

Single Judge – Panel MEDEL contribution for CEPEJ

Executive summary

Through the present contribution to CEPEJ, MEDEL (Magistrats Européens pour la Démocratie et les Libertés) aims to assessing the issues of division of judicial tasks among single or panel judges and of use of lay judges in judicial procedures. MEDEL requested to members of its national Associations of Judges and Prosecutors to describe the legislative framework in their respective countries. Responses were gathered from Cyprus, Czech Republic, France, Germany, Greece, Italy, Portugal, Romania, Serbia and Turkey.

MEDEL notes that reliable statistics on the distribution of tasks among single or panel judges are not available in all considered countries. Such circumstance should be taken into due account when assessing numerical relations that deal with ratios of cases to judges or of judges to population, as it stands not only as a quantitative affair, but it has significant qualitative repercussions on the way jurisdiction is exercised.

Having regard to different experiences in countries analyzed, as well as to different subject matters (civil, administrative, criminal law), MEDEL should recommend a careful use of single judge models, or at least a re-visitation of traditional criteria for attribution of competences to single judges.

MEDEL should invite a reflection on the issue of use of lay judges in judicial procedures, in view of the fact that modern justice contains a remarkable technical element which inevitably falls into contradiction with the traditional logic behind the direct involvement of citizens in the administration of criminal justice.

1. General remarks.

In its Document dated 10 December 2008 [\(the Protocol for the exploitation of the CEPEJ report "European judicial systems – Edition 2008" in view of preparing specific studies\)](#) the European Commission for the Efficiency of Justice invited "individual researchers or relevant bodies/institutes to work on specific studies" and stressed a number of "Priority Topics" .

MEDEL (*Magistrats Européens pour la Démocratie et les Libertés*) has been requested to cooperate in a "... study (aimed) in particular (to) assess the links between efficiency and quality of the proceedings and the organisation of judicial decision making bodies, taking into account the fundamental principles of Article 6 ECHR. To that extent, the study could also consider the bodies where non professional judges sit (alone or within a panel)".

Taking into account such guidelines, MEDEL asked to Judges and Public prosecutors, members of the National Associations gathered in MEDEL, to give some essential information on the topic following a double criterion. Along with relevant data related to the bulk of civil and criminal cases dealt with by Single Judges or Panels, we asked our colleagues to give an essential description of the institutional position of persons in charge with these tasks. A particular attention was paid to the mechanisms of appointment of non professional Judges, in order to verifying whether the related procedures sufficiently guarantee the independence of the chosen persons.

Responses had been given by professional associates of Cyprus, Czech Republic, France, Germany, Greece, Italy, Portugal, Romania, Serbia and Turkey.

Although the number of responses evidently does not allow for statistically significant observations, certain trends can be seen and certain topics appear relevant in the light of the information submitted.

2. Numerical data.

On this issue a first preliminary remark is to be formulated.

It has not been possible to gather significant numerical data on distribution of affairs among single judges/panels. Indeed, in the most part (quite the totality) of the considered Countries, national statistical systems do not take such distinction into account. We have been able to gather statistics with data distinguishing among the different burdens of work attributed to single or panel Judges only by three States, namely Italy, Portugal and Spain.

The conclusion that can be drawn is that, apparently, the Member States don't seem to be particularly interested on this essential aspect of the problem of the efficiency of the Judiciary.

A further remark is to be added. In the answers related to the Spanish situation it was pointed out that in this country the numerical composition of the Panels changes according to the matters under discussion and to the different judicial bodies in charge of them.

It is therefore far more difficult any common analysis of the data as well as even the possibility to compare the situations in different States.

At a first glance it appears clearly that the variety in MS situations concerning the single judge-panel model, employed in particular in first instance courts, imposes a critical reading of the CEPEJ report when assessing those numerical relations that deal with ratios of cases to judges or of judges to population. Indeed, the deduction of those ratios must take into account that whereas in certain MS the bulk of criminal affairs in first instance is dealt with by single judges (e.g. Romania), in those MS where a substantial portion of the affairs is assigned to panels of judges the same number must be multiplied by the number of judges required to treat a single affair.

MEDEL should recommend a progressive introduction of this distinction. The difference among single judge/panel proceedings is not only a quantitative affair, but has significant qualitative repercussions on the way jurisdiction is exercised.

3. The organisation of the Judicial Offices. The progressive increase of single judge procedures.

a. Civil an administrative matters

As regards the civil law cases, the analysis of the juridical systems of the considered countries shows that in first instance Courts the different modules , single or panel judges, are present everywhere.

Usually, the general criterion adopted for the distribution of competences, between single and panel judges, is represented both by the value of the cause or by the subject matter, as identified by the law (commercial, industrial property, family, labour law or social matters).

In some countries, it is the case of Cyprus, Czech Republic, France, Germany, Greece, Romania, Portugal, Serbia, some matters (e.g., the labour matters) can be treated by lay judges. But the prevailing rule in the most part of the States considered is that competence related to commercial, industrial property, family or social matters is given to professional judges.

The data gathered in the considered countries show that Courts of Appeals are in principle based on panel judges, mostly professional judges. To some extent Germany is an exception, being the only country where panels competent for labour matters are composed by lay judges too.

As far as administrative laws are concerned, the general rule (with the exception of Romania) is the provision for a separate jurisdiction, which is competent for dealing with the administrative cases.

The administrative Courts are, in a general way, organised in the form of panel judges, in first instance too. Also in this field there are some exceptions, regarding in particular matters as pensions or fiscal cases; thus single judges are provided for by the law in France, Greece and Portugal.

b. Criminal Law

The answers to the questionnaire show a substantial recourse to single judge solutions in first degree trials.

In most Members States this procedural model is considered general, whereas the attribution of the case to a panel is exceptional and reserved to particularly serious offences (Cyprus, France, Italy, Portugal); in Romania, single judge trials in first instance is always the rule. We must also take into consideration those MS where a large number of proceedings are treated by a mixed panel in which only one professional judge participates, along with a number of “jurors”¹: although formally tried by a panel, the provisional nature of the service of these latter implies that the entire preparatory work, the conduction of the case in the trial phase and the reasoning of decisions (where applicable) are responsibility of the professional judge.

MEDEL believes that single judge procedures are to be employed with caution.

The added value of a dialectic confrontation in the interpretation of the law and in the evaluation of technically complex evidence by a plurality of professional judgement, as well as the importance of the constant reciprocal cultural and technical interchange among judges which should ideally form a substantial part of a panel’s manner of operation, bring to the

¹ With this definition we are referring to ad-hoc lay judges appointed to serve for a limited number of days (Schoffen, jurors), although it should be noted that none of the MS evaluated presents a jury system similar to that existing in common-law countries where the terms “juror” originates from.

conclusion that the mere consideration of the number of additional proceedings that may be carried out by a single judge should not encourage uncontrolled growth of this model.

It has undoubtedly an added value in the management of factually and technically simple cases: but to this respect, the traditional criterion for distribution of affairs among single judges and panels, almost entirely based upon penalty thresholds, may have to be re-visited. Today's reality shows that certain criminal affairs which regard crimes punished with apparently low sanctions carry technical difficulties which are often much higher than problems posed by traditionally "more serious crimes" which, on the contrary, present a lower technical challenge to the courts. Responses to the questionnaire on the attribution of cases concerning professional liability, often entrusted to single judges, show exactly this problem; the same can be said, to make a further example, for environmental crimes which, given the relatively low sanctions imposed in average, follow the same fate.

MEDEL should recommend a careful use of single judge models, limited to treating affairs which not only deal with modestly sanctioned crimes but also do not present particular technical challenges. The French system for dealing with "affaires correctionnelles", which provides for the possibility to remit a single judge case to a panel in particularly complex cases, could also serve as a basis for reflection.

4. Non-professional judges

As already mentioned, one evident concern that appears is related to the competence and to the procedures for appointment of non-professional judges, where such procedures don't sufficiently guarantee the independence of the chosen persons, especially because of the primary involvement of the executive power.

In this respect, two questions arise.

The first one concerns the ways of participation of the citizens to the administration of justice in the form of the mixed panels, composed by professional judges and ad-hoc lay judges appointed to serve for a limited number of days (see par. 3.)

Several Member States provide for a substantial participation of such ad-hoc lay judges to the administration of criminal justice, especially in first instance trials (e.g. Germany, Czech Republic, Serbia. Other countries use the "assize"-like system, such as France, Portugal, Italy).

In many countries assessed such "jurors", who indeed act mostly in the same capacity and with the same responsibility of professional judges, are appointed by and depend from the Ministry of Justice.

MEDEL should invite to a reflection on the fact that this circumstance is not without significance with respect to the guarantee of independence of lay-judges.

Furthermore, most responses to the questionnaire show that no training whatsoever, not even basic, is foreseen for these “jurors”.

And this is the second concern.

MEDEL should invite a reflection on this issue, in view of the fact that modern justice contains a remarkable technical element which inevitably falls into contradiction with the traditional logic behind the direct involvement of citizens in the administration of criminal justice.

It deals with the same technical issues that our legislators solved assigning nothing more than a marginal competence to lay judges in civil matters and excluding in an absolute way the participation of the citizens in the Courts competent for administrative cases.

It is also to be recalled the jurisprudence of the European Court of Human Rights, according to which:

“1. In maintaining confidence in the independence and impartiality of a tribunal, appearances may be important. Given that the members of the maritime chambers (the president and vice-president) are appointed and removed from office by the Minister of Justice in agreement with the Minister of Transport and Maritime Affairs, they cannot be regarded as irremovable, and they are in a subordinate position vis-à-vis the Ministers”².

And a further reference can be done the Council of Europe as regards the position of the lay judges, in particular, the Opinions of the Consultative Council of the European Judges³.

5. “Petty crimes”: juges de proximité, giudici di pace

Responses to the questionnaire by France point out the issue of the institution of “juge de proximité” as subsidiary jurisdiction for minor criminal affairs. Similar considerations could be made on Italy, which has entrusted the treatment of a certain number of petty crimes to “giudici di pace” (although the system for appointment of them is substantially different than in the French case).

MEDEL should recommend a closer scrutiny of the topic, which is only marginally treated in the CEPEJ biannual country report.

² *BRUDNICKA and others vs. Poland*, judgment of 3 March 2005; see, also: *PULLAR vs. the United Kingdom*, judgment of 10 June 1996.;

³The Opinion no 1 (2001) of the Consultative Council of European Judges on standards concerning the independence of the judiciary and the irremovability of judges quotes the Recommendation No. R (94) 12, stressing how the latter “*makes clear that it is applicable to all persons exercising judicial functions, including those dealing with constitutional, criminal, civil, commercial and administrative law matters (as well as in most respects to lay judges)*”.

6. Minority opinions

The responses to the questionnaire show an extremely varied panorama concerning the public relevance of minority votes and dissenting opinions in Europe; these variations go well beyond the division among common law and civil law countries (see, e.g. Greece, Portugal, Serbia; in the Czech Republic and in Germany dissenting opinions are published only for what concerns constitutional courts).

It might be argued that publicity of dissenting opinions calls into question public accountability and the social responsibility of judges. However, the extremely varied picture which arises from the answers scrutinized can suggest that MEDEL elaborate further on this argument.

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