

2) -4/GE/2011 - *Action plan for implementing the Stockholm Programme Gaius European Project for the strengthening of the European judicial culture of Italian magistrates.*

(speaker Mr. PEPE)

The High Council for the Judiciary,

After having heard the Report on justice administration in 2010 by the First President of the Supreme Court of Cassation, Ernesto Lupo, who underlined that *«an analysis of the state of Italian justice cannot ignore the European context in which our legal system operates, thus making reference to both Community legislation (...), and to the legal provisions of the European Convention on Human Rights, which nonetheless override national provisions (...)*», where these two supranational legal systems represent *«the essential framework within which any improvements in the structure of penal and civil justice are to be made»*;

having noted that in *«the multi-level system of human rights protection, which is based on the European Convention and which, through the Treaty of Lisbon, forms the very basis of the rights laid down by the Charter of Nice, which is an integral part of the Community legal system»*, engrained in the *«culture of magistrates is the principle according to which internal provisions must be interpreted not only in accordance with the interpretation provided by the Constitution, but also in the context of the provisions of the European Convention and in the light of the legislation of the Court of Strasbourg»* (Vitaliano Esposito, *Speech by the General Prosecutor of the Supreme Court of Cassation at the General Assembly of the Court on justice administration in 2010*, Rome, 28 January 2011);

having noted the *European Gaius* project (Annex1) for the strengthening of the European judicial culture of Italian judges, developed by the Ninth Commission, and the annexed file containing some of the main documents on European judicial training, with particular focus on the progress achieved in implementing the Stockholm Programme, during the currency of the Treaty of Lisbon, signed on 13 December 2007 and entered into force on 1 December 2009;

having assessed the outcome of the work carried out by the Ninth Commission and, in particular, the ample discussion that took place over the course of the session held on 22 February 2011, which saw the participation of the First President and of the General Prosecutor of the Supreme Court of Cassation, who made a special contribution through their specific expertise, including the information provided over the course of the meeting by Mr. Luigi Berlinguer concerning the action plan for implementing the Stockholm Programme;

having noted that, following the entry into force of the Treaty of Lisbon, great importance is attached to the relations between the European Union, the Charter of fundamental rights of the European Union and the European Convention for the protection of human rights and fundamental freedoms,

which national judges, in their capacity of EU judges, are required to implement, as they constitute the main instruments through which the European judicial protection system functions;

having acknowledged that European law comprises both EU law and the European Convention on Human Rights and that, consequently, the magistrate's knowledge of European law must therefore comprise the knowledge of both EU law and the legislation of the European Convention on human rights;

having acknowledged that next to the awareness of the key role played by European judges, who constitute the central link of the rights protection interpretation chain, lies the awareness of the challenges faced by European judges in their duty not only to possess knowledge of European legislation and its interpretation according to the supranational Courts, the Court of Luxembourg and the Court of Strasbourg, but also to provide an interpretation of domestic legislation that is in keeping with European legislation;

having noted that the *European Gaius* training project is part of the initiatives aimed at creating the conditions necessary to enable common judges to fulfill such extremely complex and enormous duty of protecting and guaranteeing the effectiveness of rights in the best possible manner;

having acknowledged the outcome of the Conference organized by the European Judicial Training Network (EJTN), held in Budapest from 8 to 10 March 2011, over the course of which an update was provided on the progress achieved in judicial training in Europe and on its future outlook, stressing the importance of a common European judicial culture for protecting the autonomy and independence of the Judiciary;

having acknowledged that judicial training in Europe plays a fundamental role in creating a space of freedom, security and justice, given that the correct enforcement of EU law – which is highly, although not entirely, dependent on the work of the national jurisdictions – is essential to the respect accorded to the fundamental freedoms laid down by the Treaty on the functioning of the European Union;

having acknowledged that Article 81, comma 2, letter h) and Article 82, comma 1, letter c), of the Treaty on the functioning of the European Union, supplemented by the Treaty of Lisbon, provide a legal basis for measures which are aimed at supporting the training of judges and magistrates;

the European Commission having acknowledged, through Communication of 29 June 2006 on judicial training in the European Union (COM(2006)0356), the following needs concerning judicial training: increasing knowledge of the judicial instruments adopted by the European Union and by the European Community, in particular in those sectors in which national judges are vested with specific powers; developing language skills, so as to enable judicial authorities to communicate directly between

them, as required by the majority of the instruments; increasing the knowledge of the legal and judicial systems of Member States so as to evaluate their respective needs in terms of judicial cooperation;

having also acknowledged that, according to the Commission, a practical method should be adopted in the training of judges, and such as to favor the following: developing methods that permit a more widespread dissemination of the training results, combined with more traditional actions such as conferences and seminars; using innovative training instruments and making available through the web the instruments of the European Union and any other information on the various national judicial systems; favoring a close collaboration between national training institutes and those with a European vocation – on the one part, EJTN, and on the other part Eurojust, the civil and penal judicial network;

having noted that, through the action plan for implementing the Stockholm Programme, the Commission announced that, in 2011 it will issue a Communication related to an action plan concerning European training addressed to all legal professions and launch various pilot exchange programmes along the lines of the “Erasmus” project, addressed to judicial authorities and law practitioners;

having acknowledged that according to the Resolution of the European Parliament of 23 November 2010, the ability to understand and manage the differences that exist between the various European judicial systems can only stem from a European judicial culture, which needs to be built through the sharing of knowledge and communication, the study of comparative law and the radical transformation of the way in which judges participate in professional training and development programmes, through actions aimed at overcoming language barriers;

having considered that the High Council for the Judiciary has always adhered to the programmes offered by the EJTN, also playing a key role in their development and implementation, and that Italian judges participate fully in this cultural challenge, in the awareness that European law cannot be excluded from the wealth of knowledge and expertise that each one of them must possess;

having ascertained that, aside from the training courses organized so far and from the journals, specialised publications and sources of information made available through the web, there is still an open issue related to the method used for disseminating structural and complete information on the various aspects of European law, and such as to enable each judge to obtain only the legislation concerning each single case, but also pending issues, applicable regulations and information on how to draw up an order for reference to the Court of Justice of the European Union;

having examined the experience in European law gained by the other EC member States, among which, in particular, that of the Dutch system, implemented through the *Eurinfra* programme, aimed at strengthening the knowledge of Community law on the part of judges and judicial structures;

NOTES

Based on the instructions given by the European Union, with particular regard to the Dutch experience, three targeted actions need to be implemented in order to provide a major step change in the knowledge of European law on the part of Italian judges:

-the **first action** is aimed at increasing the number of central and decentralised courses on European law, with particular regard to language aspects and, if possible, also supplementing the courses on national law with specific sessions dedicated to European law;

-the **second action** involves the training of judges having jurisdiction in the sector of European law, to be held at the Office of the Reference person in charge of decentralised training, next to the judges with specific skills in the penal and civil sectors;

-the **third action** involves the creation, as part of the *cosmag* website, of a web page (*e-G@ius: electronic Gaius*) capable of providing quick and easy access to both past and ongoing training courses, the teaching material of the High Council for the Judiciary, all the European sources as well as to national and supranational legislation.

FIRST ACTION

The High Council for the Judiciary is engaged in providing initial and continuing training courses on the main topics of European law. In this context, in addition to increasing its offer of training courses on specific European law-related subjects, it also plans to supplement some of its courses with specific sessions focusing on various aspects of European law, both with reference to EU law and to the legislation of Strasbourg. The High Council for the Judiciary has the perspective to continue and to increase its commitment in this sector, having particular regard to the language aspects.

SECOND ACTION

In order to increase the knowledge of European law on the part of Italian magistrates, it is essential to introduce the figure of expert magistrate (specialised in European law), as member of the Office of the Reference person in charge of decentralised training, who should be responsible for organizing decentralised courses on European law-related subjects and providing his or her colleagues with timely and specific information on European legislation and European case law.

Another duty of the judges of reference for European law is that of gathering the case law of the district of the Court of Appeal on matters concerning European law as well as the references submitted to the Court of Justice. This would permit the creation of a complete and up-to-date database that would

enable Italian judges to gain knowledge of the guidelines of the respective Courts on EU legislation and on the case law of the European Commission on Human Rights. The judges of reference for European law, furthermore, should be in charge of communicating – through a *mailing list* or *newsletter* to be distributed on a periodical basis – the most relevant national and European sentences concerning EU law and the European Commission on Human Rights, issued in the period, as well as the most important regulatory developments in the same sectors.

Reference persons are to be appointed by a separate ruling.

THIRD ACTION

Gaining access to legislative and judicial sources and study materials is essential to gaining a thorough knowledge of European law. The current framework, in fact, is characterised by a wide dispersion and heterogeneousness of information sources present on the *web*, making access to the same information extremely difficult. In order to simplify such access and enable users to gain full knowledge of the existing sources and information, it is necessary to create a single web page serving as a gateway to all the other sources that exist on the internet and on the *cosmag* website.

In this context, a web page (*e-G@ius: electronic Gaius*) should be created as part of the *cosmag* website to permit quick and full access to the past and ongoing training courses offered, the teaching materials of the High Council for the Judiciary, all the European sources as well as to national and supranational case law.

The webpage (*e-G@ius*), linked to the *cosmag* website, will enable users to do the following:

a) gaining access to the latest information contained in the *cosmag website* concerning the teaching material (presentations and study material) produced as part of the work required by the courses organized by the High Council for the Judiciary and by decentralised training. A more detailed search engine capable of performing more specific research, and of helping users in finding presentations on a given subject. In order to enable users to gain access to all the existing teaching material, having particular regard to the various aspects of European law, the website should contain the links to all the Offices of the Reference Persons in charge of decentralised training, thus providing quick access to the information contained in the web pages on the training courses offered at the various Courts of Appeal and at the Court of Cassation;

b) gaining access to the full framework of the links of interest to judges on European law-related topics, having particular regard to databases containing the case law and teaching material;

c) creating one or more forums (*mailing lists* or *blogs*, also through the forms used by the High Council for the Judiciary as the basis for *e-learning* (the first *forum* of the High Council for the Judiciary was set up during the inauguration of the telematic platform supporting the *e-learning* course of the project entitled “*Judicial cooperation in civil matters: European legal systems and language; study for a common vocabulary and language*”);

d) distributing a *newsletter* or creating a *mailing list*, which would enable users to make reference to the most significant national and European sentences on EU law and on the European Commission on Human Rights, issued in the period, as well as to the major developments in the same sectors.

Having said that, the Council

deliberates

- to approve the *European Gaius* project;

- to invite the IXth Commission, and through the latter, the Scientific Committee and the Offices of the Reference Persons in charge of decentralised training to increase the number of central and decentralised European law-related courses, having particular regard to the language aspects, as well as to supplement, if possible, the courses on national law with specific sessions dedicated to European law.

- to introduce the figure of expert magistrate (specialised in European law), as member of the Offices of the Reference Persons in charge of decentralised training, next to the magistrates with specific skills in penal and civil law. The Reference Persons shall be appointed by a separate ruling.

- to create a web page (*e-G@ius: electronic Gaius*) as part of the *cosmag* website, permitting quick and full access to past and ongoing training courses, teaching materials of the High Council for the Judiciary, all the European sources as well as to the national and supranational case law.

The “*European Gaius*” Project is enclosed herein under Annex 1.