



## Information Note from the Registrar

### Secondment to the Registry of national lawyers

#### 1. Introduction

The combination of a growing case-load and the extremely difficult budgetary situation facing the Council of Europe has led the Court to seek assistance outside the ordinary budget framework. Thus in recent years individual Governments have offered their support to the Court either through voluntary contributions to finance extra case-lawyers or by secondment of national lawyers.

Secondment of national lawyers, particularly judges, fulfils a dual aim: on the one hand, it provides the Court with the assistance of experienced national lawyers with full knowledge of national legal systems; on the other, it feeds back into the national system Convention trained lawyers and therefore promotes more effective national implementation.

This was confirmed in a report from the Council of Europe's Steering Committee for Human Rights (CDDH), examined at the meeting of the Committee of Ministers on 7 May 2008, which included a proposal to facilitate the secondment of national lawyers to the Registry of the Court. The report<sup>1</sup> states:

*The secondment of national judges to the Registry of the Court could be beneficial both to the Court and to domestic legal systems by improving mutual understanding. It thus responded to the need for enhancing national judges' knowledge of Convention issues. The fact that an experienced national judge could work for a certain period at the Registry also had the potential to reinforce the operational efficiency of the latter. The secondment of national judges, as well as of other high-level lawyers, should therefore be strongly encouraged in future, notably by simplifying the administrative procedures.*

In the Interlaken Declaration of 19 February 2010, the High Level Conference on the Future of the European Court of Human Rights called upon the States Parties to the Convention to consider the possibility of seconding national judges or other high-level independent lawyers to the Registry of the Court, as part of the efforts to increase the awareness of national authorities of the Convention standards and to implement the Convention at the national level. This call was repeated in the Izmir Declaration of 27 April 2011.

The Court welcomes this initiative and wishes to encourage it.

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1. Doc. CM(2008)51 of 4 April 2008 – available in English and in French.

## **2. Existing secondment arrangements**

**The Netherlands** has, for many years, been sending young judges to spend one year at the Registry, as part of their training before being appointed to a court in the Netherlands. Since 1 August 2011 two Dutch trainee judges have worked at the Court in the framework of this cooperation programme.

Since 2007 **Sweden** has seconded national judges usually for one year. More judges have been added to the partnership in recent years so a total of two or three judges from Sweden have been working at the Registry at any given moment since April 2011.

**Germany** has seconded experienced judges – one at a time - since 2009. The current secondment has been extended until 2014.

**France** has seconded two judges since 2009, one from the *Cour de cassation*, the other from the *Conseil d'Etat*. The first two judges left at the end of the maximum three-year period. The replacement from the *Cour de Cassation* arrived in September 2012, the new magistrate from the *Conseil d'Etat* will arrive shortly.

The number of seconded judges from **Turkey** has gradually risen since the initial secondments in 2010. Five seconded judges are currently working in the Registry.

A judge from **Luxembourg** will complete his three-year secondment in 2013.

A lawyer from **Estonia** was seconded to the Court for one year and returned to her post in the Supreme Court in Estonia on 1 October 2011.

A lawyer from the Office of the Attorney General in **Ireland** worked at the Registry on a one-year secondment from May 2011 to April 2012.

A judge from **Montenegro** arrived on 1 July 2011 for an initial one-year secondment, which has been extended for a second year.

The secondment of a lawyer from **Armenia**, who had arrived on 1 August 2011, has been extended for another year.

Twenty lawyers seconded by the **Russian Federation** arrived at the Court in August and September 2011. The great majority will stay for another year; some have been replaced to keep the strength of this task force at 20.

A lawyer from **Romania** started her secondment on 19 March 2012. Two more seconded lawyers are expected to arrive in the near future.

Three lawyers from **Moldova** started their secondments in July 2012.

A seconded judge from **Switzerland** took up her duties on 1 September 2012.

**Ukraine** has also made proposals and the selection procedure for three lawyers is under way.



The **Latvian** Government has agreed to second a judge and will shortly make proposals for selection.

**Finland, Cyprus and the Netherlands** provide direct funding to the Court to cover the cost of employing an additional lawyer to work on applications from the respective countries. **Germany** is financing a press and public relations programme focusing on German-speaking countries, including employment of a German-speaking press officer.

The Registry has in addition discussed secondments with some other States, but no firm arrangements have yet been agreed.

Since 2008 the Court has participated in the practical training of judges under the auspices of the EU-funded and Brussels-based **European Judicial Training Network (EJTN)**. In the framework of that programme, eight national judges from **Austria, Germany, the Netherlands and Italy** have spent up to twelve months at the Registry. Five judges sent through the EJTN from **Estonia, Germany, Hungary, Italy and Poland** are currently working in the Registry.

In addition, the Registrar has written to the Permanent Representatives of those member states for which a backlog of inadmissible cases exists in order to invite them to consider the secondment of lawyers who would join the Registry to deal with this specific backlog.

### ***3. Regulatory basis/funding***

Secondments for periods of one year or more are governed by Resolution (2012)2 adopted by the Council of Europe's Committee of Ministers on 15 February 2012.

Under the terms of that Resolution, seconded officials remain in paid employment in an international, national, regional or local administration throughout the period of secondment, and receive no salary from the Council of Europe (Article 2). While the Resolution provides for the possibility of a relocation allowance paid by the Council of Europe, the Court, relying on Articles 7 and 23 of the Resolution, has made it clear that it is unfortunately not in a position to offer this advantage. Indeed for it to do so would defeat in part the purpose of the exercise. It follows that expenses related to secondments must be borne by the sending government.

On the other hand, the Court reimburses travel expenses incurred by seconded officials and their family members when travelling to take up their duties and on completion of their secondment (Article 23b of the Resolution) and pays a lump sum corresponding to six times the return fare between the place of residence and Strasbourg per year of secondment (Article 23c) to officials seconded for an initial minimum period of one year.

National lawyers staying for periods of less than one year, notably during their professional training, may spend their time at the Registry as study visitors.

### ***4. Selection of national judges***

In order to guarantee both the appearance and the reality of independence and impartiality the final selection of the person(s) to be seconded must be left to the Court. Experience shows that the best practice is to advertise the secondment at national level and then select the most suitable candidates. These candidates are then submitted to the Court for possible interview and final choice. In all circumstances the Judge elected in respect of the State concerned is consulted.

#### ***5. Period of secondment***

In order to achieve the dual aims identified the minimum period for secondment should be one year. This period may be extended up to a maximum of three years, subject to meeting the required standards of service. In this connection it is clearly to the Court's advantage when it is able to benefit from an experienced and competent lawyer over a longer period of time.

#### ***6. Qualification requirements***

National lawyers seconded to the Registry must hold a law degree obtained in their country of origin and possess sound professional legal experience acquired within the national legal system.

They must have an excellent knowledge of English or French, including the ability to draft to a high standard in one of those languages.

#### ***7. Work performed***

The lawyers seconded are not legal assistants to any particular judge or any staff member in the Registry but are integrated into the Registry, usually as lawyers in one of its case-processing divisions.

#### ***8. Point of contact in the Registry***

Michael Wischuf  
Administration Division

e-mail: michael.wischuf@echr.coe.int  
telephone: 0033 3 88 41 22 74