
A European Rechtspfleger For The European Union

By Thomas Kappl

In an effort to advance cooperation among the various European judicial systems to (i) improve and unify the jurisdictional and administrative frameworks of those systems, and (ii) achieve greater efficiencies and effectiveness in the administration of justice, the European Union of Rechtspfleger ("EUR") has prepared and submitted a Green Paper for the European Rechtspfleger to the European Commission's Directorate-General for Justice, Freedom and Security. This is a joint effort undertaken with the Department of Civil Justice. In doing so, the EUR seeks to support the European Union's ("EU") efforts to create a greater and more consistent organizational framework among the member states for the administration of justice. Doing so will promote the pursuit of justice in individual freedom, safety, and rights pursuant to the EU's by-laws. These goals accord with the judicial-political mandate regarding the creation, development, and harmonisation of the law on the European and the international levels.

The EUR was founded in 1967. Today it comprises member associations in 16 European countries: Belgium, Denmark, Germany, Estonia, Finland, France, Italy, Luxembourg, the Netherlands, Norway, Austria, Poland, Portugal, Romania, Sweden and Spain. Similar professional associations have been founded in non-European countries such as Japan, Mali, Morocco and Tunisia, all of which are encompassed within EUR's broad and increasingly international scope. These are professional associations of higher-level civil servants who exercise specialized jurisdictional authority and carry a variety of higher-level administrative responsibilities within their respective judicial systems.

The EUR Green Paper is intended to stimulate broad discussion on the academic and public levels regarding the creation of a new European judicial system position description, the Rechtspfleger, and to establish basic judicial-political objectives which integration into the system will achieve.

The introduction of this new position, the European Rechtspfleger, should serve as well to relieve judicial burdens through the delegation of more-routine judicial tasks to the position for an objective and independent review and determination within the framework of country-specific laws and regulations. The consequences of providing this judicial relief, the need for which has been extensively discussed and demonstrated, will be that judges are liberated and able to focus their time and attention on the more significant matters that require their attention. This, in turn, should result in higher-quality and better-researched judgments; effectively, judges will have been freed from the burden of dealing with matters that do not require the attention of a fully qualified and appointed judicial officer. Such need for relief extends to judicial systems throughout the European community and civil law systems elsewhere.

In countries in which the Rechtspfleger position has been introduced, it has contributed to greater efficiency in the administration of justice. In member countries of the EU where it has not, we encourage Ministers of Justice and their staffs to review the position qualifications, functions, and responsibilities and to discuss with their colleagues in countries that have adopted it the benefits of the position.

Rechtspfleger are judicial civil servants assigned with legal functions that they perform independently. They serve in the upper level of the civil service within the organizational structure of the court. Appointment to the profession requires a minimum of three years of specialized judicial studies at a college or university. Because the training in the member states currently varies from one to another, it should be standardized into a general curriculum to ensure that the training, regardless of the state in which it is provided, is relatively uniform and covers all of the critical subject areas. Only thereby is it possible to establish uniform occupational qualifications that all aspirants to the position of European Rechtspfleger must meet. This will help to ensure that the skills and knowledge of any Rechtspfleger educated in any of the EU states conform to a high professional standard.

The tasks and activities assigned to the position also vary from one country to another. Here, too, there exists a need to standardize the functions and responsibilities of the position, regardless of the institution in which it is located. One way to accomplish this is to develop a model position description that can be used in any type or level of court to ensure that the position contributes equally to the administration of justice regardless of which system utilizes it. This model position description can then be refined, as necessary, to conform to local requirements as long as the critical elements that define specific responsibilities and functions are not compromised.

The European Rechtspfleger position, under this European-wide model, may be defined as follows, considering the mature juridical structures and different legal systems within the EU member states:

1. Judicial tasks as well as tasks concerning the judicature, which may reside in non-court institutions, should be assigned to the European Rechtspfleger for independent handling and completion. The incumbent is an objective

and independent officer of judicature. In his decisions, he is bound only by the dictates of the law and the principles of justice.

2. Any person aspiring to the position of European Rechtspfleger shall complete uniform education and training requirements. This can be achieved by the imposing a requirement such as the Bachelor of Law or equivalent education based on a specialized curriculum.
3. The functions and responsibilities of the Rechtspfleger and comparable civil servant positions in the judiciaries of the EU member states should be uniform and consistent among all of the states, as proposed in the Green Paper. This inventory of functions and responsibilities is based on the responses to a standard questionnaire and is submitted as a proposal for analysis and discussion.

The official basis for the proposal set forth in the Green Paper is twofold:

1. The model statute for a European Rechtspfleger passed at the 1995 EUR Congress in Spain;
2. Recommendation No. R (86) 12 of the Committee of Ministers of the Council of Europe to the member states concerning measures to prevent and reduce the excessive workload in the courts.

The model statute also contains the substance of Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms (MRK) which calls for a fair public procedure at the responsible court within a reasonable period of time.

The EUR model statute provides the following:

1. Growth in court caseloads compels the introduction of measures to:
 - a) increase the efficiency of the courts,
 - b) guarantee the issuance of judgments within a reasonable time frame (Art. 6 of the MRK), and
 - c) expand the use of electronic data processing in the courts to maximize their efficiency.
2. The constitutionally oriented European countries have followed the Recommendation of the Council of Europe of Ministers No. R (86) 12 for the introduction of the Rechtspfleger. The introduction of the Rechtspfleger has proven to be a suitable measure in the individual countries for the realisation of the aims mentioned under No. 1.
3. In accordance with Recommendation No. R (80) 3 of the Council of Europe regarding training, research, and formation in electronic data processing and the law, appropriate basic and advanced training in these fields shall be guaranteed to judicial officers, including Rechtspfleger.
4. It is essential to develop a uniform rule for instituting the Rechtspfleger position with regard to the approval of diplomas (Recommendation 89/48 of the European Communities).

To issue this Green Paper for a European Rechtspfleger, the EUR established a commission comprising colleagues of the EUR states: Belgium (Joseph Horrion), Denmark (Else Dankau), Germany (Stephan Emmmler), France (Jean-Jacques Kuster who also serves as EUR representative at the Council of Europe), Austria (Gerhard Scheucher) and Romania (Dumitru Fornea) as well as the EUR Board (President Thomas Kappl, Secretary-General Adelheid Hell and Treasurer Harald Wilsch).

The European Rechtspfleger Is On His Way

Thomas Kappl and Lana Papamichalopoulou handing over to the European Commission in Brussels and Austria, Mrs. Else Dankau and Mr. Gerhard Scheucher, were unable to take part at the meeting.



On 2 December 2008 at 04.00 p.m. the EUR handed over the Green Paper for a European Rechtspfleger to the European Commission (EU), General Directorate for freedom, security and justice, in Brussels. Mrs. Lana Papamichalopoulou, head of the Section of the General Direction, accepted the Green Paper from EUR President Thomas Kappl in the French, English, Italian, Romanian and German languages.

The members of the EUR Green Paper delegation included Hubert Vanmaldeghem/Belgium; Jean Jacques Kuster/France and Permanent Representative of the EUR at the Council of Europe in Strasbourg; Dumitru Fornea/ Romania and the EUR Board, Thomas Kappl, Adelheid Hell and Harald Wilsch. The delegation met in the entrance hall of the European Union building in the Rue de Luxembourg in order to put together the European Rechtspfleger on his way. Unfortunately, EUR representatives from Denmark

In 2006, the Association of German Rechtspfleger ("BDR") asked Thomas Kappl to consider assuming the EUR presidency. He already had conceived embodying the European Rechtspfleger concept into a green paper for discussion throughout the EU, and the EUR was anxious to move ahead with the initiative under his leadership. Work on drafting the Green Paper commenced shortly thereafter by the EUR Commission meeting together in Strasbourg and Munich. Drafting and agreeing upon the final version required approximately one year. The paper was completed in November 2008; it is available on EUR website: <http://www.eu-rechtspfleger.eu>

Mrs. Papamichalopoulou thanked the EUR. The green paper will be sent by the EU to all member-state Ministries of Justice for review and discussion.

From left to right: Dumitru Fornea, Hubert Vanmaldeghem, Sonja Vanmeldeghem, Adelheid Hell, Amélie Leclercq (EU), Lina Papamichalopoulou (EU), Dr. Ivo Thiemrodt (EU), Annelie Kappl, Thomas Kappl, Jean-Jacques Kuster, and Harald Wilsch.



The European Rechtspfleger Continues Its Way

The Green Paper Is Handed over to the CEPEJ



Jean-Jacques Kuster

Adelheid Hell

Fausto De Santis
President of the CEPEJ

On 11 December 2008 the EUR formally transmitted the Green Paper for a European Rechtspfleger during the plenary session of the European Commission for the Efficiency of Justice ("CEPEJ"), based on the European Convention For Human Rights at Strasbourg. This followed transmission of the Green Paper to the European Commission, General Directorate for Justice, Freedom and Security on 2 December 2008 in Brussels. CEPEJ President Fausto De Santis accepted the green paper gratefully from EUR

General Secretary Mrs. Adelheid Hell and EUR Permanent Representative at the Council of Europe Mr. Jean-Jacques Kuster. In the presence of the representatives of 47 member states of the Council of Europe and the CEPEJ, General Secretary Hell expressed that the EUR, having obtained official CEPEJ observer status in 2003, "...want(s) to support the work of the European Commission for the Efficiency of Justice with the green paper and we want to contribute that the quality of the legal systems of the member states of the Council of Europe will be improved." She noted that the EUR does not seek to intervene in the internal operations or organizational structure of judicial systems of the other countries. Rather, the intent of the green paper is to stimulate public discussion and possibly consensus among the EU member states as to how to achieve greater uniformity in (i) structuring administrative processes, and (ii) relieving judges of burdensome routine responsibilities in a systematic manner. General Secretary Hell expressed the hope that the member states of the Council of Europe would actively promote such discussion of the proposals in the green paper with the objective of contributing to the improved administration of justice.