



Strasbourg, 16 September 2005

CDL-JU(2005)038

Engl. only

CCS 2005/07

EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

(VENICE COMMISSION)

in co-operation with

THE CONSTITUTIONAL COURT OF SLOVENIA

**THIRD CONFERENCE
OF SECRETARIES GENERAL
OF CONSTITUTIONAL COURTS
AND EQUIVALENT BODIES**

Bled, Slovenia, 29-30 September 2005

REPORT

**THE ORGANISATION OF WORK OF LEGAL SECRETARIES
IN THE REGISTRY OF THE EUROPEAN COURT OF HUMAN RIGHTS**

**by Ms Claudia WESTERDIEK
Registry of the European Court of Human Rights
Strasbourg**

I. Introduction

Protocol No. 11, which came into force on 1 November 1998, replaced the existing, part-time Court and Commission by a single, full-time Court in order to maintain and improve the efficiency of its protection of human rights and fundamental freedoms. Forty-five Judges are currently sitting on the Court.

Concerning the administrative support structure, the Convention is very succinct. Article 24 provides for a registry including legal secretaries, leaving the regulation of any details to the Rules of Court (Appendix I with relevant extracts).

On 1 January 2005, this Registry was composed of 458 staff members (293 permanent and 165 on fixed-term contracts).

The basic organisational structures are the common services and the four Section Registries (the establishment of a fifth Section has been recently decided by the Court).

The common services comprise in particular the Administration Division, the Budget and Finance Office, the Working Methods and Case Management Division, the Information Technology Division, the Publications and Information Division, the Public Relations Division and the Press Division, the Language Divisions, the Research and Library Division and the Central Office (mail, sessions and archives) as well as a Jurisconsult.

Within the Section Registries, the Court has a pool of legal secretaries to assist the Court as a whole and the individual Judges in the exercise of their judicial functions. There are no personal legal assistants working for a specific judge.

The present paper answers the following questions: How are these legal secretaries organised? What are the roles and duties of these legal secretaries? How are they appointed?

II. The organisation of work of legal secretaries

1. The managerial structure

On 1 January 2005, 176 of the total of staff were lawyers processing applications in twenty legal divisions (83 permanent lawyers - four being seconded elsewhere or on leave for personal reasons, and 93 lawyers on long-term or short-term fixed-duration contracts, of whom 33 were junior lawyers). These legal divisions are equally attributed, for management purposes, to one of the four Section Registries, resulting in five divisions per Section Registry.

Each legal division is managed by a Head of Division (a grade A4 career lawyer) and comprises a number of career lawyers (permanent contracts of indefinite duration, mostly grades A2/A3), assistant and junior lawyers (fixed-term contracts, category B), an administrative assistant (grade B4) and a number of secretaries (grades B1/B2/B3).

The composition of the legal divisions takes into account the common legal background of the lawyers, language skills, the Section of the national judges concerned and an even balance of staff in terms of numbers. For high-case count States with between twenty and thirty

national case-lawyers, it is not feasible to concentrate them in one legal division and indeed the managerial limits for organising their work in two divisions have been reached as well.

The divisions are usually attached to the Registry of the Section where the national Judges in respect of most of the applications processed by the lawyers concerned sit. Some overlapping cannot however be avoided.

In the context of the fixation of objectives and staff appraisals, the Section Registrar is the line-manager for the Heads of Division attached to the Section Registry concerned, and the Heads of Division in turn for the legal staff in their division, with the possibility of further delegation within the division, in particular regarding junior staff.

2. The roles and duties of legal secretaries

a. Roles and duties in general

Legal secretaries assist judges in their work as rapporteurs in cases which merit examination by a Chamber (Article 49 § 2 of the Rules of Court as amended in July 2005). To that end, they examine applications, establish the facts, and draw up draft reports and decisions or judgments for submission to the rapporteurs. They further attend the Chamber sessions when applications assigned to them are examined.

To ensure a high quality of draft documents, the stringency of the reasoning and the consistency of the case-law, an internal Registry control, the so-called “quality-check”, is carried out by the Section Registrars and their Deputies before submission to the judge rapporteurs.

Even in the absence of any hierarchical link between legal secretaries and judges, it is common practice that legal secretaries follow the instructions given by a judge rapporteur and implement any of the latter’s requests for changes, amendments or, if need be, for alternative proposals or alternative reasoning. In the exceptional event that a conflict of legal opinion might arise that cannot be settled by means of discussion between the legal secretary and the judge rapporteur, the issue may be brought to the attention of the Section Registrar.

Where the material submitted by the applicant is, on its own, sufficient to disclose that the application is inadmissible or should be struck out of the list, the application will be prepared for consideration by a Committee without the intervention of a judge as rapporteur (a procedural change formalised by Rule 49 § 1 as amended in July 2005). All these notes also pass the internal “quality-check”.

Besides these duties, the lawyers also play a significant role in dealings with the parties and in the conduct of proceedings.

Furthermore, they assist the Court in participating in the various working groups, inter alia on the Rules of Court or the working methods.

b. The roles and duties of lawyers of different status

There are some distinctions in the degree of responsibility depending on the status of the lawyers.

Career lawyers are fully responsible for their work, once they have passed the probationary period.

Junior lawyers who are recruited when they have one year or less professional experience work only under supervision of an experienced lawyer and assist in the preparation of correspondence and drafts in “standard-form” cases, these are Committee and applications that have been assigned to a Chamber but can be dealt with in a standard manner.

Assistant lawyers who must have two years’ professional experience are entrusted with the same duties as junior lawyers the principal difference between the two categories being the greater degree of responsibility they are given. Thus they are given a list of cases for which they are responsible. Moreover, their work may include of a certain complexity for training purposes.

c. The practical organisation of processing applications

Mail for the Court is first received at the Council of Europe’s central mail unit, then forwarded to the Court’s Central Office. New applications are then sent to the legal divisions according to a pre-established plan based on linguistic considerations. The Heads of Division assign a new application to a principal lawyer who understands the case language and who is trained in the legal system of the State concerned.

The initial stage of the proceedings from the lodging of an application until the completion of the case file when the case is assigned to one of the four Sections is in the hands of the legal secretaries. The legal secretaries have to ensure that applicants complete a formal application form and send copies of the relevant domestic documents enabling the Court to examine the case.

Once a complete application has been allocated to a Section and, according to a provisional assessment made by the legal secretary responsible for the case, justifies examination by a Chamber, the Section President, mostly assisted by the Section Registrar, assigns a judge as rapporteur. The work relationship between the legal secretary and the judge rapporteur is accordingly established on a case-to-case basis.

Concerning applications against many Contracting States, this relationship will normally be a recurrent one between the national Judge and the national legal secretary. However, in respect of high case-count States, the national lawyers will assist a multitude of judges acting as rapporteur, and this in more than one Section, e.g. in cases directed against Russia, Poland, Romania, France, Germany or the United Kingdom.

3. The recruitment of legal secretaries

Career lawyers are recruited following an external recruitment procedure from candidates with professional experience acquired in the legal field (preferably in the judicial service), a thorough knowledge of their national legal system and a very good knowledge of one of the two official languages of the Council of Europe (English and French).

The recruitment of career lawyers is governed by the general provisions of the Council of Europe on the appointment of permanent staff. This procedure offers objective safeguards to ensure the appointment of staff of the highest ability, efficiency and integrity. The procedure for staff members of the Registry is, however, special in that the appointment by the Secretary General is subject to the agreement by the President or Registrar.

The Court is currently reflecting whether this arrangement respects the principle of “operational independence” of an international court. This examination of possible changes was triggered off by some serious practical problems concerning the appointment of staff in the Registry, as under the system in force, there is a deadlock in the event of disagreement between the President and the Secretary General.

The recruitment proceedings regarding junior and assistant lawyers may not be as strict as the one for career lawyers. However, normally a test is organised in addition to the examination of the qualifications as shown by the curriculum vitae and the professional certificates, in order to choose the best qualified candidate.

The functions of junior and assistant lawyers often constitute a “mini-career” for young lawyers who, after this first professional experience, are “re-injected” into their national legal systems. Some of them also pursue a career in other international organisations.

III. Concluding remarks

The organisation of work of the legal secretaries in the Registry reflects the special needs of this Human Rights Court responsible for more than 800 million persons living in 45 European States, not forgetting any non-European foreigners occasionally staying in one of these States.

Due to the accession of new Contracting States and an increase in awareness of European citizens of their rights under the Convention, the Court has become a “victim of its own success”. In 2004, more than 40,000 new applications have been lodged and there are currently more than 80,000 applications pending before the Court. The processing of applications is considerably delayed in respect of many States, in particular the high case-count States with between 2,000 and more than 10,000 pending applications each.

Additional resources were found to fund a three year programme (2003-2005), which has seen the enhancement of the budget for the Court and other departments involved in the execution of judgments of the Court. Still, two recent audits have concluded that there is a serious understaffing in the Court’s Registry. The Court has, accordingly, asked for a new three year programme to increase its Registry staff in quantities which can be absorbed by the present structures.

Furthermore, the latest reform package of Protocol No.14 contains several instruments designed to help reduce the Court's backlog. The single-judge formation, the extended competence of the Committees of three judges, the joint examination of admissibility and merits of applications and the “significant disadvantage” as new admissibility criterion are meant to help streamline the Strasbourg procedure. The new formation of a single-judge assisted by a registry rapporteur will probably entail a restructuring of the legal divisions so as to separate the filtering work and the processing of manifestly inadmissible cases from the work on meritorious applications.

*Appendix I****Rules of Court (March 2005)*****Chapter III
The Registry***Rule 15**(Election of the Registrar)*

1. The plenary Court shall elect its Registrar. The candidates shall be of high moral character and must possess the legal, managerial and linguistic knowledge and experience necessary to carry out the functions attaching to the post.
2. The Registrar shall be elected for a term of five years and may be re-elected. The Registrar may not be dismissed from office, unless the judges, meeting in plenary session, decide by a majority of two-thirds of the elected judges in office that the person concerned has ceased to fulfil the required conditions. He or she must first be heard by the plenary Court. Any judge may set in motion the procedure for dismissal from office.
3. The elections referred to in this Rule shall be by secret ballot; only the elected judges who are present shall take part. If no candidate receives an absolute majority of the elected judges present, a ballot shall take place between the two candidates who have received most votes. In the event of a tie, preference shall be given, firstly, to the female candidate, if any, and, secondly, to the older candidate.
4. Before taking up office, the Registrar shall take the following oath or make the following solemn declaration before the plenary Court or, if need be, before the President of the Court: "I swear" - or "I solemnly declare" - "that I will exercise loyally, discreetly and conscientiously the functions conferred upon me as Registrar of the European Court of Human Rights." This act shall be recorded in minutes.

*Rule 16**(Election of the Deputy Registrars)*

1. The plenary Court shall also elect two Deputy Registrars on the conditions and in the manner and for the term prescribed in the preceding Rule. The procedure for dismissal from office provided for in respect of the Registrar shall likewise apply. The Court shall first consult the Registrar in both these matters.
2. Before taking up office, a Deputy Registrar shall take an oath or make a solemn declaration before the plenary Court or, if need be, before the President of the Court, in terms similar to those prescribed in respect of the Registrar. This act shall be recorded in minutes.

*Rule 17**(Functions of the Registrar)*

1. The Registrar shall assist the Court in the performance of its functions and shall be responsible for the organisation and activities of the Registry under the authority of the President of the Court.
2. The Registrar shall have the custody of the archives of the Court and shall be the channel for all communications and notifications made by, or addressed to, the Court in connection with the cases brought or to be brought before it.
3. The Registrar shall, subject to the duty of discretion attaching to this office, reply to requests for information concerning the work of the Court, in particular to enquiries from the press.
4. General instructions drawn up by the Registrar, and approved by the President of the Court, shall regulate the working of the Registry.

*Rule 18**(Organisation of the Registry)*

1. The Registry shall consist of Section Registries equal to the number of Sections set up by the Court and of the departments necessary to provide the legal and administrative services required by the Court.
2. The Section Registrar shall assist the Section in the performance of its functions and may be assisted by a Deputy Section Registrar.
3. The officials of the Registry, including the legal secretaries but not the Registrar and the Deputy Registrars, shall be appointed by the Secretary General of the Council of Europe with the agreement of the President of the Court or of the Registrar acting on the President's instructions.

Appendix II

REGISTRY OF THE EUROPEAN COURT OF HUMAN RIGHTS - LEGAL DIVISIONS

09.2005

**SECTION 1 – REGISTRAR (DNK)
DEPUTY REGISTRAR (ESP/FRA)
Section Assistant (FRA)
Assistant to the Registrar (FRA)**

**SECTION 2 - REGISTRAR (UK)
DEPUTY REGISTRAR (UK)
Section Assistant (FRA)
Assistant to the Registrar (FRA)**

<p><u>DIVISION 8</u> HEAD OF DIVISION AUT 1 career LIT 5 career RUS 1 assistant AUT 2 assistant RUS 1 junior LIT 5 junior RUS 1 junior AUT</p> <p><u>Division Assistant</u> 8 secretaries</p>	<p><u>DIVISION 9</u> HEAD OF DIVISION UK 5 career RUS 1 career ARM 1 assistant RUS 6 junior RUS</p> <p><u>Division Assistant</u> 5 secretaries</p>	<p><u>DIVISION 13</u> HEAD OF DIVISION GRC 1 career HUN 2 career CRO 1 career GRC 1 career CYP 1 assistant GRC 1 assistant CRO 1 junior CYP 1 junior HUN</p> <p><u>Division Assistant</u> 6 secretaries</p>	<p><u>DIVISION 15</u> HEAD OF DIVISION BEL 2 career FRA 1 career GEO 1 career LUX 1 assistant BEL 3 junior FRA 1 junior GEO</p> <p><u>Division Assistant</u> 5 secretaries</p>	<p><u>DIVISION 20</u> HEAD OF DIVISION AUT 3 career BGR 1 assistant SUI 3 assistant BGR 2 junior BGR 1 junior SUI</p> <p><u>Division Assistant</u> 5 secretaries</p>	<p><u>DIVISION 3</u> HEAD OF DIVISION TUR 4 career TUR 6 assistant TUR 4 junior TUR</p> <p><u>Division Assistant</u> 6 secretaries</p>	<p><u>DIVISION 4</u> HEAD OF DIVISION NLD 2 career NLD 4 career UKR 3 assistant UKR 3 junior UKR 1 junior NLD</p> <p><u>Division Assistant</u> 8 secretaries</p>	<p><u>DIVISION 12</u> HEAD OF DIVISION FRA 2 career FRA 1 career SVN 2 assistant FRA 1 junior FRA 2 junior SVN</p> <p><u>Division Assistant</u> 4 secretaries</p>	<p><u>DIVISION 14</u> HEAD OF DIVISION TUR 5 career TUR 1 career AZE 4 assistant TUR 6 junior TUR</p> <p><u>Division Assistant</u> 7 secretaries</p>	<p><u>DIVISION 17</u> HEAD OF DIVISION SVK 2 career CZE 1 career SVK 2 assistant CZE 1 assistant SVK 1 junior CZE</p> <p><u>Division Assistant</u> 6 secretaries</p>
---	--	---	--	--	--	--	---	--	--

**SECTION 3 – REGISTRAR (FRA)
DEPUTY REGISTRAR (SUI)
Section Assistant (NLD)
Assistant to the Registrar (FRA)**

**SECTION 4 - REGISTRAR (IRL)
DEPUTY REGISTRAR (BEL)
Section Assistant (UK)
Assistant to the Registrar (UK)**

<p><u>DIVISION 1</u> HEAD OF DIVISION ITA 1 career ITA/FRA 2 assistant ITA 1 assistant ALB 2 junior ITA</p> <p><u>Division Assistant</u> 5 secretaries</p>	<p><u>DIVISION 2</u> HEAD OF DIVISION FRA 3 career ROM 3 assistant ROM 2 assistant FRA 4 junior ROM</p> <p><u>Division Assistant</u> 6 secretaries</p>	<p><u>DIVISION 6</u> HEAD OF DIVISION ITA 3 career ITA 2 assistant ITA 2 junior ITA 1 junior MLT</p> <p><u>Division Assistant</u> 4 secretaries</p>	<p><u>DIVISION 10</u> HEAD OF DIVISION GER 1 career LVA 1 career GER 1 assistant GER 1 junior LVA 1 junior GER</p> <p><u>Division Assistant</u> 3 secretaries</p>	<p><u>DIVISION 19</u> HEAD OF DIVISION GER 2 career ROM 1 career GER 3 assistant ROM 2 assistant GER 1 junior GER 4 junior ROM</p> <p><u>Division Assistant</u> 7 secretaries</p>	<p><u>DIVISION 5</u> HEAD OF DIVISION PRT 3 career POL 2 career ESP 3 assistant POL 1 assistant ESP 3 junior POL</p> <p><u>Division Assistant</u> 6 secretaries</p>	<p><u>DIVISION 7</u> HEAD OF DIVISION NOR 2 career SWE 1 career DNK 1 career EST 1 assistant SWE</p> <p><u>Division Assistant</u> 5 secretaries</p>	<p><u>DIVISION 11</u> HEAD OF DIVISION UK 1 career FIN 2 assistant FIN 1 assistant MKD</p> <p><u>Division Assistant</u> 5 secretaries</p>	<p><u>DIVISION 16</u> HEAD OF DIVISION POL 2 career POL 8 assistant POL 4 junior POL</p> <p><u>Division Assistant</u> 7 secretaries</p>	<p><u>DIVISION 18</u> HEAD OF DIVISION IRL 1 career UK 1 career MOL 1 career BOS 1 career SER 2 assistant MOL 2 assistant UK</p> <p><u>Division Assistant</u> 5 secretaries</p>
--	--	---	---	---	---	---	---	---	---

