

# The budgets of the EU Supreme Courts

## *Summary*<sup>1</sup>

*Sofia, 13 October 2011*

The European Union is undergoing a major economic crisis. In a climate marked by the fear of recession and fed by the serious threats weighing on the future of the euro zone from “the debt crisis”, political debate is now tinged with the sombre tints of austerity and restraint. Tired of the temporising of too many States, economic reality has now reminded us of the urgent need for a return to a budgetary equilibrium for too long postponed *sine die*.

Under pressure from the current economic situation, reducing public expenditure is now the watchword. It therefore seemed appropriate to take another look at how the activity of the EU Supreme Courts is financed in order to amplify the report devoted to this topic in 2006 from the pen of Mr Lech Gardocki, with a view, in particular, to the impact of the current economic situation on the budgets of the supreme courts in the Network.

The great majority of those Courts replied to the Questionnaire sent to them<sup>2</sup>. The proposed summary of their replies will focus on three main areas, dealing first with the budgetary resources of the supreme courts (I) and how they are managed (II), before going on to consider the budgetary impact of the present European economic situation (III).

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<sup>2</sup> The replies of the following Supreme Courts were used as a basis for this Summary: Austria, Belgium, Cyprus, Croatia, Czech Republic, Denmark, Estonia, Finland, France, Germany, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Netherlands, Norway, Poland, Portugal, Romania, Spain, Slovakia, Slovenia and United Kingdom. As the information provided by the Bulgarian Court did not refer to the questions asked, it could not be considered.

## I – Budgetary resources of EU Supreme Courts

Before looking at the various ways in which the supreme courts use their resources (C), we need to be reminded of where they come from: all the Courts are financed by public funds from the national budget (A), yet it is a peculiarity of some that they may also receive other categories of resources (B).

### *A – Necessary public funding of supreme courts*

The financial independence of a supreme court seems naturally to be one of the main conditions of its institutional independence. This is why the provision of an overall appropriation from the national budget, enabling it to meet its operating costs, may be viewed as a minimum standard as regards the democratic principle of the separation of powers. This standard would appear to be respected in all EU States, even though there is still some way to go to achieve the full financial independence of all European Supreme Courts<sup>3</sup>.

Clearly, there are still countries in which the supreme court does not have its own funds. In such cases, there can be no question of financial independence, as the court itself cannot determine the use of the funds intended to enable it to operate. The situation is less problematical when the lack of its own funds is limited in scope: this is the case, for example, in France and Slovenia, where certain property investments are governed by the Ministry of Justice (expenditure above 60,000 € in the case of the French *Cour de cassation*, the construction of new buildings in the case of the Supreme Court of Slovenia), and also in Lithuania (where certain investments also fall under the Ministry of Justice). It is more worrying when management of the budget completely or almost completely escapes the supreme court's control, which would seem to be the case in at least three countries: the Belgian *Cour de cassation* finds its financial independence limited to minor expenses and representation costs; the Supreme Court of Justice of the Grand Duchy of Luxembourg has no

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<sup>3</sup> For further discussion of this topic, see the report by Mr. Lech Gardocki for the Second Colloquium of the Network of the Presidents of the Supreme Judicial Courts of the European Union (held in Warsaw on 12 June 2006) devoted to the funding of the activity of the Supreme Courts of the European Union. This stated, *inter alia*, that: "In light of the replies submitted, the Supreme Courts of Bulgaria, Cyprus, Estonia, France, Hungary, Ireland, Latvia, Poland, Portugal, Romania, Slovakia and Slovenia are financial independent. In contrast, the Supreme Courts of Austria, Belgium, Czech Republic, Finland, Germany, Greece, Italy, Luxembourg, Malta, Scotland and Spain lack financial independence. [...] The replies concerning the situation of the Supreme Courts in Denmark, Netherlands, Norway and Sweden were less unequivocal (lack of "complete" independence, yet a "certain degree" of independence)".

budget of its own; the financial management of the Spanish Supreme Court is mainly governed by the Ministry of Justice.

Although they do not have funds of their own, the situation of the Supreme Courts of Denmark, Ireland and Norway lies midway between, managed as they are by an independent judicial authority of the Executive (The Danish Court Administration in Denmark, the Courts Service in Ireland and the National Courts Administration in Norway).

The degree of financial independence of a supreme court can also be assessed by virtue of the theoretical and practical modalities of the process following which its overall appropriation is determined, and more particularly by virtue of whether the supreme court can be involved in it, for example by preparing and defending a draft budget in association with the decision-making power. As this aspect of the question was one of the central topics dealt with by Mr. Lech Gardocki in his report referred to above (footnote 1), the latter should be consulted for a more detailed analysis.

### ***B – Resources of supreme courts other than public funds***

As the amount of public funds allocated to a court determines its financial independence, it may find it useful, when offered this possibility, to supplement its budget appropriation from its own revenue. Most supreme courts do draw on funding other than their annual appropriation from the national budget. Some courts (such as Belgium and Romania) added that they are formally prohibited from doing so. When they are permitted, such resources, as distinct from public funds, may be allocated at no cost, by donation, or subject to payment, in exchange for a service.

The first category may take the form of material donations. As an illustration, the German Supreme Court receives donations of works from publishers or authors (311,600 € in 2010), under an administrative rule on the funding of federal activity by private persons (the Court's Chief Librarian may only accept donations up to a value of 5,000 €, and must seek the consent of the Ministry of Justice above this figure).

It may also take the form of financial donations. These sometimes come from charities (this is so in Denmark, provided the donation does not compromise the independence of the court

vis-à-vis political, economic or financial interests). It can also entail foreign funds received, for example, through participation in international projects (this is so for the Courts of Latvia and Slovenia, the latter having said it had received funds from Norway, from the World Bank or from European projects). In Spain, the extrajudicial activities of the Supreme Court may be funded by private bodies, under agreements signed by the General Council of Judicial Power. Extra-budgetary resources in the form of donations or foreign funds are also authorised in the Czech Republic when expressly stipulated by a text.

It is important always to bear in mind that the development of the funding of supreme courts from private funds is not without raising the delicate problem of the court's independence from its sponsors. Happily, one sees that safeguards are generally laid down in the applicable regulations to prevent possible diversion.

The second category concerns funds received in remuneration for a service. This may be supplying paper documents, such as the sale by the Court of its own publications – newsletters, reports, etc. – (Estonia, France, Lithuania, Portugal) or the copying of archives or other documents (Latvia), as well as in an electronic medium (for example, the *Cour de cassation*'s support fund offers legal publishers or any other interested party – in return for a fee fixed by order of the Ministry of Justice – electronic communication of the decisions contained in its databases according to criteria laid down by the subscriber; the Portuguese Supreme Court also provides private entities with information from its case-law databases).

Certain supreme courts rent out their premises on various bases (e.g. the renting out of its basements to a restoration company by the Estonian Supreme Court, the renting out by the French *Cour de cassation* of courtrooms as venues for colloquia, and by the United Kingdom Supreme Court of its premises for receptions).

Inputs of external funds may be one-off (such as when, in Estonia for example, this arises from the disposal of company assets). As a rule, it is regular when it arises from supplying fee-based services which form part of a court's normal activity. Even in those cases, the share of alternative resources is usually very marginal. However, the situation of the United Kingdom Supreme Court would appear to be an exception in this respect: against the background of the general policy of making better use of national assets implemented in 1998

(*Wider Markets Initiative*), it has developed various more clearly commercial activities, such as the sale of souvenirs generating substantial income.

### ***C – Allocation of the budgetary resources of supreme courts<sup>4</sup>***

When a supreme court is responsible for paying its judges and officials<sup>5</sup>, salaries constitute by far the largest item of expenditure, ranging from 60% (Slovenia) to 94% (Latvia) of the courts' total budgets. And paying salaries is a priority for most of them, pursuant to the Council of Europe's Committee of Ministers Recommendation No. R (94) 12 to Member States on the Independence, Efficiency and Role of Judges, adopted on 13 October 1994<sup>6</sup>.

Expenditure relating to the equipment judges are provided with for their work emerges as the other major budgetary concern<sup>7</sup>. Essentially, this is the costs incurred in the area of documentation and equipment (IT above all). The need for documentation may apply to both judges and members of the public, professionals or non-professionals: in France, the *Cour de cassation* thus devotes 14.8% of its non-rental operating budget to its documentation department responsible for its various publications, for updating its own databases and its website.

Maintenance of the work environment is also referred to by many supreme courts, which devote part of their budget to maintaining their premises. Buildings can constitute a major budget item, particularly when a court rents all or part of the premises it occupies, as in Austria, Denmark, Finland, France, Norway or Netherlands.

Apart from these three major areas (salaries, equipment and the work environment) other less important budget items may be noted, such as expenditure on training, travel, representation or communication.

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<sup>4</sup> While the Courts were asked to indicate the main focuses areas of their budgetary management, the question was understood by most as referring to the main items of expenditure. It is therefore the use of resources which is presented here and not the budgetary strategy of the supreme courts.

<sup>5</sup> In Italy, salaries are paid directly by the Ministry of Justice.

<sup>6</sup> For a more detailed discussion of this question, see the report by Mr. Lech Gardocki, p. 12.

<sup>7</sup> The following courts replied that this was so: Austria, Czech Republic, Denmark, Finland, France, Italy, Netherlands, Poland, Romania, Slovenia and United Kingdom.

## **II – Managing the budgets of EU Supreme Courts**

To enable the President of a supreme court to perform his or her duties as regards managing the budget (A), he or she is usually assisted by a budget department (B), both parties being responsible for ensuring good management, which is subject to various controls (C).

### ***A – Role of the President of a Supreme Court in managing its budget***

In most cases, the president of a supreme court is responsible for the management of its budget<sup>8</sup>. In this, he or she is assisted by a budget management department and can delegate all or some of his or her powers to the judge or other official in charge of it (for example, in Czech Republic, France, Italy, Norway and Portugal).

Exceptionally, however, the president may not play any role in the court's financial management. This is so in Cyprus, Luxembourg, Spain and United Kingdom. Ireland is midway between: the President of the Court has no budgetary power as such, yet presides over the Board of the Courts Service, which sees to the material running of all national courts.

Lastly, the financial powers of the president of a supreme court may be restricted: in Austria, he or she may only authorise certain expenses, depending on their nature or amount, after obtaining the consent of the Minister of Justice; in Belgium, the President's independent management is confined to budgets for minor expenditure (39,000€ in 2011) and representation costs (10,000€ in 2011).

### ***B – Organisation of supreme court budget departments***

It must first be noted that certain supreme courts do not have such a department of their own, internally. This may be because another body is responsible for managing the budget. This is so in Spain (where the Ministry of Justice manages the Supreme Court's budget in association with the latter's technical department), in Ireland (where all courts are run by the Courts Service), or in Luxembourg (whose Supreme Court does not have its own budget). The lack of a budget department may also stem from the fact that work on the budget is carried out by

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<sup>8</sup> This includes the Supreme Courts of Croatia, Czech Republic, Denmark, Finland, France, Germany, Italy, Latvia, Lithuania, Norway, Netherlands, Poland, Romania, Slovakia and Slovenia.

the secretarial office of the president of the court. This is the case in Austria and in Belgium, where the financial powers of the president are limited, as noted above.

The budget departments of the supreme courts are generally run by civil servants (which may be the general secretary of the court, as in Denmark or Finland), and less often by judges (as in France or Italy). For the most part they consist of civil servants or registrars, who are often specialised, and whose staff is sometimes assisted by contract staff (as in France, Germany, Romania or Slovakia).

Most departments consist of fewer than 5 people, those of the Supreme Courts of Austria, Czech Republic, Portugal and Slovenia of fewer than 10 people, those of the Hungarian and Polish Supreme Courts of less than 15 people, the budget services of the French and Romanian Supreme Courts consisting, respectively, of 28 and 26 people. Alas, the wide variation in the figures reported rules out any comparison. For example, to manage nominally similar budgets, the Finnish Supreme Court's budget department employs one official besides the general secretary, while the Hungarian Supreme Court employs 14 officials and the Czech Supreme Court 5 officials. The conclusion is that there is no quantitative and/or qualitative equivalence as between the duties assigned to the various services or departments. To illustrate this, the Department of Administrative, Budgetary and IT Management at the French *Cour de cassation* consists of 28 people, only 11 of whom are assigned to budgetary of financial duties strictly speaking, the others being spread between the IT, operational and maintenance departments.

Implementing the budget allocated to the court by the budgetary department is supposed, in principle, to comply with the general regulatory framework stemming from both the general public accounting rules and the financial rules applicable in the country concerned. In some Member States, specific accounting rules also apply to the Ministry of Justice (as in Denmark, Germany and Hungary) or to the Supreme Court (in Austria, a decree issued by the Minister of Justice specifies the area of the Supreme Court's autonomy in budgetary matters; in Belgium, circulars lay down the rules applicable to the budgets, "minor expenses" and "representation costs" directly controlled by the Court).

### ***C – Controlling supreme courts' budgetary management***

A supreme court's financial management, regardless of the body under whose authority it falls, may prove faulty or improper. It must be possible to carry out budgetary controls for preventive purposes or a posteriori. In the former case, this is generally a matter of internal accounting checks<sup>9</sup>. The German Supreme Court has an original system for automatically monitoring expenditure, which takes the form of a software programme signalling any amount in excess of the resources allocated.

A posteriori controls may take the form, firstly, of standard budgetary controls – which is found in almost all cases – carried out by the Court of Accounts (or whichever body performs this role), parliament or the Ministry of Finance or the Budget. It may also take the form of controls by the Ministry of Justice (Belgium, Croatia, Czech Republic, Finland) or by an independent judicial authority (like that exercised by the Danish Court Administration – or the National Courts Administration in Norway).

Where there are errors of management, public managers may fall under various categories of responsibility: disciplinary, criminal, civil or administrative. While it is highly probable that most European countries have added offences likely to be committed when preparing a public budget to their arsenal of prosecutable offences (e.g. embezzlement of public funds, favouritism, corruption, forging public documents, etc.), few replies expressly mention this possibility (in this case, only the Supreme Courts of Austria, Belgium, Croatia, Finland, France, Lithuania, and Slovakia). Similarly, very few replies mention the possibility of civil penalties for damages (Austria, Finland, France) or of those responsible incurring administrative responsibility (Lithuania), even though such measures are probably common.

The bulk of the replies to the Questionnaire refer to the disciplinary responsibility of public managers. The conclusion must be that this is perceived as the most suited to the penalty for errors of management. It may be exercised under the rules governing the status of civil servants (as in Estonia or Slovenia) or of labour regulations (e.g. in Czech Republic, Latvia, Norway, Netherlands or Slovakia). The penalties mentioned in the replies range from a warning (Netherlands, Poland) to dismissal (Slovakia) via fines (France, Italy), a cut in salary (Romania, Slovakia) or a ban on any job connected with the administration of public funds (Poland).

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<sup>9</sup> As is the case, for example, in Croatia, Finland, France, Hungary, Latvia, Lithuania, Romania, Slovakia and Slovenia.



### **III – Impact of the European economic situation on the budgets of EU Supreme Courts**

An analysis of the replies from the various courts provides a measure of the scope (A) and variety (B) of the effects of the economic crisis on the budgets of those courts, while providing reassuring proof that the equipment provided for judges has – hitherto at least – not been affected (C).

#### ***A – An economic crisis with perceptible yet unequal effects***

It is quite clear from the replies to the Questionnaire that the current general economic crisis in Europe has had perceptible effects on the budgets of most EU supreme courts<sup>10</sup>, directly or against the background of the implementation of general policies to reduce public expenditure<sup>11</sup>. Yet a great disparity may be seen as regards the specific consequences already detected. An illustration of this is the fact that certain courts speak of major reductions in their total budgets (about 30% in Lithuania from 2008 to 2011, 10% in Italy in 2010 and Slovakia in 2011) when the effort other supreme courts have been asked to make seems more modest (a reduction of 0.70% in the budget of the Belgian Ministry of Justice, increases in public expenditure limited to 1% in Poland).

Moreover, while a number of supreme courts state that they do not feel any direct budgetary consequences linked to the crisis<sup>12</sup>, the details of their replies do confirm the general trend in most cases. For example, the Austrian Supreme Court expects its budget to remain static for the next financial period which, among other things, will take the form of a salary freeze; the Finnish Supreme Court notes that its own situation is less difficult than that of the lower courts; the French *Cour de cassation* states that it will not suffer any budgetary constraints in exchange for the voluntary adoption of a policy of rationalising its expenses; the Supreme

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<sup>10</sup> This applies to the Supreme Courts of Belgium, Cyprus, Croatia, Czech Republic, Denmark, Estonia, France, Hungary, Ireland, Italy, Latvia, Lithuania, Netherlands, Poland, Portugal, Romania, Slovakia, Spain and United Kingdom.

<sup>11</sup> Examples of countries where such policies have been implemented are Estonia (since 2008), France (“General Revision of Public Policies” launched in 2007 and aimed at reforming the administrative organisation of the country to this effect, particularly by reducing public expenditure), Poland (“disciplinary rule” introduced into the Finance Act for 2011, limiting increases in public expenditure to 1%), Czech Republic and United Kingdom (reductions in budgets applicable to all Ministries for the next four years).

<sup>12</sup> Austria, Finland, France, Luxembourg, Norway and Slovenia.

Court of Slovenia, lastly, acknowledges the forced reduction of certain expenses, particularly in the area of training.

In conclusion, only the Supreme Courts of Norway and Luxembourg state they have hitherto not experienced any perceptible effects on their finances from the economic crisis. The German Federal Court of Justice, meanwhile, prudently considers that the present consequences of the economic crisis cannot be estimated.

### ***B – Principal budget items affected by the crisis***

While all sectors of expenditure may be affected by the budgetary squeeze (Italy, Latvia, Slovakia or United Kingdom), some are more directly hit. In this respect, the wage bill would appear to be the chief adjustment variable in a period of crisis, which is readily understood when it is the chief item in the budget. Two ways of reducing it are used: cutting staff numbers or cutting salaries<sup>13</sup>.

The former is the one generally used<sup>14</sup>. It may take various forms. Examples are, in Belgium, that the publication of vacant posts has been postponed and the increase in the number of law clerks, which was presented as a necessity to cope with the increased number of appeals, was turned down; in France, the systematic non-replacement of all officials transferred or having retired is leading to vacancies; in Italy, it is staff in the electronic documentation centre, responsible for maintaining the Supreme Court's website, who have been squeezed; in the Netherlands, each of the Chambers of the Court has lost a judge despite the increase in the number of cases. The situation in Ireland, although it does not solely concern the Supreme Court, deserves mention. The Irish Courts Service has actually managed to increase productivity, thus enabling the courts to cope with reductions in staff numbers by rationalising legal means and methods, in two areas particularly. In the area of court premises, geographical regroupings of courts (offset by the creation of travelling hearings in cases requiring greater proximity, such as family law) have yielded savings in "legal" time, making it possible to process more cases; in the areas of information and communication

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<sup>13</sup> These two methods may, if need be, be used together, as seems to be the case of the Latvian Supreme Court, which has seen a 20% reduction in staff numbers and a 40% reduction in its wage bill.

<sup>14</sup> Examples are the Supreme Courts of Belgium, Croatia, Cyprus, Czech Republic, Denmark, France, Ireland, Italy, Latvia, Netherlands, Slovakia and United Kingdom.

technologies, the development of electronic communication and videoconferencing have made it possible to free up a sizeable number of full-time equivalent staff.

The latter – cutting salaries - whose problematical implementation can easily be imagined, has nevertheless been pursued by 8 countries<sup>15</sup>, ranging from a simple freeze on salaries (Austria, Estonia and Poland) to cuts in salaries (in Italy for instance, for the next three years) which have proved quite substantial in certain cases (a 10% drop in salaries for the staff – whether judges or civil servants – of the Portuguese Supreme Court and a 25% cut in the salaries of judges in the Supreme Courts of Lithuania and Romania).

Investment expenditure in court premises is also a recurrent theme (Belgium, Cyprus, Czech Republic and Estonia) and IT (Belgium, Croatia, Czech Republic, Latvia or Slovakia) and operational expenditure, whether day-to-day running – such as the maintenance of equipment (as in Denmark) – or the purchase of equipment (as in Hungary, Latvia, Romania or Spain) or vehicles (like the French Court, which has seen their range level restricted). Besides the quantitative reduction in the funds allocated, the savings sought often take the form, for this type of expenditure, of the staggering or postponement of operations which are nevertheless regarded as necessary: maintenance or repair work on buildings not done and electronic updating delayed in Belgium, digitisation of the judicial system postponed in the Czech Republic, the staggering of the renewal of equipment in Hungary, etc.

Over and above the essential budget items of salaries, expenditure on investment and the operating expenditure of the supreme courts, there may be efforts to make selective savings in all sectors: expenditure on training (Croatia, Slovakia or Slovenia), in communication (Estonia), in research on case-law (Latvia), documentation (Belgium, Slovakia or United Kingdom), and reception (Slovenia), etc.

### ***C – A crisis with little or no effect on the equipment provided for judges in their work***

The budgetary effects of the crisis affecting Europe have necessarily had an impact on the working conditions of judges, as certain Supreme Courts point out (Belgium, Croatia, Czech

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<sup>15</sup> Austria, Estonia, Italy, Latvia, Lithuania, Poland, Portugal and Romania.

Republic, Romania, Slovakia and Spain), essentially instancing accommodation problems, restrictions affecting expenditure on IT equipment and a fall in credits for documentation.

The majority of the courts questioned nevertheless conclude that there has been no deterioration in the equipment judges are provided with for their work<sup>16</sup>. To judge by the reasons mentioned by the courts which clarified their replies, this situation may at least partly be attributed to a policy of rationalising expenditure aimed at maintaining the working conditions of judges<sup>17</sup>.

It would thus appear that the current economic context is perhaps encouraging the emergence of a more active, not to say “pro-active” type of management, aiming to convert a budgetary threat into an opportunity to achieve greater economic efficiency in expenditure: doing better with less, in other words, improving judges working tools and the judicial processes despite the credit squeeze (Finland, France, Hungary, Ireland or Slovakia).

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<sup>16</sup> The Supreme Courts which replied in these terms were those of Austria, Cyprus, Denmark, Estonia, Finland, France, Hungary, Germany, Ireland, Italy, Latvia, Luxembourg, Norway, Netherlands, Poland, Portugal, Slovenia and United Kingdom.

<sup>17</sup> The tools judges need for their work (documentation and equipment, in particular IT equipment) are a management priority for many supreme courts (cf. I – C).