.

(5.5) Bearing in mind the special nature of the Spanish Judiciary School it should become an important instrument for liaising between European and Latin American networks in training matters.

VI. SUMMARY OF CONCLUSIONS

1. Ongoing training is indispensable not only for the development of law, and the techniques and knowledge required to perform judicial duties, but also for the possibility of encountering new responsibilities as a result of a change in post or appointment (145).

Selection, initial training and ongoing training are different stages of a same process designed to obtain improve qualifications of judges for performing their jurisdictional duties. An adequate selection should ensure that those who enter the judicial service can attest to an optimum level of legal knowledge. Initial training –based on that knowledge and those skills– should contribute to the acquisition of specific and practical training required in the performance of judicial duties.

2. Society has the right to count on properly trained judges (146). Training of judges is a guarantee of their independence. Ongoing training, organised and directed by the General Council of the Judiciary, should be completed with training designed by judges themselves according to their own criteria.

3. All judges have the professional duty to continue training. Although the voluntary nature of training should be the general rule, at times there is a case for requiring specific skills, such as when acquiring a speciality, change of appointment, change of jurisdictional order and promotion to higher ranks, to name just a few such cases.

4. The present system of training, which has had an important role in historical terms, is not fully adjusted to the requirements of the Organic Law of the Judiciary nor to the current training needs of the Judicial Service. The criteria on which it is based, particularly the fact that the training system bears no relation to the development of the Judicial Career, and the lack of a plan which goes beyond the mere haphazard completion of courses, has led to the need for a review of the system.

5. The present organisation of the Ongoing Training Service, comprising highly qualified legal practitioners, seriously underrates their capabilities. The way the service is structured and the Judiciary School Committee functions mean that valuable

experience of its experts is underused, and their work is reduced to ancillary functions more appropriate for events management staff.

6. Article 433 bis of the Organic Law of the Judiciary requires the General Council of the Judiciary to ensure that all judges undergo ongoing, individualised and specialised training of a high quality throughout their professional career. In order to ensure this the General Council of the Judiciary should establish an Ongoing Training Plan for the Judicial Service detailing objectives, content, training priorities and long-term programming of these activities. Specialised plans should also be devised for every member of the Judicial Service and these should be programmed in an individualised manner detailing training objectives over five-year periods.

7. Article 433 bis also requires that compliance with the specialised plan be evaluated in the manner established by regulations, for the purposes of professional promotion. Training is closely linked to the judicial career in that it is taken into account for promotion purposes.

8. Specialisation of knowledge is essential, given the increasing complexity of legal matters. If the specialisation means a greater knowledge of specific subjects, the General Council of the Judiciary should encourage as many judges as possible to acquire that greater knowledge. Ongoing training should be one of the tools to assist in acquiring specialisation (147)

9. The assessment of training and monitoring of programmes by the General Council of the Judiciary should be promoted in order to determine the profiles of the various posts available within the Judicial Service. Assessment of training should also be promoted in competitive procedures based on merit for covering posts which are appointed discretionally.

10. The Ongoing Training Service should be directly responsible for training and should be organised by the School Committee and its Director as the teaching body which plans directs and evaluates the training of judges. All of this should be without prejudice to the consultative nature attributed to the Education Committee and to the Governing Chambers of the High Courts of Justice and to other collaborating entities.

11. Judges should participate in the planning and design of their own Training Plans, which will need to be approved by the Judiciary School Committee at the proposal of the Ongoing Training Service.

12. The High Courts of Justice shall set up the appropriate Training Plans for judges appointed to their Regional Community which take into account the specific nature of the law and language of that community. It will be necessary to coordinate with the General Training Plan and with the individualised plans for each judge, thus avoiding superfluous material and seeking an improved distribution of resources.

13. Particular attention shall be paid to the method, by co-ordinating courses, seminars and legal sessions, admitting, acknowledging and supporting the possibility of improving training by means other than through the Ongoing Training Service.

14. Making best use of training courses could give rise to a system whereby credits are obtained or some other type of indicator which would provide a gauge of the degree of participation or training acquired, which could subsequently be taken into account when obtaining benefits in the Judicial Service such as promotion, upgrades, specialisation or posts of responsibility.

15. The maximum number of hours which all judges may use annually during their working day for training purposes shall

be established, taking into account that this is a tool which assists in the essential duty that is the task of every judge, that of administering Justice.

16. The training content shall be varied, concentrating essentially on legal matters, without prejudice to introducing programmes for ancillary matters complementary to the performance of judicial duties. Knowledge of institutions and bodies of interest to the judicial function should be promoted. In particular training in new technologies and the learning of foreign languages should also be encouraged.

17. The selection of directors and lecturers should be governed by objective, transparent criteria and should respond to strictly educational profiles. The final proposal, having been assessed by the appropriate organisations or entities, shall be made by the Ongoing Training Service, taking into account the lecturers' merits, their evaluation from previous courses, while encouraging participation of members of the Judicial Service. The School Committee shall approve the selection, which shall be ratified by the Plenary Session of the Council.

18. The appropriate systems should be set up for assessing training programmes and methods, evaluating trainers and assessing the knowledge acquired by participants. The evaluation should attempt to improve on the training cycle and the training system.

19. New technologies should be promoted for use in distance learning and virtual training. Training will encourage knowledge and use of these technologies.

20. Ongoing training should take into account the international dimensions of the jurisdictional function, in particular from the perspective of constructing a European Judicial Area

so that judges are adequately prepared to perform their jurisdictional duties within this context. In addition, the special relations with Latin America should be considered, and the possibility of developing joint programmes within the framework of the Latin American Network of Judiciary Schools.

NOTES

- (1) Currently the Centre for Legal Studies of the Administration of Justice.
- (2) The reform of the Organic Law of the Judiciary 6/1985, of 1 July by Organic Law 19/2003 of 23 December in its sole article 122 introduced both title V (*Ongoing training of judges*) as its sole precept, article 433 bis. Both were introduced in the legislative procedure by amendment number 775 of the Popular Parliamentary Group in the Senate. In its justification of the new title the amendment states that «The objective of achieving a more flexible justice should also be accompanied by the development of quality policies in ongoing training and qualifications of judges».
- (3) Its full text is found on the website of the Ministry of Justice <www.mju.es>.
- (4) Published in the Official State Gazette number 166, on 13 July 1995.
- (5) According to GUARNIERI, Carlo and PEDERZOLI, Patricia, «Judges and politics. The Judiciary and democracy», Taurus, page 34, the two models to be compared are, respectively, recruitment through competitive examination or bureaucratic means, and professional recruitment. Whereas the former is characteristic of continental Europe, the second is typical of Anglo-American systems. In order to address the analysis we shall follow the line separating legal tradition from *common law* and that of *civil law*.
- (6) DIEZ-PICAZO, Luis María, «Problems and tensions in the Judiciary», *Revista de Occidente*, number 179, 1996, pages 45 and 46.
- (7) GUARNIERI, Carlo, «Access to the magistracy: theoretical problems and comparative analysis». *Access to the judicial function. Comparative study*. VV.AA. Ongoing training Manuals. no. 13. General Council of the Judiciary, Madrid, 2001, pages 21 and 22.
- (8) According to PARADA VÁZQUEZ, José Ramón, «Lectio brevis on career, political neutrality and governance of judges», *Boletín de la Facultad de Derecho* no. 7, Madrid 1994, page 405, this model corresponds to the closed career system or civil service system.
- (9) PITCHERS, Christopher, *The content of training for judges in Great Britain* 1997.
- (10) CARMONA RUANO, Miguel, «The role of associations and unions in the training of senior judges», *Jueces para la democracia*, no. 38, July 2000, page 13.
- (11) Countries with no similar institution have Academies (German Federal Republic), Institutes for the training of judges (Czech Republic) or Committees responsible for organising seminars, courses and other activities (Italy).

(12) As the Director of the Judicial Studies Board indicated in its 1997 report, «We know how difficult the judicial task is and we will do all we can to help those with the responsibility of sitting in judgment perform that role justly and effectively»; PITCHERS Christopher, *The content of training for judges in great Britain*, *cit.*

(13) Paragraph 32.

(14) Paragraph 33.

(15) In the opinion polls carried out by the General Council of the Judiciary *White Paper on Justice, Annexes*, General Council of the Judiciary, Madrid, 1997, pages 501 and subsequent pages.

(16) Its article 10 indicates that «Persons selected for judicial office shall be individuals of integrity and ability with appropriate training or qualifications in law».

(17) Principles III, 1. and V, 3.G.

(18) Articles 1.3 and 2.3.

(19) Paragraph 11.

(20) OBERTO, Giacomo, *Recrutement et formation des magistrates en Europe. Étude comparative*, Council of Europe, March 2003, page 35.

(21) IPPOLITO, Franco, «Training of Senior Judges», *Jueces para la Democracia* no. 50, July 2004 page 21.

(22) CARMONA RUANO, Miguel, «The role of associations and unions in the training of judges», *cit.*, page 14.

(23) ANAYA GÓMEZ, Antonio, *La Carrera Judicial*. Studies on the reform of Justice in Spain, Real Academia de Jurisprudencia y Legislación y Ministerio de Justice, VV.AA. Volume I Madrid 2004, pages 184 and 185, considers that the main source of training for the judge is the performance of his duties. How many lectures should be attended?, or how many articles should be read in order to acquire the amount of information received by the judge every year out of the brief submitted by parties which in turn refer to case law and works of literature, of the deliberations of associative bodies and the confirmation or revocations of appealed judgments, all of which is further multiplied by the number of cases heard and ruled on?

(24) *White Paper on Justice, Annexes, cit.*, page 510.

(25) GARCÍA VALDÉS, Carlos, «Selection and training of judges in Spain: the Centre for Judicial Studies», *Revista del Poder Judicial* no. 7, offprint, Madrid 1987, page 50.

(26) Paragraph 36.

(27) See article 433 bis section 1.

(28) Paragraph 31.

(29) *White Paper on Justice, Annexes, cit.*, pages 510 and subsequent pages.

(30) On Ongoing Training in Italy: LO VOI, Francesco and PATROLA, Gian Luigi, «La selezione e la formazione del Giudice in Italia», *Revista del Poder*

Judicial no. 69, Madrid, 2003, pages 491 and subsequent pages; OBERTO, Giacomo, *Recrutement et formation des magistrates en Europe. Étude comparative, cit.*, pages 39 and subsequent pages. On ongoing training in England and Wales; PITCHERS, Christopher, *The content of training for judges in Great Britain, cit.*; OBERTO, Giacomo, *Recrutement et formation des magistrates en Europe. Étude comparative, cit.*, pages 125 and subsequent pages.

(31) On ongoing training in Portugal: MENDES, Mário Silva Tavares, «O recrutamento e formação de magistrados em Portugal. Do estatuto judiciário ao actual sistema», *Revista del Poder Judicial* no. 71, Madrid, 2003, pages 375 and subsequent pages; GOMES LEANDRO, Armando, *La formation de magistrates au Portugal. Les grands contenus thématiques de la formation des juges dans l'Union Européenne. La durée des plans de formation*, Barcelona 1997; OBERTO, Giacomo, *Recrutement et formation des magistrates en Europe. Étude comparative, cit.*, pages 130 and subsequent pages.

(32) On ongoing training in the German Federal Republic, GONZÁLEZ-VARAS IBÁÑEZ, Santiago, «The German Ongoing Training System of Judges and Public Prosecutors. Conditions for becoming a Judge and other questions of organisation of courts and tribunals», *Revista del Poder Judicial*, no. 34 Madrid, 2003, page 219 and subsequent pages; OBERTO, Giacomo, *Recrutement et formation des magistrates en Europe. Étude comparative, cit.*, page 123 and subsequent pages.

(33) On ongoing training in France: National Magistracy School in France «The National Magistracy School» translation into Spanish by Eric Maitrepierre, *Revista del Poder Judicial* no. 68, Madrid, 2002, pages 475 and subsequent pages; OBERTO Giacomo, *Recrutement et formation des magistrates en Europe. Étude comparative, cit.*, pages 122 and subsequent pages.

(34) In Spain the White Paper on Justice pointed to the possibility of establishing the requirement for judges entering the service, at least for the two years following their incorporation in the judicial career, should participate for at least ten days annually.

(35) Paragraph 34.

(36) Paragraph 37.

(37) *White Paper on Justice, cit.*, page 54.

(38) *White Paper on Justice, cit.*, page 54.

(39) Author's note: our emphasis.

(40) GUARNIERI, Carlo, *Access to the judiciary: theoretical problems and comparative analysis, cit.*, page 21.

(41) PARADA VÁZQUEZ, José Ramón, «Lectio brevis on career, political neutrality and governance of judges», *Boletín de la Facultad de Derecho*, no. 7 Madrid, 1994 page 405.

(42) Section 12.

(43) Judges in the aforementioned poll were generally against taking into account attendance at training activities (78.7%) as a merit in competitive

examinations for appointment to judicial assignments, as opposed to 18.2% who were in favour.

(44) See section 7 of the State Pact for the Reform of Justice in Spain.

(45) According to ANAYA GÓMEZ, Antonio, *The Judicial Profession, cit.*, although the State Pact states that «merit, training, specialisation, performance and quality of work shall be included as criteria for promotion and allocation of assignment» not only four alternatives to seniority that are offered, as merit is a general concept specified present both in training (general or specialised) and in quality of work and even the actual time spent in services, which can never be deprived by any type of consequence. At least they shall be taken into account in the event of equality in the remaining merits, page 184.

(46) GONZÁLEZ PÉREZ, Jesús, *The Judicial Service: Access and Promotion, cit.*, considers that relevance should be accorded to demonstrated aptitude in training courses organised by the Council as referred to in section 6, because they will enable the quality of the course to be ascertained along with the evaluations, pages 35 and 36.

(47) The stated purpose of the Organic Law 19/2003, of 23 December establishes: «in relation to book IV, the marked emphasis on professionalism of judges in the State Pact to which we have already referred, means that it is essential to modify the entry system to the Judicial Service, as well as extending to new proposals the principles of merit, training and specialisation for allocating various posts, thus overcoming the exclusive criterion of seniority (...) In resolving competitive examination for gaining access to associative professional bodies, importance is accorded particularly to specialisation, basing criteria for access on the evaluation of either specific knowledge, or previous experience in the appropriate jurisdictional order, even when such criteria are combined with seniority».

(48) According to GONZÁLEZ PÉREZ, Jesús, *The Judicial Service: Access and Promotion, cit.*, it is reasonable; however, when other criteria arise, differing from seniority which is the only truly objective criterion, there is a serious risk of falling into the trap of arbitrariness, favouritism or political affinity, page 35.

(49) In this respect the statements contained in new case law on judicial appointments are interesting. Thus, the judgment of the Supreme Court of 21 September 2006 indicates: «Those appointments which exclusively reflect ‘favouring of some judges’ cannot be accepted as legally correct, understanding the term in the sense of doing so gratuitously, without any connection with a correct understanding of the independence of all members of the Judiciary and dispensing with their specific aptitudes, merits and capabilities in the performance of jurisdictional duties».

«We cannot accept the allegations of the State Attorney when he indicates that provisions of the type such as that which concerns us here are characterised by an element of trust. We must overcome in this sense the considerations

indicated in the Supreme Court Judgment of 30 November 1999, where he highlighted the validity and sufficiency of criteria of confidence for the provision of the post of President of a Provincial Court. This confidence cannot be understood to be based on an appreciation of political opportunity, personal affinity or ideological attachment, but rather on exclusive grounds of professional aptitude for performing the post concerned, which will be able to take into account, obviously, not only training and legal technical experience, but also personal aptitude for the work of management and administration inherent in the presidency of an associated jurisdictional body, but which in any case should be explicable and accessible from the perspective of the constitutional principles of merit and capability».

(50) VV.AA. *The selection and training of judges in Spain*, page 6, unpublished work.

(51) Except for lateral access to the Judiciary such as fourth and fifth access procedures.

(52) GONZÁLEZ PÉREZ, Jesús, *Judicial Service: Access and Promotion*, cit., page 33.

(53) The aforesaid article 110, section 2, OLJ details the matters on which regulatory power is held by the General Council of the Judiciary and cites among others: e) activities of training and means of obtaining specialisation.

(54) In this respect, see the comments on examinations for the civil and criminal specialisations (in terms of their requisite revision) and their effect on professional promotion of senior judges in SOSPORA NAVAS, Francisco and URBANO CASTRILLO, Eduardo, «Specialisation and the Judicial Service: On ridding the civil and criminal orders of examination», *Deliberación* (Journal of the Professional Association of Magistrates), number 4 July 2005, pages 16 to 18.

(55) VV.AA. *Selection and training of judges in Spain*. pages 10 and 11.

(56) The Working Group Report of the Consultative Council of European Judges, *How to prepare judges to become and be a well qualified judge? An opinion on appropriate initial and in-service training for judges at a national and European level*, presented by Rosa H.M. JANSEN, Strasbourg March 2003, proposes making a distinction between two categories of ongoing training: training at levels (according to seniority in the service) and training according to sector (specific training aimed at particular groups, such as juvenile judges or preliminary enquiry instructions for example).

(57) See Royal Decree 55/2005 of 21 January establishing the structure of university teaching and regulating official university graduate programmes.

(58) In France hierarchical superiors are required to provide authorisation for training activities which exceed the minimum legal duration of five days per annum. Training of five days per annum is a legal right for judges for which they do not need any authorisation.

(59) According to the definition of article 2 section e) of Royal Decree 55/2005 of 21 January.

(60) The present Council has organised specific training plans for different jurisdictional bodies such as the National Court or the Supreme Court.

(61) This is in line with the definition of credit contained in article 2 section g) of the aforementioned Royal Decree 55/2005 of 21 January (Credit: the unit of measurement of academic knowledge regulated in Royal Decree 1125/2003, of 5 September which comprises theoretic and practical teaching, with the inclusion of other guided academic activities such as study hours of work, which the student must put in to achieve the training objectives pertinent to each of the matters indicated in the corresponding curriculum, which presents the amount of work carried out by the student in order to comply with study programme objectives and obtained by successfully completing the study of the subjects contained in the study plan of the various teaching courses leading to university qualifications which are official and valid throughout national territory).

(62) GONZÁLEZ PÉREZ, Jesús, *Judicial Service: Access and Promotion*, cit., page 35.

(63) Article 23 of the Judiciary School Regulation in section 1 states that «Attendance at ongoing training activities shall be voluntary except when the law specifies otherwise».

(64) In the ongoing state training plan for 2006 the following complementary training courses were offered: for judges in the last two intakes («Immediation and orality», «Problems of the duty court services and the activity of the enquiry judge» and «Evaluation of evidence in the civil field») and for senior judges in the labour sector («Changes in the work contract»). In this year no complementary training activity was planned for the contentious-administrative order.

(65) Sources: Meeting of European Judiciary Schools held in Bordeaux on 26 November 2004, and Report of the Ongoing Training Service 2005.

(66) GONZÁLEZ PÉREZ, Jesús, *Judicial Service: Access and Promotion*, cit., page 35.

(67) *White Paper on Justice*, General Council of the Judiciary, Madrid, 1997, page 56.

(68) See Article 43 of the Draft Regulation on the Judiciary School text of 5 March 2004.

(69) Article 22, «Ongoing Training Management will develop programmes and activities which will ensure permanent training and appropriate professional improvement for all members of the Judicial Service».

Article 24: «Ongoing Training Management shall carry out the following duties:

a) Planning, organisation and execution of ongoing training activities for members of the Judiciary Service and other persons who, while not actually members of the service, nevertheless carry out jurisdictional functions. Similarly,

it shall also organise activities for other professionals connected with the Administration of Justice.

b) Preparation of collaboration agreements with Autonomous Communities and public and private institutions in matters of the ongoing training of Judges.

c) The proposal for selecting directors, teachers and lecturers for training activities and the Judges selected to attend them.

d) Creation of an annual plan for publications deriving from the activities, seminars and courses held every year, as well as the programme for provision for libraries for the courts and IT materials made available to judges, pursuant to a general plan drawn up by the Director of the Judiciary School for the Documentation and Publications Section».

(70) *White Paper on Justice*, General Council of the Judiciary, Madrid, 1997, pages 55 and 56.

(71) According to article 30, section 1 of the Regulation on the Judiciary School «the Ongoing Training Management will have an Educational committee appointed annually by the School director. It shall comprise the Director of Ongoing Training, who will head the committee; the Heads of the State Training and Decentralised Training Sections; a representative of each of the professional Judges' associations, proposed by each association, and a member of the Judicial Service for each of the jurisdictional orders».

(72) *White Paper on Justice*, General Council of the Judiciary, Madrid, 1997, page 53.

(73) *White Paper on Justice*, General Council of the Judiciary, Madrid, 1997, page 56.

(74) Section 10 of the conclusions of the 6th meeting of members of the European Network of information exchange between the heads and the organisations involved in training senior judges (the Lisbon Network).

(75) Teachers confirm, explain and transmit. In graphic terms they are filling an empty vessel.

(76) Within the cooperation programme of the Council of Europe for creating a State of Law «The place of the Judiciary Schools in the judicial system and their role in training senior judges» in the meeting held in Bucharest (Romania) on 18 and 19 November 2003.

(77) The Working Group Report of the Consultative Council of European Judges, *How to prepare judges to become and be a well-qualified judge? An opinion on appropriate initial and in-service training for judges at the national and European level, cit.*, recommends the following programmes based on different ongoing training categories: A) Training designed for judges in the first five years of their professional career 1. Initiation to judicial organisation; 2. Appreciation of the importance of judicial ethics; 3. Substantive law and criminal, civil and administrative procedural law, including aspects relating to Community Law and to human rights; 4. Seminars with judges from other European countries on aspects

of European and international rights; 5. Constitutional law; 6 New legislation; 7. Judicial psychology; 8. Communicative skills; 9. Professional deontology, the judge's statute (obligations and rights, in particular maintaining independence); 10. Interpretation practices: 11. Critical Spirit; 12. Knowledge of social and psychological fields; 13. Responsibility for duties; 14. Time management and organisation of use of personal time; 15. How to be efficient and manage work load; 16. Ensuring the role of judge in a public hearing; and 17. Psychology of the evidence; B) Training for judges with over five years' seniority 1. Development of case law; 2. Communication skills; 3. Responsibility for work; 4. the Senior Judge as Chamber President; 5. Different courses on positive law, as well as law on refugees, human rights, evidence, medical science, conducting debates, criminology, psychiatry, specific aspects of European law for example; 6. Specific courses aimed at those who have been recently appointed to a Provincial Court or in a Chamber of the High Court of Justice or the National Court; 7. Management of a court, financial management, knowledge management, personnel management; 8. Round tables with colleagues for the study of specific issues; and 9. Seminars with judges from other European countries on specific aspects of European and international rights); and C) sector training (Specialised course for juvenile court judges and commercial or enquiry court judges, for example).

(78) For CARMONA RUANO, Miguel, «The role of associations and unions in the training of senior judges», *cit.*, page 15, the contrast between a training oriented towards know-how as opposed to training oriented towards knowing how to be a judge, will consist of addressing problems of the judicial function, not only as technique for drafting jurisdictional decision but also through an approximation, often multidisciplinary, to the main conflict of interests underlying all court cases and the role of the judge in such a conflict.

(79) Section 14 of the conclusions of the 6th meeting of the Lisbon Network indicates the importance of including ethically related themes in ongoing training programmes.

(80) Article 47 on training of the Organic Law 1/2004 of 28 December of Integral Protective Measures against Gender Violence states: The government, the General Council of the Judiciary and the Autonomous Communities within the scope of their respective competence, shall ensure specific training on the equality and non-discrimination on grounds of sex and or gender violence in training courses for Judges, Clerks of the Court, Security forces and bodies and Forensic doctors. In any case the previous training courses will introduce an element of victim incapacity.

(81) BELLOCH JULBE, Juan Alberto, «Selection and Training of Judges», *II Bidasoa Judicial Workshops*, Department of Justice of the Basque Government and the General Council of the Judiciary, Vitoria, 1992, page 33.

(82) In this respect, CARMONA RUANO, Miguel points out in «The role of associations and unions in training of senior judges», *cit.*, page 15, a more active

participation of civil society will provide not only a livelier approach to questions addressed but also a reflection on those issues that society requests and expects of the judge.

(83) LÓPEZ MEDEL, Jesús, «Selection training and specialisation of professionals in the Administration of justice», *Studies on the reform of Justice in Spain*, Royal Academy of Case Law and Legislation and Ministry of Justice VV.AA. Volume I, Madrid 2004 page 95. This author –when speaking of the University-General Council of the Judiciary connection– proposes the establishment of an academic-judicial body which would award a Doctorate to legal professionals, a qualification which would serve for teaching at the Centre for Judicial Studies.

(84) Section 6 of the State Pact on training.

(85) Article 23 of the Judiciary School Regulation in section 2 establishes that «All Judges who apply to do so may take part in the School activities when the objective and budgetary limitations of each programme and type of activity permit, and subject to the generally established requirements».

(86) Source: Report 2005 of the Ongoing Training Service General Council of the Judiciary.

(87) Source: Report 2004 of the Ongoing Training Service General Council of the Judiciary.

(88) Source: Proposal to the Plenary Session of the General Council of the Judiciary of the State Ongoing Training Plan for 2006.

(89) José FRANCISCO VALLS GOMBAU in his report «Ongoing Training of the judge as a mandatory professional requirement», page 5, details the development in recent years of the budget allocated to the Ongoing Training Service.

(90) This does not take into account the contributions of decentralised activities held by the Autonomous Communities which have entered into collaboration agreements in training matters with the General Council of the Judiciary and those of other bodies and organisations in extraordinary activities jointly organised and financed with the Judiciary School.

(91) A participation percentage similar to that of other countries in our area as indicated when commenting on the voluntary nature of ongoing training.

(92) See Jordi LÓPEZ CAMPS and Isaura LEAL FERNÁNDEZ, *Learn to plan training*, Paidós, Barcelona 2002, page 115.

(93) CABRERA, Flor, «Evaluation research in education», in the collective work *Evaluation techniques and monitoring of professional training programmes*, published by Editorial Largo Caballero, Madrid 1987, page 99.

(94) KIRKPATRICK, Donald L. *Evaluation of training actions. The four levels*, published by Training Club, EPISE and Gestión 2000, Barcelona 1998, page 45.

(95) The KIRKPATRICK model distinguishes four levels of evaluation: reaction (measures the reaction or satisfaction of participants) learning (measurement of

the degree to which participants change their attitudes, increase knowledge and/or improve skills), conduct (degree to which there has been a change of conduct as a consequence of the participant's attendance at the training activity) and results (final results obtained as a consequence of the training activity: increase in production, improvement of quality, reduction of costs, greater benefits etc.). In this way the final results are the reason justifying the training actions (their objective); in Donald L. KIRKPATRICK, *Evaluation of training actions...*, *cit.*, page 45 and subsequent pages.

(96) Point I of section 42 of Report no. 4 of the Consultative Council of European Judges (CCEJ) for the Committee of the European Council of Ministers, on initial and ongoing training appropriate to Judges at national and European levels dated 27 November 2003.

(97) Section 11 of the Conclusions of 6th Meeting of the Lisbon Network held in Bucharest on 18 and 19 November 2003.

(98) SABATO, Raffaele, General Report of the 6th Meeting of the Lisbon Network held in Bucharest on 18 and 19 November 2003.

(99) Point II of section 42 of Report no. 4 of the Consultative Council of European Judges (CCEJ) for the Committee of the European Council of Ministers, on initial and ongoing training appropriate to Judges at national and European levels dated 27 November 2003.

(100) See the analysis of the responses to the questionnaire carried out by Raffaele SABATO (Strasbourg 26 August 2005).

(101) Jordi LÓPEZ CAMPS and Isaura LEAL FERNÁNDEZ, *Learn to plan training...*, *cit.*, page 111.

(102) EURYDICE (Information Network on Education in Europe) document on «The evaluation of training establishments under scrutiny», published in *Eurydice in brief*, October 2004, available in <www.eurydice.org>.

(103) Sandra E. OXNER, «Evaluating Judicial Education Organisations: what can and should be measured?». Lecture given at the *II International Conference on the Training of the Judiciary: judicial teaching in a world of challenge and change*, Ottawa, November 2005, organised by the International Organisation for Judicial Training (IOJT), page 11.

(104) Measurement of the degree of satisfaction is not a complicated question and is based primarily on surveys, questionnaires and interviews of those taking part in the training activities

(105) Taken from the analysis of responses to the questionnaire carried out by Raffaele SABATO (Strasbourg 26 August 2005) page 27.

(106) Judge Amady BA, «L'évaluation de programmes de formation judiciaire», Lecture given at the *II International Conference on the Training of the Judiciary: judicial teaching in a world of challenge and change*, Ottawa

November 2005, organised by the International Organisation for Judicial Training (IOJT). For more information on the IDLO see <www.idlo.int>.

(107) Jordi LÓPEZ CAMPS and Isaura LEAL FERNÁNDEZ, *Learn to plan training...*, *cit.*, page 127.

(108) Report no. 4 of the Consultative Council of European Judges (CCEJ) for the Committee of the European Council of Ministers, on initial and ongoing training appropriate to Judges at national and European levels, dated 27 November 2003.

Institute of Personnel and Development «Managing Training resources and learner support».

(110) Particularly outstanding is the Federal Judicial Television Network (FJTN) used by the Federal Judicial Center (USA), Russell WHEELER'S «Exploring the potential and limitations of Distance Education», lecture given at the *II International Conference on the Training of the Judiciary: judicial teaching in a world of challenge and change*, Ottawa November 2005, organised by the International Organisation for Judicial Training (IOJT) for more information see <www.fjc.gov>.

(111) «Les TIC et l'éducation: débats et actions au niveau européen», document published by EURYDICE (Information Network on Education in Europe), available at <www.eurydice.org>.

(112) Julia DUGGLEBY, *The online tutor. Teaching through Internet*, Ediciones Deusto S.A., Bilbao 2001, page 21.

(113) Judge Amady BA, «L'évaluation de programmes de formation judiciaire», aforementioned lecture. For more information on the IDLO, see <www.idlo.int>.

(114) See <<http://cjei.org/>>.

(115) <www.enj.org>.

(116) See the section in this Paper on the international dimension of training.

(117) Federico GAN, Eva DE FRANCISCO, Beatriz ALONSO and Santiago PUYOL, *Manual of business training techniques and tools*, Ediciones Apóstrofe, Barcelona, 1995, page 290.

(118) In virtual activities it is important to distinguish between authors of the content of the subjects and the tutors responsible for teaching the student, motivating their participation and acting as intermediaries in relations with the body organising the activities.

(119) The possibility of using this instrument is already provided in the «Judges' Extranet».

(120) Sandra E. OXNER, «Evaluating Judicial Education Organisations: what can and should be measured?», lecture given at the *II International Conference on the Training of the Judiciary: judicial teaching in a world of challenge and change*, Ottawa November 2005, organised by the International Organisation for Judicial Training (IOJT), page 12.

(121) For example, this instrument is used by the Commonwealth Judicial Education Institute»; see <<http://cjei.org/>>.

(122) For further information see <<http://www.formacioncontinua.inap.map.es/>>.

(123) For example the «Workshop on the Integral Law against Gender Violence» held on 25 February 2005 by videoconference, with the active participation of thirteen Law Associations: Figueres, Girona, Granollers, Lleida, Manresa, Mataró, Reus, Sabadell, Sant Feliu, Tarragona, Terrassa, Tortosa and Vic; and the CGAE. In addition the multi-conference was followed by the other Law Associations of Spain (83) and their respective Autonomous Boards (11). Furthermore, all the associated lawyers in Spain were able to follow the workshop on line through a web site. For more information see <www2.cgae.es>.

(124) CEDDET is a foundation sponsored by the Spanish Ministry of Economy. Its governing board, which is headed by the Secretary of State for the Economy, also includes Fundacion Telefónica, the EFE Agency the Portal Universal S.A. the Vice Presidency for Latin America and the Caribbean of the World Bank, the Spanish Agency for International Cooperation, and the Spanish Institute of Foreign Trade; see <www.ceddet.org>. CEDDET is associated with the Global Development Learning Network (GDLN) of the World Bank with Spanish branch at <www.dgln.org>.

(125) Pilar PAVÓN, Dolores PÉREZ and LAFUENTE VARELA, UOC/Education Department of the Institution of Online Training (Spain), web page of the Centro Virtual Cervantes; <http://cvc.cervantes.es/obref/formation_virtual/>.

(126) José Francisco VALLS GOMBAU, Director of the Judiciary School, proposes the constitution of Judiciary School-CENDOJ mixed committee for rationalising systems, in order to improve ongoing training through new virtual technology. This proposal is contained in the document «Ongoing training of the judge as professional requirement» in the Annexes to the present White Paper.

(127) Sandra E. OXNER, *Evaluating Judicial Education ... cit.*, page 4.

(128) 2004 Activity Report of the Ongoing Training Service.

(129) It is the first virtual training activity in which Judges and Public Prosecutors of a number of European Union countries have taken part and which has been held in three languages. See the section on International Training Dimension.

(130) These agreements are particularly significant due to application of article 10.2 of the Spanish Constitution.

(131) Fernando IRURZUN MONTORO, «The European Convention: Lines of development in matters of criminal judicial cooperation», *Cuadernos de Derecho Judicial*, Volume on *Supranational criminal law and international legal cooperation*, published by the General Council of the Judiciary, Madrid 2004, page 528.

(132) See Anne WEYEMBERG, *L'harmonisation de législations: condition de l'espace pénal européen et révélateur de ses tensions*, Éditions de l'Université de Bruxelles, Brussels 2004, page 146.

(133) Charter adopted by the General Assembly of the European Judicial Network of Judicial Training in Copenhagen on 6 December 2002.

(134) They highlight the Convention of 29 May 2000 on judicial assistance in criminal matters between Member States of the European Union, which recently entered into force; and the Framework Decision of the Council of 13 June 2002 on the European Arrest warrant and its service between Member States.

(135) This problem is particularly important when bearing in mind the possibility of compliance with an application for assistance pursuant to the original legislation, as considered in article 4.1 of the Convention on Judicial Assistance in Criminal Matters of 29 May 2000 (criterion of *forum regit actum*).

(136) Carlos GÓMEZ MARTÍNEZ, «The European dimension in judicial training of the Judge. The European judicial training network», *Libro Homenaje Profesor Eduardo Font Serra*, Madrid, Ministry of Justice, Centre for Legal Studies, 2004.

(137) Report no. 4 of the Consultative Council of European Judges (CCEJ) for the Committee of the Council of European Ministers, on initial and ongoing training appropriate to Judges at national and European levels, dated 27 November 2003.

(138) This Programme, which is valid until 2011, is detailed in the «Action Plan of the Council and the Commission for application of the Hague Programme on strengthening freedom, security and justice in the European Union», approved on 10 June 2005.

(139) Carlo GUARNIERI, «Judicial Education as a Support to Judicial Independence and Major Justice Reform» conference given at *II International Conference on the Training of the Judiciary: judicial teaching in a world of challenge and change*, Ottawa November 2005, organised by the International Organisation for Judicial Training (IOJT).

(140) Carlos GÓMEZ MARTÍNEZ speaks of «free movement in matters of judicial training» in «The European dimension in judicial training of the Judge, The European Network of Judicial Training», *Libro Homenaje Profesor Eduardo Font Serra*, *cit.*

(141) Report of the evaluator Maria MOUSMOUTI following the assessment visit of 16 November 2005.

(142) For further information see <www.ejtn.net>.

(143) For further information see <www.riajej.org>.

(144) See <<http://www.coe.int/judges/>>.

(145) Opinion No. 4 (2003) of the Consultative Council of European Judges.

(146) Opinion No. 4 (2003) of the Consultative Council of European Judges.

A dissenting vote was lodged by José Luis REQUERO IBÁÑEZ as we have indicated previously: «I disagree with the part of the approved text on specialised training and therefore, its reasoning on the issue of specialist senior judges, as in general there is some chaos and confusion between “speciality”, “specialists” and “specialised” training. Thus, specialised training is confused (by orders and subject matter) with the organic relevance of specialist judges, or “individualised plan” is confused with “specialised plan”. An example of the foregoing is the case of the National Court where an individualised or specific plan for a court is confused and is proposed as a specialisation. All this is largely the fruit of the confusion created today by the Organic Law of the Judiciary in which specialisation examinations are proposed in the strict sense (these are traditional in the contentious-administrative and the labour system created in 1985), of promotion (Civil and Criminal) to which those of Juvenile should be added, and most recently, the Commercial system».

«Furthermore, I consider it misguided that from what are merely training requirements the White Paper enters the realms of the organic and this is done ignoring, for example, the contentious-administrative system which, represents 50 years of speciality and what that means. It is a system which, since 1956, has functioned entirely satisfactorily, in a voluntary manner and has led to the admired status of the contentious-administrative jurisdiction. Literature has always praised this speciality, and moreover it has been said that the present Spanish Administrative Law is based on the case law laid down by its specialists».

«I therefore disagree with any manoeuvre designed to replace the traditional specialisation which is carried out through selective examination or which attempts to create parallel means which by which specialisation is attained through “assiduity” or through years of tenure in a jurisdictional order, or through credits as is proposed, simply by means of attending training courses. Anyone who knows the training courses organised by the General Council of the Judiciary will deduce that they cannot by any means lead to the condition of specialist senior judge. With the proposals of the White Paper an attempt will be made to take the logic of a failed system of entry into the Judicial Service –competition based on merit or 4th access procedure– to specialisation, removing any idea of personal effort, achievement, and accreditation of knowledge. In short, instead of improving on what has been a success it would be a question of generalising what has been, and remains, a failure».