

*General Assembly of the Association of European Administrative Judges  
Wien 1<sup>st</sup> and 2<sup>nd</sup> June 2007*

***“The independence of Judges and Judiciary Councils  
for Administrative Justice” (†)***

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Dear President, dear Sirs,

being here on behalf of the Italian administrative magistrates I am delighted to introduce myself to such a conspicuous audience.

The topic on which I would like to focus your attention is the following.

The President's report has just confirmed that the board of the European Association is bent on the issue "Independence and Efficiency of Administrative Jurisdiction". The basic idea is that there is no contradiction between efficiency and independence, being independence of administrative judges a necessary precondition to control efficiently the Public Administration and the local legislation.

A judge can only exercise his duty being fully independent; we should however keep in mind that independence is not just a mere privilege of the judicial function, it represents a fundamental principle for the sake of the community: judicial independence, then, is to be protected in the interest of the general public.

In the past few decades the huge boost of citizens' expectations vis-à-vis the State, as a remarkable effect of democracy, has been accompanied by an equal increase in society's demand for justice."<sup>(2)</sup>

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<sup>1</sup> Intervention at the General Assembly of the Association of the European Administrative Judges , Wien, May 2007.

<sup>2</sup> “Today, those seeking justice constantly intermingle their expectations of fairness and impartiality with those of effectiveness and promptness “,Report by Prof. Luigi Berlinguer, “Improving the self-governance of the judiciary to meet citizens”, at the 3<sup>rd</sup> European

Citizens who turn to justice cannot be satisfied only by means of an independent justice, they need a fair and an efficient justice as well.

Dear Colleagues, then it seems to be very important to reinforce the independence of the administrative jurisdiction, while guaranteeing its efficiency .

It is therefore my intention to give some brief information about two scientific meetings which recently took place in Rome in order to discuss such issues, where we interviewed in the role of observers on behalf of the AEAJ.

A) The first one was the 7th Plenary Meeting of the CEPEJ (European Commission for the efficiency of Justice) held in Rome in July 2006.

The object of the meeting was the discussion of the "Draft Report on European Judicial systems - Edition 2006", elaborated by the Research Department of Cepej, namely by Ms A. M. Falconi and Mr. Jean Paul Jean, who showed its contents to the representatives of all Member States of the Council of Europe and answered all the questions and exceptions raised by them thereon.

The Draft Report embodies the outcome of the annual work of recognition on the state of civil, penal and administrative justice in all member States, that Cepej elaborates on the basis of the data received by the States themselves, to the twofold purpose of giving a true and fair view of the factual situation and suggesting practicable solutions in order to pursue the efficiency of the

different European judicial systems, while fostering their gradual harmonization.

**In our opinion the Draft Report was characterized by the peculiar attention paid not only to the correctness and real comparability of data received by single Member states, but also to the diffusion of the same data in real time among all operators acting in the field of justice by way of the implementation of the Cepej web site and, in an oncoming future, by the envisaged creation of a real network for the data exchange in real time.**

Having regard to the contents, a cursory exam of the 2006 Draft Report shows the sensible differences existing among the judicial systems of the member States, both in terms of strict judiciary organization (people and means, salaries and pension schemes of judges, territorial distribution of courts, relations between public prosecutors and judges) and in terms of outcome (efficiency and speed of the judicial remedies, independence of magistrates), being these differences highlighted by the circumstance that in some countries organized on a federal basis (i.e. Germany) the judicial power is somehow shared, on a territorial basis, also in relation with the federal structure.

In any case the Cepej has stated to attach importance, inter alia, to the following issues:

- to implement cooperation and exchange activities among the member States of the Council of Europe, also by means of international meetings;
- to develop cooperation at a domestic and a European level, both with the competent authorities also with non-governmental entities, especially those representative of the professional classes involved **(therefore there seems to be enough scope also for our Association as playing its usual role of observer and prompter)**;
- to exercise a control and guarantee the effective execution of judicial decisions, both domestic and European, by studying practical cases and signalling any malfunction to the European Commission and the other European Institutions;
- to promote the actual application of the international and EEC laws by domestic courts, through an activity of consulting and supporting the member States;
- to stimulate the adoption of recommendations by the Council of Europe, to promote the abovementioned targets.

At the end of the meeting Mr. Franco Frattini, the Vice President of the European Commission, envisaged some lines of action towards the process of European judiciary integration that we consider of essential importance.

He underlined the importance of the recent approval of the “Mandate for the exchange of proofs “ among the EC member States.

Besides he lingered over the theme of cooperation with the Council of Europe – and within it, with the Cepej - by considering that the two of them, by avoiding useless overlapping of competences, can provide the Community Institutions with a valuable contribution of technical nature, in position of prompters and juridical consultants, also in order to stimulate all the justice operators to the full recognition of the judicial decisions stemming from all member States; in this respect he has also announced the oncoming release of a Communication of the European Commission, which will mention the Cepej and its precious support in terms of technical and scientific cooperation.

Another important target of the European Commission in the short run - he has moreover explained – is the constitution of a European permanent common Forum in the field of justice, with the participation not only of the representatives of the member States but also of the spokesmen of non-governmental entities involved, through which EC could steadily observe the course of the European judicial systems, also in cooperation with Cepej, in order to gain data, information and notions of technical and practical nature **(we have it that this Forum could represent another important scope in**

**which the Association of European Administrative Judges would gain weight in these matters).**

Mr. Frattini has eventually signalled the oncoming setting up of a Community Network of Training, by creating a sort of "Erasmus" dedicated to European magistrates, in order to foster the exchange of experiences and increase the "cultural integration" of the European judicial systems and of their practitioners.

**It is our view that the training of judges is a very sensible issue and there is a direct tie between independence and training of judges, in view of the fact that the constant attention to technical capabilities and the awareness of professional ethics represent the fundamental conditions needed to ensure that the practice of jurisdiction is based on real autonomy and independence.**

Training and the diffusion of a spirit of mutual trust between the judiciary and the judicial system represents the very reason for existence of the European Network of Councils for the Judiciary (ENCJ). And to this purpose I will mention that for the first time this year the Exchange programme for European judges, planned by ENCJ, expressly includes the administrative judges.

B) As a second topic close to the issue which is being debated at the moment, let me give you a hint at the results of the 3<sup>rd</sup> European Conference of Judges

held in Rome in March 2007, organized by the CCJE (Consultative Council of European Judges) on the theme "Which Council for the Justice".

We were present in the role of observers and held our position - which was in the same direction of the speeches made within the civil and penal judiciary – centring our attention on the profile concerning the necessity or respectively the desirability of judiciary councils for administrative jurisdiction.

After hinting at the special functions of our jurisdiction we underlined the intimate necessity of strengthening not only the personal independence of administrative judges, but also the structural independence of the administrative jurisdiction itself.

And structural independence deals with the question "how" administrative jurisdiction should be administrated: considering that the most important function of administrative jurisdiction is to control the public Administration (generally organized in a hierarchic way and submitted to instructions of its supreme organs), in order to ensure the effectiveness of such control (exercised through the judicial syndicate upon its acts ) and hinder any inversion of it, it is necessary that no competence of any controlled Administration (including its supreme organs) may intervene into the function of the controlling judiciary authority.

It will be therefore necessary to strengthen the elements of "self-administration" of the administrative judiciary and weaken the



Administration's influence on the functioning of administrative jurisdiction. If the preceding considerations can be shared, the natural consequence is the necessary implementation of judiciary councils in charge of the administration of the administrative judiciary and in a position of independence from the executive power and its supreme organs.

As for the composition of judiciary councils national traditions concerning such institutions should be respected.

Judiciary councils shall represent an element of "self-administration" of the "third power" while avoiding influence of the "second power"; it seems therefore advisable that the majority of members should be judges elected by their colleagues.

Moreover, we could also think about the representation in the judiciary councils of those institutions which are competent to enact the rulings that the administration has to comply with (and whose compliance is subject to the control of administrative judiciary): the latter argument could even lead to a participation of representatives of the "first power" in such councils; and at last we could think about law professors in order to complete the range of participants in the councils themselves.

On examining the range of possible competences for such councils we suggested a rather wide scope, such as :

- making binding proposals concerning the nomination of judges (or, where

existing of candidates) so that it should be impossible for the executive power to nominate persons who are not suggested by the council;

- deciding on the promotion of judges;
- organizing judicial training;
- dealing with administration and distribution of financial and human resources ;
- giving opinions on legal projects concerning (administrative) jurisdiction;
- participation in procedures concerning disciplinary sanctions and transfer of judges (it is also worth thinking about the establishment of disciplinary bodies, composed of judges, within the judiciary council);
- representing (administrative) judiciary towards the Parliament, especially bargaining the respective budget based on a bill enacted by the council; in this context one could also think about a legal remedy against an insufficient financial equipment (for example an appeal before a constitutional court).

By ending our intervention we have stressed the need of giving emphasis to the principle that national traditions concerning the competences of the existing judiciary councils should be respected. In particular it would not be advisable that judiciary councils took over functions that - according to the respective national traditions – were already pertaining to the competence of juridical bodies; they should rather replace organs of the executive power

exercising their (still existing) competences in the field of justice administration.

By this mention I finish my intervention and I thank you for your courteous attention.