Special international issue

JUDICIAL COLLEGE

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Introduction

I am delighted to introduce this special 'international issue' of the *Tribunals* journal.

It is an inspired idea of the editorial board to devote an entire issue to international activities. We live in an increasingly international world. This is particularly true in the law. No jurisdiction is an island. It is important that we are fully engaged with our colleagues abroad and that we share best practice on judicial training and other matters of mutual interest and concern.

You will find a wide variety of articles from distinguished and knowledgeable authors touching on the Judicial College's international work, the EU Tribunal Exchange Programme, the European Judicial Training Network (EJTN), the Themis Competition, the International Organisation for Judicial Training, training and judicial visits to France, the Balkans and Israel, the Immigration and Asylum Chambers, the International Association of Women Judges and the creation of the new post of International Course Director of the Judicial College.

It is a privilege to have succeeded Dame Linda Dobbs as chair of the International Committee of the Judicial College. Since its creation on 10 February 2012 by Lady Justice Hallett, the Committee has gone from strength to strength under Dame Linda's leadership. The Committee's twin objectives are to enable the Judicial College to engage in international judicial training projects which strengthen judicial independence and the rule of law, and to reinforce the judiciary of England and Wales as a key institution of democratic governance within the United Kingdom, across Europe and internationally.

The particular objectives of the International Committee include: providing judicial training overseas and allowing judges from abroad to participate in existing College courses; overseeing the College's contribution to the EJTN, including its exchange and training programmes; and ensuring courts and tribunals judiciary receive appropriate training in international law and procedure, EU law and international conventions.

I would like to pay a special tribute to the Directors of the Judicial College, Judge John Phillips and Professor Jeremy Cooper, for their outstanding contribution to the work of the International Committee since its inception.

I am delighted to welcome the new members of the Committee, in particular Joanna Korner QC (International Course Director), Mark Ockleton (Deputy International Course Director) and Howard Morrison QC (British judge on the International Criminal Court).

I would also like to record my personal thanks on behalf of the Committee to Peter Jones, Nic Madge, Debbie O'Regan and Gordon Lingard for the outstanding contributions they have made to the work of the Committee over the past four years.

I hope you enjoy this special issue of the *Tribunals* journal.

The Hon. Sir Charles Haddon-Cave, Chair of the International Committee of the Judicial College.

Reinforcing a keystone of democracy

Michael Williams **explains the work of the Judicial College's International Committee in bolstering judicial independence throughout Europe and further afield.**

The Judicial College has established an International Committee chaired by a High Court judge – currently Mr Justice Haddon-Cave – and comprising members of both the courts and tribunals judiciary. Its purpose is to enable the College to participate in appropriate judicial training projects which strengthen judicial independence and reinforce the judiciary as a key institution of democratic governance within the United Kingdom, across Europe and internationally.

Within the UK

The College is a member of the United Kingdom and Ireland Judicial Studies Council (UKIJSC) which meets once a year to discuss judicial training issues of mutual interest in the UK and across Europe and the wider world. The membership comprises the respective national judicial training bodies and the meetings are usually attended by the chairs of each – for example, in the case of the Judicial College, this is Lady Justice Rafferty. Each member takes turn in hosting the annual meetings. An example of such collaboration is a joint response given to an in-depth questionnaire from the EU about judicial training which ultimately influenced the development of judicial training across Europe. The latest meeting was held in London in November 2013 and was hosted by the Judicial College.

[The] Judicial Exchange Programme . . . involves sending and receiving 10 judges to and from member countries for a period of two weeks.

Within Europe

The UK, comprising the national judicial training institutions for England and Wales, Scotland and Northern Ireland, is a member of the European Judicial Training Network (EJTN), an EU-funded body based in Brussels that includes member organisations from all over the EU who have responsibility for delivering judicial training in their respective countries. It is the principal platform and promoter for the development, training and exchange of knowledge and competence of the EU judiciary.

Founded in 2000, the EJTN develops training standards and curriculum, coordinates training exchanges and programmes and fosters cooperation between EU national training bodies. The Judicial College is an active member. In recent times, the College has had representation on the EJTN's steering committee, its technologies working groups, various steering groups involved with EU-funded projects and its Themis programme.[1] The College also has representation at the EJTN's annual general assembly, attended by all members and indeed hosted one of these events in Edinburgh a few years ago.

The College has been involved in the EJTN's Judicial Exchange Programme,[2] which involves sending and receiving 10 judges to and from member countries for a period of two weeks. Week-long exchanges have also been introduced quite recently. In terms of outgoing judges, this usually involves a judge from England and Wales spending two weeks with a judge from a member country, during which they will learn about the country's judicial and court system, observe

cases and meet other judges and court officials. A similar arrangement is made for incoming judges, where they are usually assigned a judge around the country who designs a two-week programme for them.

The College also participates in the EJTN's week-long trainer exchange programme, whereby it arranges to send and receive two judicial trainers, to and from member countries. Incoming judges usually spend two days observing one of the College's seminars, have a day-long series of meetings at the College to find out how we design, deliver and evaluate judicial training, and then spend two days observing cases in a London court. Additionally, the College participates in the EJTN's Catalogue programme,[3] whereby all members offer up places on a number of their training seminars to judges from other countries. The College usually offers up to 10 places each year on its seminars. The College also arranges for judges from England and Wales to attend judicial training events throughout Europe organised by EJTN and the Academy of European Law in Trier, Germany. The College has also hosted a number of EJTN-related meetings in London.

Members of the European Parliament/EU Best Practice Experts Group observed the College's cross-jurisdictional 'Business of Judging' seminar towards the end of 2013. Their report, 'Judicial Training in Europe', now published by the European Commission, showcases 65 interesting practices over a range of training methodologies, many of which could be easily transferable to the UK. We are pleased to report that the training institution in Europe with the highest number of best practices was the Judicial College. The report can be found on the European e-Justice portal (*https://e-justice.europa.eu*).

Across the wider world

The College has assisted foreign jurisdictions with judicial training in a variety of ways. It has arranged for judges (individuals and teams) to go to other countries to deliver specific training on, for example, judicial skills and ethics. The College has arranged for foreign judges to attend its own seminars, either as participants or observers and it has also provided foreign delegations with access to various training materials. The College has no funding for these activities and has to rely on external funding, without which little of this activity would take place. The College also has to rely on the goodwill of judges going to foreign countries, as they usually travel in their own time.

. . . any training done in the name of the judiciary should be carried out through the auspices of the International Committee . . . This makes for consistency and quality-assured standards.

To facilitate this important work, the International Committee has established a register of trainer judges who have an interest in assisting with judicial training in foreign countries and who are prepared to give up their spare time to do so, as well as a register of recently retired trainer judges. It is important to stress that any training done in the name of the judiciary should be carried out through the auspices of the International Committee. The reason for this is to ensure that only properly trained trainer judges, or those with significant experience in training, particularly internationally, carry out such important work in the name of the judiciary. This makes for consistency and quality-assured standards. It also assists the International Committee and the Judicial College, which reports to the Lord Chief Justice, to have a proper overview and to be able to give an account of work that is carried out internationally by our judges.

The College also hosts visits on a regular basis from jurisdictions from all over the world who

are interested in how the College designs, delivers and evaluates judicial training. These visitors can range from a lone chief justice up to a group of 55 judges. In 2013, the College received visitors from 18 foreign countries, delivered training in some capacity in 10 foreign countries, provided seven foreign countries with training materials or access to training materials and hosted judges, as either participants or observers at College seminars, from 14 foreign countries. Brief profiles of some of the visitors to the Judicial College can be found in the table opposite.

The College is also a member of the International Organisation for Judicial Training (IOJT), established in 2002 at a conference in Jerusalem to promote the rule of law by supporting the work of judicial education institutions around the world. The IOJT's mission is realised through international and regional conferences and other exchanges that provide judges and judicial educators to discuss strategies for establishing and developing training centres, designing effective curricula, developing faculty capacity and improving technology. The IOJT is a volunteer, non-profit-making organisation and relies on the efforts and goodwill of its members. The organisation is governed by a general assembly of its members which meets every two to three years during the international conference. There is an elected board of governors, which consists of an executive committee, regional deputy presidents, additional deputy presidents and governors. As of September 2013, the IOJT has 115 member institutes from 69 countries.

The Judicial College's Executive Director, Sheridan Greenland, has been appointed deputy secretary of the IOJT and the College's Director of Training for Tribunals, Professor Jeremy Cooper, is a member of its Academic Committee. Both attended the latest international conference in Washington DC in November 2013.

The Learning Management System (LMS)

The International Committee oversees the international section of the LMS which contains a number of different areas as follows:

- *Training networks* – this area contains details of international bodies connected with the training of international judicial office-holders.
- *Training* – this area contains details of training delivered to foreign jurisdictions, international training for or attended by England and Wales judges.
- *International Committee* – this area contains details of the committee's terms of reference, its membership and minutes of meetings.
- *E-learning* – this area contains a number of e-learning modules.
- *Library* – this area contains materials and training activities that have been prepared specifically to support and/or supplement local training.

Michael Williams is the Judicial College's Senior International Strategy and Policy Adviser.

[1] Themis is addressed to the trainees of all institutions and schools responsible for training the European magistracy, whether as judges or prosecutors. Themis is designed to give participants an opportunity of not only entering into stimulating and competitive debate with members of similar schools, but also meeting others in training in different countries and learning about, or improving knowledge of, the different systems that exist within Europe.

[2] The Exchange Programme for Judicial Authorities is aimed at EU legal practioners, judges, future judges and prosecutors and judicial trainers. Through short- and long-term exchanges that take place within judicial institutions of another member state, this programme is a unique experience that allows judges to understand, in concrete terms, the daily work of their European counterparts. The Exchange Programme aims to develop the mutual trust between judicial authorities by allowing them to get to know each other better and by giving them the opportunity to work together. The programme is funded by the European Commission.

[3] The EJTN Catalogue is a fundamental tool to promote judicial training within the European Union countries. This tool integrates the training activities organised by EJTN's judicial institution members.

Profile of visitors to the Judicial College from the wider world from September 2013 to March 2014

Country	Who visited	Purpose
Australia	Judge of the District Court of Queensland	Attend Crown Court Combined Seminar
Bangladesh	Bangladesh High Commission	Judicial training
Belize	Justice	Attend Civil Law Seminar
Bhutan	Judicial delegation	Observe the morning of a Civil Reforms Day conference, visit the College, meet the Chair and observe Day 1 of the Craft of Judging seminar
Hong Kong	Judge	Attend Crown Court Trial Seminar
Isle of Man	Judge	Attend Civil Law Seminar
Japan	Two judges	Attend a Serious Sexual Offences Seminar
Japan	Two Supreme Court judges	Attend Civil Law Seminar
Malawi	Gopal Hooper (Recorder)	Using College training materials to assist the Malawi judicial training programme
Namibia	High Court judge	Observe a College seminar and talk about course administration
Pakistan	Judicial delegation	Judicial training
Papua New Guinea	Chief Justice	Judicial training
Rwanda	Chief Justice	Content and logistics of judicial training
Rwanda	Judge	Long and Complex Trials
Saudi Arabia	Higher Judicial Institute	Judicial training
Singapore	Judge	Long and Complex Trials
Singapore	Judicial delegation	Training in relation to family matters
South Africa	Chief Justice	Judicial training
Tanzania	Chief Justice	Judicial training
Thailand	Human Rights Law Centre, School of Law, University of Nottingham	Judicial training
Zambia	Judge	Attend Administrative Law Seminar
Zimbabwe	Head of Education and Training	Judicial training
Zimbabwe	Delegation of Supreme Court Judges	Judicial training

Sacrebleu! Where have I put my ROBE?

Judith Gleeson **recalls a 'wonderful, invigorating' work experience trip to Cahors, learning about a judicial system based on Roman law while brushing up on her language skills.**

I had the opportunity last year to undertake a two-week work experience '*stage*' in Cahors, south-west France, at the Tribunal d'Instance and Tribunal de Grande Instance, a combined civil, criminal, family and insolvency court group. It was a fascinating insight into the workings of a Roman-law court, operating under criminal and civil codes (and various other codes relevant to the specialist areas with which the courts dealt). At the end, fulfilling a promise rashly made before I arrived, I took my courage in both hands and gave a presentation in French on what I had learned, and on the UK legal system.

Before I could begin sitting in, I was required to appear at the Cour d'Appel in Agen (the intermediate appeal court between the first instance tribunals and the Cour de Cassation, the French equivalent of our Court of Appeal) to be sworn in wearing 'my usual robes'. This caused complications because, of course, UK tribunals judiciary have no robes to wear, even on formal occasions. After discussion with colleagues, I remembered that I am still entitled to wear solicitors' robes. Of course, when in practice I simply borrowed the office robe which hung on a post by the door, and my own bands were long since jettisoned. So, it was off to robe-makers Ede and Ravenscroft, who were most helpful.

Thus was I able to drive to Agen to be sworn in on the first day of my *stage* (the French word for a period of training). I still had no idea what oath was required (a judicial colleague suggested I might have to swear loyalty to the French state). Fortunately, it had occurred to me that given the French propensity for formality, a speech might be required, and I had prepared a five-minute one thanking them for having me, and bringing with me the good wishes of the Lord Chief Justice, the Senior President and judges in the UK. My French vocabulary was already being severely tested.

> *. . . police officers, traffic wardens, local council secretarial staff . . . all agreed to serve their employers well and faithfully and to keep relevant matters confidential.*

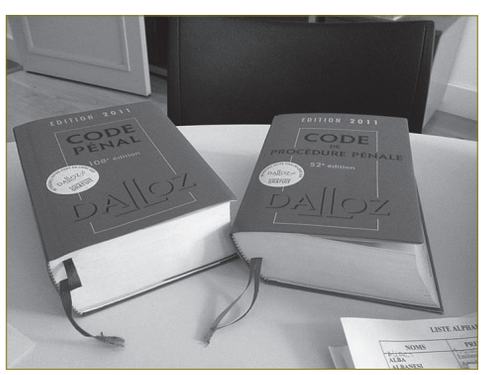
I swear to . . .

I was ushered into the retiring room to meet the President of the chamber, M. Pierre Cayrol, and two other judges, Mme Dominique Nolet and Mme Aurore Blum, as well as the chief prosecutor, Mme Francoise Serny, and the court clerk. Then I was shown into court where I watched, fascinated, as police officers, traffic wardens, local council secretarial staff and various other dignitaries were sworn in at the beginning of their new roles. They all agreed to serve their employers well and faithfully and to keep relevant matters confidential. In each case, the new employee stood at the witness stand in the middle of the court and received an introduction from the prosecutor, and a homily from the President. When my turn came, I was introduced and swore the following oath:

'I swear to keep confidential the work and acts of the court, the investigating judge and the judgments of which I shall have knowledge during my *stage*.'

A copy of the certificate recording this event is now on the wall of my chambers at Field House, London, where it reminds me of a very proud moment. There was, of course, a Presidential homily for me too, and I made an abbreviated version of my prepared speech in reply. Then I zipped out of court and back to Cahors, to meet Mme Nelly Emin, the judge in charge of the small claims court, who had organised my programme and would take responsibility for me during my stay, including inviting me to a wonderful regional dinner in her home. I am extremely grateful to Mme Emin for her support, interest and courtesy: we have stayed in touch.

The first thing to strike me was the difference in the age and sex of judges in France. I was told that, nowadays, 80 per cent of those appointed as judges are women. That contrasts with the figures released recently for the male-female balance in UK courts at 31 July 2014, which show that, in magistrates' courts there are slightly more than 50 per cent of women, in first instance tribunals just over 30 per cent, and above that, around 20 per cent of women in the higher judiciary and Upper Tribunal. One effect of the 80:20 ratio in France is that, socially, if you say that you are a judge, there is no reaction equivalent to the surprise usually shown in the UK.



The 'Code pénal' and 'Code de procédure pénale'

In larger cities, there are more male judges but across France, justice is managed by younger female judges, who come into the job straight from university, working their way up from the prosecutor's department, where they exercise tight control on police arrests, searches of property and investigations, as well as detention, and prepare cases for presentation in court before the Parquet, which deals with a wide range of crime, much of which would go through the magistrates' courts in the UK, but also a significant number of serious crimes such as sexual offending which would go to the Crown Court in the UK. Judges move posts every three to eight years, changing regions to obtain promotion, with the aim of becoming President of a Tribunal de Grande Instance, or progressing over time to a regional Cour d'Appel.

Different procedure

The French criminal procedure differs from the UK because the evidence has been taken, and the facts found, before the hearing, either by a judge interviewing the witnesses and defendant on behalf of the prosecutor's service, or through the formal 'juge d'instruction' process if more resources are required. The prosecutor introduces the case and then the chair of the three-judge panel sums up the evidence. The defendant is represented, but they also speak for themselves, to comment on the summary and respond to questions from the bench. Any person injured by the crime appears as a 'partie civile' and is heard during the criminal proceedings as to damages for the loss to property, and/or the harm suffered.

The court then sentences the defendant, typically to a sentence which is partly custodial (*peine ferme*) and partly suspended (*peine avec sursis*), a fine, and damages for the partie civile. In one case I saw, a person whose house had been broken into had lost a ladder. She claimed the entire value of the original purchase, but the court awarded only what it considered that a reasonable ladder would cost to buy locally, drawing on the President's knowledge acquired during recent building works in her own home. In almost every case, the court also required the defendant to undertake a counselling or re-education course to deal with the underlying

problem of alcoholism, drugs or sexual deviation. When I asked why there were so many places available, the judges reminded me that, in France, the health system is partly insurance-based, allowing even patients on low pay to buy quite costly psychiatric services locally. While sitting in, I watched the judges riffle through the criminal code, looking for guidance on offences and penalties.

None of the defendants appeared to have brought their toothbrushes and suitcases, nor to be particularly worried by the imposition of a custodial element as part of their sentences. When observing the 'juge d'application des peines' (JAP), I discovered why. All custodial sentences less than two years are subject to negotiation after sentencing, with a view to reducing the pressure on French prisons.

The 14th century Pont Valentré over the River Lot

Range of options

The JAP has available to her a range of options, including deferred imprisonment at a more convenient moment, partial imprisonment (for example, at night, or at weekends, so that the person can continue to work at their day job if they have one), an undertaking to attend therapy sessions for an agreed period, or community projects, for example gardening in the 'mairie' (town hall) or local school. The criminal makes the proposal and the JAP decides what she will accept as a reasonable offer: they are not encouraged to offer any sort of imprisonment option, so that, in practice, the choices are a mixture of therapy and community service. If the alternative penalty is completed as agreed, the custodial sentence will never be served. The JAP supervises the criminal's compliance over one to two years.

The JAP hearings, in particular, had their comic moments: many of those convicted were alcoholics in everyone's opinion but their own. In discovering whether they were really prepared to change, the JAP asked about their drinking. Responses ranged from, 'I am not an alcoholic, I don't drink in bars – I buy a nice bottle of vodka, drink it in my car and drive home, what's wrong with that?' to 'I'm not an alcoholic. I only drink at festivals, and it was the 14th of July (Bastille Day) Madame la juge, what do you expect me to do?' Another feature of the French criminal system is that any driving offence attracts just one point on the licence, with no automatic disqualification, but the points are never spent. I saw cases where drivers had accumulated 40 points without disqualification.

After my initial shock subsided, I discussed this difference with the judges. South-west France is a rural area. It depends on agriculture and tourism. There is very high unemployment, often only seasonal work, and very little public transport. There are very many divorced or separated men living in rural isolation and drinking away their troubles. Imprisonment – even if prison places were available – would lose them their jobs and their relationships, if they had them. Keeping them in the community and under judicial and therapeutic supervision seemed both practical and compassionate.

Family law

The other area where I spent most time was family law. I was reminded that I was in a Roman-law area because the term used for any unmarried partner (male or female) was concubin(e). Although France is a Catholic country, many of the parties in the access and maintenance proceedings were not married or not remarried. In January 2012, France formally abolished the legal distinction between married

and unmarried partners, and also the term 'Mademoiselle' for an unmarried woman. All females – even five-year-old girls – are in law 'Madame' now. There is a strict access regime prescribed by statute, with alternate weekends, often alternate Wednesdays (the day when children have no school in rural areas), and half each of all the holidays. A concession is made for younger children that in the long two-month summer holidays, they need not spend a whole month away from their mother, but can divide those holidays into alternate fortnights, so that each party does get a month overall to spend with the children.

Requests for the parties to organise their own contact with children were sternly rejected: the judge told me that if that were permitted, the fathers rapidly lost contact with their children. Disagreements and failures to cooperate between the parents were met with a firm statement that 'you may no longer be a conjugal partnership, but you are a parental partnership for the rest of this child's life. If you cannot agree, there is a counsellor waiting in the library upstairs. Go and see them and I will reschedule this appointment when you have sorted out your differences.' Another regular comment was that it was important 'not to give the child too much power' – children were heard in relation to their reluctance to visit a father with whose concubine they were not getting on, but again, the solution was counselling and adherence to the statutory contact programme. It had the great virtue that all of the parties knew what to expect, including the children.

The juvenile court judge was a very young woman, Tiphaine Personnic, who dealt with difficult children of all ages with great aplomb and skill. She had available to her a much more variable care regime than in the UK. All of the major towns had state boarding schools where children with inadequate or alcoholic parents could get stability, education and regular food. A social worker was involved, as you would expect. However, the child might well also have a foster parent for Wednesdays and weekends, and still return regularly to spend time with their natural parents, who would have the ability to telephone the foster parent if they ran into difficulty.

Flexible care

In one particularly well-known case, where the UK social services had sought to take into care a baby born to recognisably inadequate parents who had then fled to France, the French flexible care system had enabled the parents to retain the child and to gradually learn to cope, with the support of the school and state. The system is not cheap: France still has much greater social security funding than in the UK. It was, however, impressively well integrated, and like the JAP system, it enabled the child to remain connected to their birth family, however hopeless, if that was at all possible. I did see cases where it had not been possible and foster parents were supporting a child in the state boarding facility.

I learned an immense amount during my *stage*. It was a wonderful, invigorating experience and I have kept in touch with the judges in Cahors. I visited the city just recently and had the opportunity to visit the court again and to hear the news. I would highly recommend anyone to undertake a visit of this sort if their language skills are up to it.

Judith Gleeson is a judge in the Upper Tribunal (Immigration and Asylum Chamber).

If you are interested in work experience in France, Scotland or Northern Ireland, please apply in writing by 1 December 2014 to Lord Brodie, President of the Franco-British-Irish Judicial Cooperation Committee (*Lord.Brodie@scotcourts.gov.uk*), with a brief CV indicating the court or topic that interests you and, if in France, your knowledge of French.

You should discuss the question of judicial release with your presiding judge before applying.

Exchanges that broaden and DEEPEN

After visits to Romania and Bulgaria – and playing host in return – *Edward Woodcraft* gives an appraisal of the opportunities provided by the European Judicial Training Network.

Although it has been running for several years and covers all of the nations of the European Union, the European Judicial Training Network (EJTN) is surprisingly little known in the United Kingdom. Those who are prepared to take the time to find out what it is, and to apply for a place on one of the exchange visits, will be in for a fascinating experience, which will both enlarge their horizons and engage them in a process that has the potential, dare I say, to improve their judicial ability. I hope that after reading this article more judges in England and Wales will be persuaded to take an interest in the scheme and will apply to visit one of the participating countries.

Places offered

The idea is a simple one. The EJTN publishes a list (which is advertised on the judicial intranet) of countries that have places to offer to visiting judges. A judge based in the UK, for example, will look at the list and apply on a simple form to the Ministry of Justice stating which three countries (listed in order of preference) they would like to visit. If the application is successful, someone in the host nation will make the appropriate arrangements for the judge's itinerary. Consent from the head of the tribunal or court where the judge sits has to be obtained. The EJTN will pay a daily rate (which, depending on the country, can range from around €175 to €200 per day) for living expenses incurred during the visit. If the visit is to last a week, the EJTN will pay a return air fare up to a limit of €400. If the visit is scheduled for two weeks, a slightly higher daily rate is payable. The list of countries clearly indicates the language (English or another) in which the exchange is to be conducted. Most of the countries on the list have places for English speakers.

The EJTN will pay a daily rate . . . for living expenses incurred during the visit.

A choice to make

So, which country to choose? The first time I applied, I chose to go to Romania, a country I had never visited. I applied to join a two-week visit in a group comprising six other judges who came from Croatia, Hungary and Belgium. Our hosts organised a very busy programme for the first week. This included a series of meetings in the capital Bucharest with, among others, the president of the constitutional court, the prosecutor's office, judges at various levels in a variety of jurisdictions, and officials from the Romanian Ministry of Justice. That first week was both thorough and hard work (as we walked briskly from one meeting to another) but well worth the effort. The advantage of a group exchange is that you learn a great deal about how judicial colleagues in the host country go about their work and, by socialising with the other judges in your party, you learn a great deal about their countries too.

One or two of the judges in my group were familiar with Bucharest already (and could point the rest of us towards some very good restaurants), while others had been on EJTN visits to other countries before and could make helpful comparisons with this exchange visit. The group was a good mix of ages and nationalities. Eastern European colleagues

found many examples of Romanian practice to be familiar, while those of us from Western countries were able to compare and contrast what we saw with how we would do things at home. One ubiquitous example would be the role of the prosecutor. In the United Kingdom the image suggested by 'the prosecutor' is that of the Crown Prosecution Service coming into court to present a criminal prosecution. In Eastern Europe, however, the role of 'the prosecutor' is much wider as they appear to be involved in all sorts of litigation passing through the courts. For example, in asylum appeals not only is there a representative from the border agency but the prosecutor is also present in court and can express observations to the judge on the merits or otherwise of the appeal.

Differences

Then there are more specific examples of how practice and procedure differ between countries. The system of delivering *ex tempore* judgments after an oral hearing – a system familiar to English judges – is quite unknown in large parts of Europe where everything is committed to writing and the burden on judges in consequence is immense. In Bulgaria, judges are not allowed to go on their holiday in August until they have written up all of their judgments. In Romania, the workload for a judge is assessed on a points system that has some similarities to the points system used in the Immigration and Asylum Chamber but which amounts to several thousand points over the course of the year.

It is interesting to compare the system of training judges in one country with that of another. The Romanians have a central institution, the National Institute of Magistrates, based in Bucharest, and application is made on examination to gain a place there. Many of the judicial applicants have only recently graduated from university. Like most other continental European systems (and unlike England and Wales) they do not expect their judiciary to begin judicial careers at a relatively late age after a successful career in private practice. Through discussion with colleagues one can compare their different experiences and their motives for becoming judges. From my own discussions with colleagues, I can say that they tend not to be motivated by the money. Judges in Europe are generally paid significantly less than those in Britain. Judges in Romania face the additional problem that they must reveal all of their finances and make that information publicly available, a system that would not be tolerated in a Western European country.

Judges in Romania . . . must reveal all of their finances and make that information publicly available, a system that would not be tolerated in a Western European country.

That is not to say that one cannot learn from observing the practice in other countries. I found hearings in Romania to be much quicker than equivalent hearings in the UK owing to the inquisitorial procedure adopted by Romanian judges. Each judicial system in each European country has its own peculiarities. In Romania, there are a number of appellate courts around the country, each of whom have their own interpretation of the law, leading to a large number of inconsistent decisions between those courts of appeal. (Having said that, it is not unknown in England and Wales for differently constituted benches of the Court of Appeal to come to inconsistent decisions.) It was most instructive to attend the constitutional court in Bucharest – situated in the vast folly of a palace built by the Romanian dictator Ceausescu – as the court rattled through the hearings, reconciling such decisions.

During an exchange visit, one can observe behaviour that at first sight seems perplexing. During the first week in Bucharest, we visited the anti-corruption agency. When our group arrived we found the place besieged by

journalists, television cameras and others. What was the explanation for this media interest? Had some celebrity been arrested on corruption charges? It transpired that this gathering of journalists was a daily experience since the anti-corruption organisation was investigating one of the media outlets in Romania and, in retaliation, the media were putting the anti-corruption agency (and all their staff and visitors) under close surveillance.

The second week of my exchange visit to Romania was spent in the town of Alba Iulia in the heart of Transylvania. Nearby is a magnificent Gothic castle frequently used for horror films and the town itself has an impressive history going back to the Roman occupation by the Emperor Trajan. The atmosphere here was more relaxed than in Bucharest; there were fewer official visits and more opportunity to speak to individual lawyers (and sample the local wine). Everywhere we went we found people willing to help us, answer our questions and take us on excursions (hence the interest in the castle).

However big the European Union is, the judicial world can be a very small one at times.

Second visit

For my second EJTN visit I chose to go to Bulgaria for a week. Although I have some familiarity with the country already, I was enormously impressed by the efforts made by my host judge to tailor my programme to the things I specifically wanted to visit. As with my visit to Romania, I was impressed by the way that senior members of the Bulgarian judiciary, who were no doubt extremely busy with their cases, were prepared to take time out to meet me, a visiting judge from the United Kingdom. A visit to the Bulgarian Parliament to watch the human rights committee stage discuss the implementation of two European Union directives was a particular highlight for me as it was fascinating to watch the parliamentary process in action. Afterwards I was able to discuss these legislative developments with my hosts and it was instructive to compare this procedure with that of the UK. I was also taken to meet the secretary of the Association of Bulgarian judges who was particularly interested to know how judicial salaries were arrived at in the United Kingdom. I explained, as best I could, the workings of the Review Body on Senior Salaries and how judicial salaries had, generally speaking, been frozen over the last two years or so. By coincidence it transpired that the secretary of the Judges Association shared her chambers with the Bulgarian judge that I had hosted in London a few months before. However big the European Union is, the judicial world can be a very small one at times.

Recommendations

My week in Bulgaria meeting judges, appellant's representatives and others involved in asylum appeals highlighted some areas where it was clear that the Bulgarians could benefit from the experience of other European Union countries, particularly the UK. This in turn led me to make some recommendations to the Judicial College about how work in training Bulgarian judges could be carried forward with them to assist in implementing the Common European Asylum System. I am pleased to say that this work has gone forward and I have recently taken part in a European Asylum Support Office mission to Bulgaria to assess judicial training needs. This was a spin-off from my original week in Bulgaria and goes to show that you never can tell how these matters will develop in the future. The best thing to do is to immerse yourself in the experience for the week or the two weeks that you are in the host country and take a real interest in what your hosts are doing and showing you. Then, keep in contact with the people that you have met after you return to the UK. An EJTN visit should be seen as an opportunity to broaden horizons, develop contacts with judicial

colleagues in other jurisdictions and, potentially, for use as a springboard for other judicial activities. However, it is not just a question of finding out about another country's legal system. It is also an opportunity to submerge yourself in the life of the host country that you are visiting.

Enthusiasm

As judges, we know that the law in all its forms has an impact on everyone and one can get a good impression of a society by observing its legal system. In the case of Romania, a country which has recently joined the European Union, I was struck by the enormous enthusiasm for the European Union among those we met but also the eagerness to learn from us how we do things. English, for example, has been adopted in Bucharest as a second language. One can also get an insight into the nature of society. The Romanians, for example, have become very litigious and seem to appeal against every decision of their administration. This demonstrates faith in both the legal system and in the judiciary who are deciding those appeals, which I found to be impressive.

The other side of the coin is that if one takes part in an exchange visit to another country one normally has to agree to host a judge in return.

The other side of the coin is that if one takes part in an exchange visit to another country one normally has to agree to host a judge in return. In my case I have hosted two judges: one from Poland and the other from Bulgaria. Both were criminal judges and therefore not very familiar with my particular area, which is concerned with asylum and immigration cases. However, both were anxious to learn as much as they could about the common law system. Both sat in court with me and other colleagues at my hearing centre and watched cases. I was able to arrange for them to visit some criminal court hearings. The judge from Poland was particularly interested in attending Westminster magistrates' court where she observed a number of extradition hearings of citizens from Poland who were wanted in that country for trial. Justice must not only be done but also be seen to be done. An opportunity like that for a Polish criminal judge to observe how rigorously fair our procedures in London are is, in my view, an important step in the development of mutual confidence and trust between jurisdictions. These were individual visits and if I was to make one recommendation to the EJTN on organising visits I would suggest that when they send people to a country they send them in a group. My experience of the group visit to Romania and what I have learned from talking to colleagues who have been on similar exchange visits is that the group tends to socialise in the evenings, whereas for the solo visitor (unless one already has some contacts in the host country, as I have in Bulgaria) there is a risk that the time between engagements may hang heavily. I would certainly recommend taking part in an EJTN exchange visit to an unfamiliar country as part of a group to anybody.

Making arrangements

As I have indicated, my visiting judges wanted to see other cases besides immigration and asylum appeals. I had no difficulty in arranging such visits for my two judges. It is of interest to one's fellow judges that a judge from another country is visiting, and people are willing to assist and show that judge the work they are doing. Arranging a programme for a visiting judge is not at all a chore. Since the visiting judge's knowledge of England in general and London in particular may be limited, it can be fascinating to show someone around one's own city – not least because one can end up visiting places which as a resident one would not normally visit. In all the years that I have lived in London I had never been inside the Temple Church but since my visiting judge had seen the Da Vinci Code they wanted to see the

inside of the church for themselves, so I took it on myself to show them. Visiting judges want to see obvious legal landmarks such as the Royal Courts of Justice and it helps if you familiarise yourself before your visit with a few dates about when buildings were constructed etc.

By making visits and hosting visits one can build up contacts with judicial colleagues. Whatever one's views about the European Union, all of us in our daily judicial work are affected by European Union law. By meeting judges from other European Union countries and discussing with them what they do in their jurisdictions to respond to problems similar to those that we face in our jurisdiction this, the edifice of European Union law, becomes more accessible and less alien. The establishment of contacts between European judges in different countries is an important step forward in this process. My own personal view is that as many judges as possible in this country should be encouraged to take up as many exchange visits as possible. I would urge everyone reading this article to seriously consider whether they might take part in the next EJTN round of visits when it is announced.

Edward Woodcraft is a judge in the Upper Tribunal (Immigration and Asylum Chamber).

INFLUENTIAL GUIDANCE

Bernard Dawson **explains the work and objectives of the International Association of Refugee Law Judges.**

JUDGES OF THE Upper Tribunal and First-tier Tribunal have a long history of involvement in international activities, largely through the International Association of Refugee Law Judges (IARLJ). The association was established in London in 1995. It has a worldwide membership and its objectives include the promotion within the judiciary and quasi judicial decision-makers of a common understanding of refugee law principles, judicial independence and information sharing and research to achieve these ends.

The extent of IARLJ's activities is evident from its website (*www.iarlj.org*). From this it will be seen that not only does the association encourage an exchange of information but that it is actively involved in training as well as providing guidance to its members on a range of matters including its most recent publication on making preliminary references to the Court of Justice of the European Union (CJEU).

A particular feature of asylum law is the impact of international instruments including the well-known Refugee Convention and Human Rights Convention . . .

Tunis conference

The association is holding its bi-annual conference in Tunis in October 2014 when an attendance by members of the judiciary of 70 countries is expected. The event also includes a pre-conference training programme for judges from North Africa and other regions.

Upper Tribunal judge Hugo Storey is current President of the European chapter of the IARLJ and under his stewardship links have been forged between the chapter and the European Asylum Support Office (EASO), an agency of the European Union which is based in Malta.

Established by EU Regulation in 2010, EASO aims to help member states fulfil their European and international obligations and to provide practical and technical support. In doing so, it contributes to the development of the common European asylum system. As well as providing operational support to member states with specific needs illustrated recently by its activities in Italy and Greece, it also provides evidence-based input for EU policy-making and legislation that has a direct or indirect impact on asylum.

EASO has worked closely with the IARLJ since 2011 with a view to discharging its obligations under the Regulation. In particular, EASO is required under Article 6 to:

> 'Establish and develop training available to members of all national administrations and courts and tribunals and national services responsible for asylum matters in member states.'

True to its objectives, the IARLJ has emphasised the need for EASO to respect the independence of the judiciary and tribunals in providing the training. The Regulation itself provides for '. . . full respect of the independence of national courts and tribunals.'[1]

EASO has accepted that judges need to be involved at every level for the creation of the training material and its delivery. Candidly, its director has indicated that without judicial support it will be unable to achieve its objective.

A particular feature of asylum law is the impact of international instruments including the well-known Refugee Convention and Human Rights Convention and, in addition, a number

of European directives as well as the Charter of Fundamental Rights. Such instruments are relevant to the field of refugee law in the United Kingdom where they have been transposed into domestic law and the Immigration Rules. However, it is open to the parties to make direct reference to the directives where it is considered that transposition has not been faithful or is inaccurate.

The IARLJ relies on subscriptions for its activities. In the light of the increasing need for consistent judicial decision-making throughout the European Union, the association made an application in 2013 to the EU Commission for funding. This was positively received and the upshot is that substantial funding will be provided through EASO for allocation to the IARLJ to enable it to be a partner with EASO in the creation of judicial training materials in key areas of refugee law over the next three years.

A number of judges in Immigration Chambers of the Upper and First-tier Tribunals have been providing assistance to EASO in relation to its creation of guidance on children and vulnerable witnesses and country-of-origin information, a crucial aspect of any reliable decision-making.

Europe-wide pilot

With specific focus on EU-based judicial training, Upper Tribunal Judge Storey, First-tier Tribunal Judge John Phillips (who is the training judge of the First-tier Tribunal, Immigration and Asylum Chamber) and I are on the drafting committee for a pilot on training material that will shortly go into print and will be available for the training of judges Europe-wide, including the UK.

The subject matter of this particular material is a controversial one. Article 15(c) of the Qualification Directive[2] provides for protection where a person who is not entitled to refugee protection nevertheless faces a serious and individual threat to his life or person by reason of indiscriminate violence in situations of international or internal armed conflict. As a general principle of refugee law:

> 'Risks to which a population of a country or a section of the population is generally exposed do normally not create in themselves an individual threat which would qualify as serious harm'.[3]

The CJEU has made two landmark decisions in order to assist in the interpretation of the reach of Article 15(c).[4] As readers will be aware, the court is responsible for ensuring that EU law is interpreted and applied uniformly, but unlike the European Court of Human Rights it does not decide the substance of the case. That is left for the national courts.

The experience of the Upper Tribunal in making decisions about conditions in other countries through country guidance cases is well known . . .

The experience of the Upper Tribunal in making decisions about conditions in other countries through country guidance cases is well known and its cases are followed in other European jurisdictions and they have been approved by the Court of Human Rights. In recent years the Upper Tribunal has concluded that conditions in Afghanistan and Iraq did not meet the Article 15(c) threshold whereas in Mogadishu and other parts of Somalia it did. The Upper Tribunal will shortly be promulgating a new country guidance decision regarding Mogadishu and, in due course, a further decision regarding Iraq.

The regime of country guidance is reflected in the practice directions for the Immigration and Asylum Chambers which provide that a reported determination of the tribunal bearing the letters 'CG' shall be treated as an authoritative finding on the country guidance issue identified in the

determination as reflected in the head note. This will be the case unless the decision is expressly superseded or replaced by a later CG decision or is inconsistent with other binding authority. New evidence (or a different issue being raised) may also result in permissible departure from a CG decision. However, the Direction provides that failure to follow a decision (or explain why it does not apply) is likely to be regarded as a ground of appeal on a point of law.

The task of keeping the country guidance decisions up to date is a challenging one for the Upper Tribunal particularly in the light of the expansion of its judicial review work.

Recent developments in the Near East and elsewhere have indicated a compelling need for up-to-date guidance and training for judiciary.

Through its country guidance decisions the Upper Tribunal has been able to influence and shape the training material for judges throughout Europe and to bring about greater consistency. The project between EASO and the IARLJ will further enhance the UK tribunals' role.

Bernard Dawson is a judge in the Upper Tribunal (Immigration and Asylum Chamber).

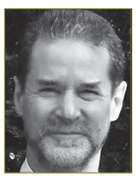
[1] Article 6(5).

[2] Directive 2004/83 EC and the recast Directive 2011/95 EC (the UK has opted out of the latter).

[3] Recital 26.

[4] See *Elgafji* [2009] EUECJ (C 465-07) and *Diakite* [2014] EUECJ (C-285/12).

A long-term project in a NOBLE cause



Through training visits to Albania and Kosovo, *Philip Rostant* discovered two Balkan countries where establishing the rule of law is a task that will require a sustained commitment.

Earler this year, I received a cunningly worded invitation to give up four days' holiday to do some training for the Slynn Foundation in Albania. The foundation is a charitable body founded by Judge George Dobry QC and named in honour of Lord Slynn, former Law Lord and judge at the European Court of Justice. Its principal aim is to promote better understanding between Britain and the countries of Central and Eastern Europe and to contribute to the development of joint action. It is funded by a variety of charitable and government sources.

Albania is among the countries where the Slynn Foundation devotes its resources, principally in the form of human rights and rule of law training for the Albanian judiciary. The indefatigable Sir Henry Brooke is a regular visitor and there have been several seminars on both subjects over the last few years of which the April 2014 course was merely the latest.

. . . there is an enormous gulf of history and culture between British and Albanian judiciaries.

Significant problems

Albania is a country with significant problems. This is not the place to describe its history but it has, in common with many of its neighbours, only recently emerged from communist rule. In Albania's case this was of a particularly insular nature, Enver Hoxha presiding over the only avowedly Maoist (for a period) state in Europe.

Despite considerable inward investment, the country remains extremely poor. It is trying to join the EU but so far has failed even to achieve candidate status. The monitor reports make it clear that its inability to guarantee the rule of law is a major barrier. Whatever may be the truth of the matter, the public's perception of their judiciary is extremely jaundiced. Allegedly, corruption is rife and organised crime is widely believed to have a significant influence over the organs of state, including the judicial apparatus. For its part, the judiciary feels embattled, subject to unacceptable political pressures and appallingly poorly paid.

In that context, a seminar from three British judges on judicial conduct and ethics runs the risk of seeming irrelevant to the point of absurdity. Despite that, the Slynn Foundation training is welcomed. It is hosted by Albania's judicial college, and judges are expected to attend. Each course has the benefit of an Albanian judge as part of the team, in our case Judge Evelina Qirjako of the Supreme Court, an immensely impressive person.

Hierarchy

In the two days we were there, we trained 25 first-instance judges and 26 members of the Tirana Court of Appeal. Given the importance placed by Albanian judges on the judicial hierarchy in their own country, a team comprising an employment judge and two district judges (Debbi O'Regan and Gordon Lingard) might have been seen as a bit 'low level' but I never sensed that our status was treated as a ground for disregarding the message. Rather, the problem is that there is an enormous gulf of history and culture between British and Albanian judiciaries. The concept of judicial independence, for instance, is at least honoured and understood in our country, albeit that it can occasionally come under threat. In Albania, despite the existence of a code of judicial

ethics and a formal adoption of the Bangalore Principles, it is largely a matter of theoretical aspiration rather than of lived experience.

To say that the training itself was challenging would be a masterpiece of understatement. There is almost no culture of extended judicial training, and all three British trainers found themselves improvising and generally playing things by ear rather than delivering the scripted course word for word. Largely, this was led by evident, if somewhat anarchic, engagement by the judges and by a desire on our part to be responsive to particular issues of concern as they unfolded. Overwhelmingly, the trainees wanted to tell us their stories, to explain how and why things were so hard for them. We had to find a difficult balance between acknowledging the difficulties they faced and at the same time insisting on the uncompromising requirement of the highest standards of conduct and probity. Our indefatigable translators did their best in the face of overwhelming odds.

Kosovo is in many ways an even more troubled country than its southern neighbour.

College approach

Not long after I returned from Albania, I was approached by Professor Jeremy Cooper on behalf of the Judicial College to ask if I would be prepared to go to Kosovo in June. This time the team was to be me, the tireless Debbi O'Regan and Judge Andrew Hatton. Andrew and Debbi had both been to Albania before and Andrew had spent a year in Kosovo as part of the EULEX mission. On this occasion we were to be training Kosovar judiciary at the request of the well-established German agency for international cooperation GIZ.

I could hardly resist another chance to work in the Balkans, particularly as I knew that the rest of the team were experienced Balkan hands. Kosovo is in many ways an even more troubled country than its southern neighbour. Its independence is not universally recognised, particularly not by Serbia, and 20 per cent of the population is Serbian, with the rest Albanian speaking. It is run by what seemed to me, even after only two days there, to be an evidently uncomfortable troika of EULEX, the United Nations Mission in Kosovo (UNMIK) and a local democratic structure which, while we were there, was in the throes of trying to select a prime minister following an inconclusive election. It is a small country (population two million) and is even further away from the stability and potential economic lifeline of EU membership than Albania. There is an evident and growing resentment against foreign interference in its affairs, with anti-UNMIK/EULEX graffiti sprayed on the walls of Pristina. Nevertheless, after the conflict in 1998/99 we have a moral duty to Kosovo and, in any event, a stable Balkan region (a matter which also informs UK efforts in Albania) is an important and long-term foreign policy aim.

Training doubts

It seems hard for us to recall, but it is only since the 1970s that the British judiciary has embraced training. The Kosovar judges (who share all of the difficulties faced by their Albanian counterparts) are evidently not convinced as a whole of its value. Training for the judiciary is not compulsory and on both days attendance was well below advertised numbers of attendees.

On the first day we were training a group of five potential judicial trainers. Kosovo has, like Albania, an institute devoted to training its judges once they are appointed and are out of their formal academic education. Director of the Kosovo Judicial Institute (KJI) is the energetic Valon Jupa and his dedication and expertise was evident. However, his trainers, (volunteers who, nevertheless, are paid a supplement) with one or two obvious exceptions, do not exhibit

the same commitment. Trying to get them to embrace training methods more challenging or imaginative than four hours of chalk and talk was what might best be termed as a 'hard sell'. Despite this, we all felt that training future trainers was where best value for money was to be had and we have encouraged GIZ and the KJI to think about this for the future. On reflection, it may well be that this ought also to be a message for the Slynn Foundation in its future work in Albania.

In both countries I had the sense that my individual efforts were like trying to alter the shape of a granite rock with a wooden toothpick. Talking to 15 Kosovar first-instance judges about judicial ethics (day two's activity) or even helping local judges to train their colleagues on that and other subjects, will not by itself bring about much-needed change. Nevertheless, I think that as part of a continuing effort it has a valuable part to play in helping our Balkan colleagues. At the very least it demonstrates solidarity and, perhaps coupled with generational change and pressure by others on other aspects of the Balkan body politic, may ultimately prove to have been a key component in establishing of the rule of law in those countries.

Despite emerging from each of the visits feeling that I would now quite fancy a 20-day, five-handed discrimination case as a rest, I also felt that I had been privileged to be there. The Albanians and Kosovars that I met were uniformly generous-spirited and hospitable. I was never made to feel that my presence was resented, as it might easily have been. I very much hope to have the chance to return and add my further efforts to what strikes me as a noble cause.

Philip Rostant is an Employment Tribunal judge.

'Unruly' dilemmas bring law to the fore

In Israel, *Paul Bompas* discovers how the legal system in a country of immigrants is responding to the 'complex and intractable subject' of immigration and asylum.

Through a serendipitous chain of events, Jonathan Lewis, Designated Judge of the Immigration and Asylum Chamber (IAC), led a first visit of 15 immigration judges and spouses to Israel in May 2011 to learn about the country's immigration and asylum system. This visit was so successful that it led to a second trip in May 2013 of 23 judges and spouses, including myself as a non-legal member of the IAC. For this visit the programme was broadened to include wider aspects of Israel's judicial system.

Both visits were unofficial and arranged by Jonathan in conjunction with Ohad Zemet, an immigration lawyer from Israel's Ministry of Foreign Affairs (MFA). They were open to all members of the IAC, entirely at the personal expense of participants, and within the leave entitlements of those judges who are salaried. For some participants the second trip was an opportunity to return to a country they were very familiar with, but for others like myself it was a totally new experience.

. . . the public can even participate, with the chair's sanction, in the committee debate, if their contribution is important to the subject under consideration.

The Knesset

Our first visit was to the Knesset, the Israeli Parliament, high on a hill overlooking Jerusalem. Our visit also included a tour of this magnificent building with its modern minimalist appeal, somewhat reminiscent of Dr Who's Tardis with its external size being no match for the vast internal underground space. As well as the tour of the building we were given a guided talk about the workings of Israel's unicameral parliament and the significant role of the committees. Legislation starts with a preliminary vote in plenary session and then passes to a committee. After a sequence of debate both within committee and the full parliament, the legislation finally becomes law after the third reading in committee, and signature by the country's President. The role of the committees is prominent in the legislative process; however, there was a striking democratic aspect in the process, insomuch as the general public are allowed to sit in at the hearings of most committees and can ask questions of the committee members and advisers. Moreover, the public can even participate, with the chair's sanction, in the committee debate, if their contribution is important to the subject under consideration. This was our first encounter with what we learned of Israel's open democratic process – Israelis' opportunity to question and challenge the state.

After this introduction to government, we transferred to the MFA where we were given a series of presentations, beginning with a candid account of the current Middle East situation by a senior political analyst, Ms Eynat Schlein-Michael, Head of International Affairs Bureau, Centre for Political Research. She referred to the 'Cell Phone Spring' (Arab Spring) as being a change of historical magnitude, in that the uprisings were of indigenous peoples against their own states, as against colonial powers. There was recognition of the growth of 'political Islam' with pressure for legislation of Sharia law. The difficulty in making an assessment was that there were '50 Shades of Green' and it was difficult to

foresee a general conclusion to the unrest, with the potential threat to the borders of countries established following the collapse of the Ottoman Empire; some states may even be threatened by complete disintegration, such as Libya, Yemen and Iraq. Ms Schlein-Micheal's enthusiasm and her preparedness to answer our questions frankly and openly was much appreciated by the group, especially her responses covering the many issues facing Israel from its neighbours, in particular Israel's dilemma regarding any humanitarian action in respect of Syria.

Development aid

Our second presentation was from Mr Ilan Flus, Director, Diplomacy and Development Department, on its work in disaster relief and development aid to the world. Israel does not give financial aid, but provides aid through capability programming. Examples were given of field hospital responses to disaster-hit countries. Invariably Israel is the first country to have a field hospital up and running in a disaster zone, as it did in Haiti. Israel's contribution is focused on health, disaster preparedness and emergency assistance. In development aid, Israel is leading the world in respect of agricultural technology, in particular with irrigation systems. It is sharing this experience with countries such as Kenya, Ukraine and Ethiopia. The group was able to witness some of Israel's knowledge and experience with this technology, when the following day in the Negev desert we saw irrigation systems in operation, where under shaded structures salad crops for the world market were being grown in the barren hot countryside.

After a lunch at which we made presentations to the MFA and to the key people there who had arranged our visit, we met Peter Deck, a Senior Protection Officer of UNHCR, based in Israel. He provided us with some opinion that appeared to challenge Israel's policy towards asylum-seekers, the inference being that so few have been granted refugee status, despite approximately 12,000 illegal immigrants per year entering the country between 2006 and 2011. Since 2011, a seven-metre-high fence, built to high-tech standards, has been erected over 220 kilometres along the Egyptian border. Following its completion earlier this year the result has been that in the first quarter of 2013 there have been only 30 new arrivals. While the UNHCR recognises Israel's legitimate right and reason to control entry into the state, the agency's concern is with Israel's management of the Convention, and its interpretation of definitions associated with asylum claims. Furthermore, the Law to Prevent Infiltration is highly controversial, and is, or is likely to be, subject to challenge in the courts.

. . . Israel does not currently participate in the UN Human Rights Council as it regards the demands by political lobbies as a hijacking of the legal process . . .

International law

Following the presentation by UNHCR we heard from Ms Sarah Weiss Ma'udi, Deputy Director of the International Law Department, on aspects of international law affecting Israel. We were informed that Israel does not currently participate in the UN Human Rights Council as it regards the demands by political lobbies as a hijacking of the legal process, with many demands against the interests of Israel. Israel is faced by three challenges: first, how such issues are framed; secondly, the abuse of legal challenge, in particular what it considers the hijacking by political forces under the guise of human rights; and thirdly, asymmetric warfare in respect to the concepts of proportionality, rationality and relativity. The presentation included information on the Turkish ship flotilla incident of 2010 and the subsequent Israeli report known as the Turkel report.

Our first day concluded in the evening by attending, as guests, the Hebrew University of Jerusalem Faculty of Law, to hear the annual Lionel Cohen Lecture given this year by Sir Stanley Burnton LJ on 'Immigration and International Law'. The lecture took us through the jurisprudence of human rights and immigration control, and the growth of the law since the Second World War. Poignantly, Sir Stanley said that in respect of human rights, knowledge of Article 3 was relatively easy to follow; however, Article 8 was very hard. In his words, 'Article 8 is the least defined and is the most unruly of all the Articles'. He referred to the 'push' countries and the 'pull' countries and the difficulty for the 'pull' countries trying to return citizens to the 'push' countries. He concluded his thought-provoking lecture by a quote of Margaret Thatcher, 'You can't beat the market', and adding that the same could readily apply to immigration.

Gaza border

Our second day began with an early start by coach to south-west Israel, to the town of Sderot, less than a mile from the border with the Gaza Strip, and less than three miles from and within sight of Gaza City. This enabled us to hear the first-hand experiences of those who lived in the town during the period of more than 10 years when Sderot came under regular attack by rockets fired from within Gaza – some 1,200 being fired in 2007/08. We toured the town and saw the civil defence precautions that have been built, with 40cm-thick concrete shelters built at bus stops and in the playgrounds of schools, with similar shelters attached to all houses and apartments. One school had a 'missile shield' built over the main building, reminiscent of the shape of an aircraft hangar on a military base. A visit to the local police station yard gave us the opportunity to see the types and origins of missiles that had hit the town. The close proximity of the town to Gaza means that an 'early warning' of an attack is just 15 seconds! It is almost unimaginable that this is sufficient time to run to a shelter, but civil defence training and public information ensures that residents know that this has to be achieved. The psychological impact of constant rocket attack, and the fear of the same, is a priority for the town's authority, and although Sderot is not currently under attack, the psychological damage remains, and such consequence featured in the *Jerusalem Post* while we were there ('Chronic rocket attack exposure can lead to violence in youths, says study').

[The] Sahronim Detention Centre . . . just a few kilometres from the Egyptian border and the Sinai . . . was home to about 1,600 detainees . . .

Negev fence

Following this interesting visit to Sderot, we then journeyed across the Negev desert to the Sahronim Detention Centre, which is administered by the Israel Prison Service, and is located just a few kilometres from the Egyptian border and the Sinai. After being given an overview by the facility commander with statistics showing the reduction in detainees since the construction of the new fence on the border, we were allowed to tour the facility and were able to talk with some of the female detainees. The facility was home to about 1,600 detainees, at that point 1,397 male and 198 female with eight minors and a further seven unaccompanied minors. Despite the facility being in the desert there was no air conditioning and reliance was placed on fans and shielding from the hot day-time sun; however, our conversations with the detainees indicated that, although their long trek from north-east Africa across the Sinai had not brought them the freedom and opportunity dreamt of, they had at least reached safety and were being adequately provided for. There appeared good rapport between the detainees and their guards. Judge Ilah Halebka, the resident judge at the facility, briefed us on the immigration appeal

and review processes, and how a detainee must be brought before a judge within stipulated periods. Most of us found this process somewhat unclear, in that there appeared to be a divergence of understanding and opinion between the judiciary, the immigration authority and the messages given to us from elsewhere. Something that perhaps we had all similarly experienced back home in the UK.

We travelled the few kilometres to view the new high-tech fence on the Egyptian border. It is an impressive construction, with all the necessary surveillance and security equipment. Stretching the full length of the border, the fence has several objectives: first, to reduce the flow of illegal economic migrants across the desert, many of whom had been smuggled into Israel by the Bedouins; secondly, to protect the sovereignty of Israel from terrorist attack; and thirdly, to protect Israel from the lawlessness and cross-border attacks in the Sinai region following the 2011 Egyptian revolution. Certainly in respect of reducing the flow of illegal entries into Israel, the fence has achieved its first objective.

All four academics . . . were candid in their opinions, some even expressing the need for secure managed gates in the Israel/Egypt border fence to allow controlled access for asylum-seekers and humanitarian need . . .

Topics for discussion

On the third day of our visit after a short drive to the Ministry of Justice, the group had the opportunity to have a discussion with Ms Dina Zilber, Deputy Attorney-General (Legal Counselling). This was followed by syndicate discussions with representatives of the Ministry of Justice and the Ministry of the Interior. A list of topics had been agreed in advance between Jonathan Lewis and Ohad Zemet, and members of our group had each prepared a subject. It was apparent that our Israeli hosts were grateful to hear the experience of the immigration judges on the visit, and exchange views. The whole group came together for a report-back session.

We then returned to the Hebrew University of Jerusalem, on Mount Scopus, with its magnificent views across the city, where we were presented with a lively debate with Professor Yuval Shany (Dean of the Faculty of Law), Professor Ruth Gavison, Professor Frances Raday and Dr Tali Kritzman-Amir. The debate was on the topical issue of human rights and immigration. All four academics presented with great passion and knowledge, and were candid in their opinions, some even expressing the need for secure managed gates in the Israel/Egypt border fence to allow controlled access for asylum-seekers and humanitarian need, and also for the need to challenge the recently established anti-infiltration laws. Needless to say academics rarely agree, but the session did allow us to consider all the issues that Israel has to face and we all agreed that we left the discussion far better informed.

An opportunity was given to us to have a quick guided tour of the university, to learn of its origins in 1918, its opening in 1925, and its connection with the Gray Hill family from Liverpool. Through to the modern day, the university has an impressive pedigree and as a seat of learning to students (most in their early twenties after their military conscription service) one could see the reason for its worldwide recognition. Our guide left this writer with two thought-provoking claims. Firstly, Israel has the closest ties with America and Australia, the reason being that all three nations are made up of immigrants. Secondly, in its quest for knowledge, Israel is a nation of violinists and lawyers and does not need any more! More on this later.

A circuitous journey across the city took us to the District Court of Jerusalem where we were able to meet the presiding judge and a number

of his colleagues and learn of the role of the Administrative Court and the hearing of actions against government departments. It is in this court that immigration cases are heard. Some clarity was given to us about the review process of immigration cases; however, with the court being an administrative court, and not a merits appeal hearing, with no live evidence from the appellant, and also not being a separate tribunal, we saw clear distinctions with our own system. We were already aware of how few succeed with asylum claims. The presiding judge left us with the enigmatic words: 'The cover of the ground is the same, wherever we walk.' What could he have meant?

Supreme Court

Our fourth and final day started with a visit to the Supreme Court, a magnificent building constructed using the mellow Jerusalem stone and opened in the early 1990s. In line with the Knesset building, it has a modern minimalist style, but its design reflects the biblical heritage of Israel, and it has an inner courtyard and cloistered passageways. During our visit to the Supreme Court we were given a statistic that gave credence to the comment heard the previous day at the university about a nation of lawyers. Israel has a population of about eight million; however, some one million cases come before the courts each year. In other words if you are an Israeli you are likely to find yourself at some stage before the courts, either as a claimant or respondent. Perhaps more lawyers are needed. After a tour of the building and sitting in on a hearing, Justice Daphne Barak Erez gave us a very informative presentation.

We then transferred to Tel Aviv and the British Embassy where we met and participated in an extremely informative session with Dr Rob Dixon, Deputy Head of Mission, who gave us an account of the UK's position and business links with Israel, an analysis of the Middle East situation, and what may lie ahead for the region. He spoke of the peace initiatives of Tony Blair and John Kerry and was open that failure to make progress in the peace process is likely to have an impact on Israel, and that the UK Government does not recognise a sovereign state of Palestine. Dr Dixon acknowledged, however, that 'the elephant in the room' remains the vexed question of the Israeli settlements, although the point was made that there are widely differing views, political and legal, about them.

The timing was perfect as it pulled together all the strands of what we had learned during the course of our four-day visit.

Immigration

Our penultimate visit was to Mesila, an organisation that offers aid and information to the foreign community in Tel Aviv. Ms Tamar Schwartz gave a moving presentation to us. An estimated 35,000 foreign workers are living in Tel Aviv, many of them without permits. Her account brought into sharp focus the life in Israel for many of these immigrants, most from the Sudan, Ethiopia and Eritrea. With the state making little or no provision for these migrants, Tel Aviv has assumed responsibility for them, using Mesila for hands-on assistance. Ms Schwartz and her team were inspirational in the work that they are undertaking against a backdrop of drugs misuse, crime, poverty and social deprivation.

It was therefore fitting that our last engagement on our visit to Israel was to be escorted by Chief Superintendent Nissan Menashi, the police commander of Levinsky Street police station, around the Neveh Sha'anan neighbourhood of Tel Aviv, the home to so many of Israel's African immigrants and asylum-seekers. The timing was perfect as it pulled together all the strands of what we had learned during the course of our four-day visit. We saw the life of the immigrant in the raw. We saw the practicalities and implications of the debate as to whether immigrants should

be permitted to work or not, whether the opportunity to work draws yet more immigrants, the exercise of discretion by the police, and the need to consider social cohesion and the impact of such a large 'temporary' community on the settled community and the fears that come with it. All these aspects could fall under the banner of 'public interest'. For any sociologist this visit around the district would have been a study in itself, but for this writer it simply rekindled a desire to be 'back on the streets'.

Any fact-finding visit to another country enables one to reflect on one's own practice, and also to consider the alternatives experienced within the host country. Israel is a unique country with the state having only being established 65 years ago. It is a country of immigrants, with differing opinions and views. It is surrounded by countries and peoples who declare that they are enemies of Israel. Our short visit allowed us some insight into the threats, risks and opportunities facing the country.

When considering our subject area of immigration and asylum, in very broad terms the Israeli system is at about the stage of development of that in the United Kingdom before the introduction of individual asylum status determination by a tribunal. Under the pressure of events, Israel is catching up fast, and is now introducing a tribunal jurisdiction. In some aspects its procedures are in advance of those in the UK – for example, the detention of asylum-seekers in detention centres, such as at Sahronim, is subject to much more regular and rigorous legal oversight than is the case in the UK, with a judge permanently based in the Israeli detention centre.

While there were not lessons learned of general application to the immigration and asylum jurisdiction, each of us returned with our own impressions of how another legal and judicial system that partially draws upon the common law tradition addresses similar scenarios. It was clear that in attempting to deal with such a complex and intractable subject as immigration and asylum, the law is assuming, for better or worse, a more and more dominant role, just as it has done in the UK. As a non-legal member of the IAC the visit highlighted to me the dilemmas of any immigration and asylum policy: the balance between humanitarian and economic need and the social cohesion of societies within a state, the merits of permitted work against prohibition, and the vexed question of the nationality of children born in Israel to parents of foreign nationality who are neither deported nor granted citizenship rights or political asylum.

Our visit would not have been possible without the full cooperation of the MFA. We were given access to people, places and information not normally available to a visitor. Each and every one of our hosts showed true interest in the work of the British judges and in return were keen to provide us with all the information we sought. Jonathan Lewis readily achieved the objective of our visit, which was to give us an understanding of Israel's immigration dilemmas and legal system. For the writer the visit has simply whetted the appetite for yet more information about this interesting country.

Paul Bompas is a non-legal member of the First-tier Tribunal (Immigration and Asylum Chamber).

The TALK of 71 countries

Sheridan Greenland **on how judicial and academic experts from around the world share their knowledge.**

The International Organisation for Judicial Training (IOJT) was created in 2002 to promote the rule of law by supporting the work of judicial training institutes around the world. IOJT facilitates cooperation and the exchange of information and knowledge among its member institutes. IOJT has to date 117 members from 71 countries. Six successful conferences have been held, the most recent with the theme 'Judicial Excellence Through Education' held at the end of 2013 in Washington DC. At the previous conference, in France in 2011, I had been appointed Deputy Secretary-General for the organisation and I am a member of the Executive Committee.

It was a privilege to be working with judicial and academic experts from around the world and devise a programme that met the needs of participants, with delegates' experiences ranging from well-established training institutes to those very recently established. Several delegates outlined their experiences trying to support the rule of law in often dangerous and challenging circumstances. Some funded places were available for participants who would not otherwise be able to afford to attend.

The Judicial College's Director of Training for Tribunals, Professor Jeremy Cooper, gave a very well-received seminar entitled 'Teaching Judicial Ethics and Judgecraft'. Delegates were able to exchange training information and see the latest in technological assistance for training. An interesting new interpretation was given to 'going Dutch' in attempting to split the meal bill between 22 European trainers who met in a restaurant for an evening meal. Our hosts, the National Center for State Courts, organised a visit to both the US Library of Congress and the US Supreme Court which were definite highlights of the conference. I hope the security people were not confused when the IOJT banner leading a group of trainers became mixed up with the banners held by demonstrators outside the White House.

An exciting programme of work under four themes – training practices and models, technology, research and academic library – was agreed between now and the next seminar in Brazil in two years. Jeremy Cooper is chairing the first of these four projects. The first edition of the *IOJT Journal* was produced for this conference with a second edition planned and, in collaboration with UNESCO, a 'Judges' Book on Bioethics' is also being drafted. A small number of delegates from IOJT are to visit and assist the Rwandan Institute of Legal Practice and Development in curriculum development and mentorship for professional development.

IOJT has an informative website at *www.iojt.org* from where the first edition of the *Journal* can be downloaded.

Sheridan Greenland is Executive Director, Judicial College.

Opting for strong links of mutual BENEFIT

Jeremy Cooper **commends the work of the European Judicial Training Network and the value of continued membership while warning of the consequences of a change in UK policy.**

The European Judicial Training Network (EJTN) is an important and valuable organisation with which the Judicial College has developed strong links of mutual value. The contribution of the United Kingdom to the EJTN is highly valued and the benefits of our continuing membership are clearly reciprocal.

So who and what is the EJTN? The EJTN gathers the training institutions for the judiciary of all EU member states. It has as its aim the promotion of training programmes with a genuine European dimension for the benefit of members of the European judiciary. In addition to providing a platform for the exchange of ideas and dissemination of experiences in the field of judicial training, the EJTN also serves as a forum for the coordination of programmes within member states relating to aspects of European law. It can also provide an arena for initiatives on EU law and further knowledge of the legal systems within member states. Its flagship is the European Exchange Programme whereby judges spend periods of up to two weeks in another country (either as individuals or in groups) in order to observe at close quarters the workings of that jurisdiction, to meet fellow judges and to exchange ideas (see page 10 for reflections on being a participant in the programme).

Its flagship is the European Exchange Programme whereby judges spend periods of up to two weeks in another country . . .

More recently, the EJTN has developed an interest in promulgating new ideas and best practices in the use of training methods, including e-learning.

Governance of the EJTN is provided by an elected secretary-general, based in Brussels advised by a steering committee of nine member institutions, which may make proposals and institute initiatives, all of which are brought before the general assembly for debate and approval each year. At present both the secretary-general and the steering committee members are elected for a three-year term. A series of working groups with specific areas of responsibility – such as programmes, IT, e-learning – make up an important part of the process. A secretarial staff provides the necessary administrative support for the day-to-day operation of events and seminars throughout the year. Funding comes from the European Commission, which provides subventions covering 95 per cent of the annual costs. The balance is made up by annual contributions from each member state levied on a basis proportional to the size of the country. Thus, as of 2014, the UK, Germany, Italy and France each pay a subvention of 37,750 euros, while a smaller country such as Ireland may only pay 7,500 euros or thereabouts.

The UK is divided into its three constituent elements. Thus there is the Judicial College representing England and Wales, the Judicial Institute for Scotland and the Judicial Studies Board for Northern Ireland. Again the annual fee is sub-divided – so, for example, the NI contribution is a modest sum of about 2,500 euros. This represents remarkable value for money. Thus conferences and seminars on such topics as the European arrest warrant,

cooperation in the provision of evidence in criminal trials, informative visits to the European Court of Justice and the European Court of Human Rights have all been attended by UK members with all expenses covered by funding by the European Commission. There is little doubt that the financial benefits of such funding have far exceeded the actual cost of the annual fee.

All of this, however, is in the process of change as a direct result of the UK Government's decision in December 2013, pursuant to the Lisbon Treaty, to opt out of adherence to several EU treaty obligations. This has already had, and will continue to have, a profound effect upon the continued active participation by the constituent elements of the UK in EJTN activities. In short, from December 2014 although the UK will continue to be a member of EJTN it will pay only a basic fee of 7,500 euros, which will still allow participation in all programmes and events, including voting rights at the general assembly. The downside of this is, however, that no financial assistance will be provided by the European Commission. In Northern Ireland in particular, this will have serious consequences where the budget for judicial training has already been pared to the bone by the Stormont Executive.

The main aim of the Themis project is to bring together future or recently appointed judges from different European countries to enable them to share common values . . .

Training methods working group

From September 2014, a new EJTN working group comes into existence, the Working Group on Training Methodologies. This group will incorporate the current 'technology' and 'training the trainer' sub-groups together with the development of new areas of training methods. The Netherlands Training College was elected by the general assembly as the convenor of the new group (the other candidates were Germany and Italy). The Judicial College will be a member of this working group, and we intend to play a full and active role. There are 12 other members. The group's inaugural meeting will be in Utrecht in September.

Themis Competition

The Themis Competition was created in 2006 jointly by the judicial training institutions of Romania and Portugal, and was formally absorbed into the EJTN framework in 2010.

The competition is aimed at trainee judges and public prosecutors – in most continental European countries, public prosecutors are seen as part of the judicial process – grouped in national teams of three people. A person is considered to be a trainee if they are so regarded under their national law and if they have attended initial training activities for less than two years. Any country where the concept of 'trainee' does not exist (as for example in the UK) may participate with a team composed of judges who, at the date of the beginning of the competition, are in their first year of judicial service, such year commencing with the date when they first took up their appointment as a judge or public prosecutor, irrespective of whether or not they are in the same employment at the time. The competition is open to both fee-paid and salaried judges.

The main aim of the Themis project is to bring together future or recently appointed judges from different European countries to enable them to share common values, to exchange new experiences and discuss new perspectives in areas of common interest.

The project also aims to develop abilities related to the judicial competences of the participants, such as communication skills, debating abilities, critical and analytical thinking, logical reasoning and proper legal writing. Themis has also been

very successful in fostering the development of professional contacts, experiences and relationships between both newly qualified judges and their training judges.

The Themis Competition comprises two different stages: the semi-finals and a grand final. The four semi-final stages allow a maximum of 11 teams each, with the winners and runners-up of each category competing in the grand final.

When registering for the semi-finals, participant teams select a topic that falls under one of the four thematic categories of the competition. Each one of the four semi-finals addresses one of the categories. These are:

- International cooperation in criminal matters.
- International judicial cooperation in civil matters.
- Interpretation and application of Articles 5 or 6 of the ECHR.
- Judicial ethics and deontology.

Each team prepares a written paper on any subject that falls within the category selected for their semi-final. This is sent to all jurors (three per topic) with the necessary anticipation. During the semi-final, each participating team has a maximum of 30 minutes to make an oral presentation of its paper. This presentation involves all team members and any audio-visual technology may be used. Immediately after this presentation, another participant team (chosen randomly) is entitled to ask three questions to the presenting team. After these answers, the jury starts a discussion with the team about the contents of the paper and the oral presentation, lasting another 30 minutes. Each team member must play a broadly equal part in the discussion. The entire competition is conducted in the English language.

In 2013, I was invited to serve on the jury of the semi-final held at the National Training School for Judges in Budapest on the topic of 'Judicial ethics and deontology'. Eleven teams participated in the semi-final, and the event lasted three days in total. The standard of presentation was outstanding, as was the general intensity of the competition. The entire event was conducted in plenary session in a small auditorium. After each presentation, the team was closely interrogated by the jury who sat facing the panel in a 'X Factor style'. The quality of debate was high, and the standard of English of all participants stunning. At the end of the event, after long deliberations and in dramatic fashion our jury announced the winners – Portugal and Italy – before a packed auditorium. These two teams then went on to compete in the grand final, held later that year in Bucharest.

To date only Scotland has entered a team in the Themis Competition from the UK. The Judicial College encourages any recently qualified judges to give serious consideration to putting together a team to enter the 2015 competition. For further information contact Michael Williams (*michael.williams@judiciary.gsi.gov.uk*).

Study of best practices

In 2012, the EJTN won an EU open tender to carry out a study on 'Best practices in the training of judges and prosecutors in EU member states'. In June 2014, the European Commission published its 250-page report.

The report divides training practices into five categories:

- Training needs assessment.
- Innovative training methodology.
- Innovative curricula or training plans.
- Training tools to favour the correct application of EU law and international judicial cooperation.
- Assessment of participants' performance in training/effect of the training activities.

Following an intensive process of empirical analysis, the report showcases 65 interesting practices over a range of training methodologies, many of which could be easily transferable to the UK. A full version of the report can be found on the European e-Justice portal. The July edition of *Benchmark* also contains an article on the report.

The Judicial College came out of this study as a top judicial training institution, being awarded the highest number of 'best practices' of any judicial training body in the EU – six in total.

The six best practices were as follows:

- The Judicial College policy that all our training must include three components: 1) law and procedure, 2) judicial skills, 3) the social context of judging, including diversity awareness.
- The process whereby, through a sophisticated and inclusive training needs analysis, the College developed a completely new training programme for coroners and their assistants in the space of a few months, which is already evaluated as highly effective.
- Development of such innovative training methodologies as the Snowball Technique, which enables large groups to distil complex thinking through a collaborative process to identify a common set of options or ideas in a short space of time. In light of this recommendation, College trainers were invited to demonstrate (to good effect) the technique in action at the EJTN general assembly held in Thessaloniki in June of this year.
- Three individual training programmes were each identified in the report as best practices, namely:
  - The 'Business of Judging', a highly participative cross-jurisdictional course that covers a range of judicial skills and ethics, using role play, DVD and live sessions with actors
  - A course in the 'Social Security' training programme that uses doctors and judges in co-training teams, and also as trainee participants in the same training event, in a way that allows better and deeper understanding of the technical and professional aspects of the adjudication of certain benefit claims.
  - A two-day residential course in the Property Chamber based on a reconstructed full hearing moving gradually through the hearing process in a mixed plenary/break-out format that enables every delegate to participate directly and interactively in the process.

The report also identified two further practices in the Judicial College which they classified as 'promising practices', which were our new 'Leadership and Management Development Programme', and the 'Whole Programme Assessment' recently carried out in the Mental Health Tribunal.

As well as describing our own best practices, this excellent report also provides a wide range of examples of imaginative and innovative approaches to judicial training across the European Union, from which we can learn a great deal. Here are but a few examples:

- In both Italy and France, when judges are first appointed they spend some time in seminars with prison governors, senior police officers, and have placements in organisations such as the national bank and big industries, so that they can better understand how society operates both at a high level – and, in France, on a voluntary basis they can spend time in a prison.
- A particularly interesting example of role play training is undertaken jointly by the German and Turkish judiciary (there is a large Turkish population in Germany), to understand cultural differences and develop a more effective approach to domestic violence cases.

- In Hungary, role play exercises have been developed lasting five days, where every trainee judge plays every role, from defence to judge to prosecutor, to help them understand every aspect of the courtroom.
- Judges in Portugal are given training on how to improve their voice projection and presence in the courtroom by spending time with the singers and actors of the Opera House in Lisbon.
- In Spain, trainee judges work with a serving judge on a live case, shadowing the judge, studying the papers, the prosecution documents and so on. When the judge delivers their decision, the trainee judge simultaneously delivers their own decision in the training college, which is followed by a seminar involving all the case professionals (including the trial judge) to dissect the trainee's performance, and give feedback.
- A number of countries have developed sophisticated systems to enable the judiciary to be trained quickly on the implications of new pieces of legislation. Romania, for example, has invested in a sophisticated e-learning system as part of a holistic approach that includes written materials (sent electronically), lectures streamed live over the web, and live Internet discussions. Bulgaria's investment in a range of forms of e-learning was prompted by the country's inaccessible terrain, and by limited resources, but has proved popular in its own right with many judges now preferring this type of training to face-to-face events – 20 per cent of judicial training in Bulgaria is now delivered exclusively by e-learning.
- France has a highly developed leadership and management training programme offering a series of modules in such subjects as budget management, personnel work, change management, and cooperation with other public bodies. Although the modules are voluntary, 12 per cent of judges chose this programme last year because it is seen as essential for those wishing to become senior judges: in France, the resident court judge is also the court's chief executive officer.
- Again in France, family judges are trained in working with children including sessions with a senior judge and a psychologist on how to ask questions, how to know when a child has had enough and so on. Sessions are filmed and reviewed to give the judge a chance to assess their performance and further develop their skills in working with children.

So, in conclusion, it is my belief that the EJTN is an important and valuable judicial training network with which the Judicial College should continue to maintain a strong connection, notwithstanding the problems caused by the opt-out referred to above. There is no doubt that the contribution of the UK to the EJTN is highly valued (a previous secretary-general of the organisation was in fact a British judge, Victor Hall) and the benefits of our continuing membership are clearly reciprocal.

Professor Jeremy Cooper is Director of Tribunals Training, Judicial College.

'Justi-i-i-i-i-ce for ALL'

Adenike Balogun **reports on the Tanzania conference of the International Association of Women Judges.**

The 12th biennial conference of the International Association of Women Judges (IAWJ) took place from 5 to 9 May 2014 in Arusha, Tanzania, home of the International Criminal Tribunal for Rwanda.

The IAWJ was created in 1991 and is a non-profit, non-governmental organisation whose members represent all levels of the judiciary worldwide and share a commitment to equal justice and the rule of law.

The goals of the association are, in summary, to advance women's right to equal justice and to eliminate gender bias from the judicial systems. To that end, the IAWJ sponsors and promotes research, cooperation and collaboration among women judges of all nations in order to increase awareness and understanding of social, economic, psychological and cultural factors which inhibit women from accessing the courts.

. . . the GLOW project, funded by the Netherlands . . . tells the story of women on the international criminal tribunals in the Hague and Arusha . . .

The UK Association of Women Judges (UKAWJ) is an affiliate member of the international body and a number of UK members, as well as other UK women judges travelling independently, attended the conference.

In keeping with its aims, the theme of the conference was 'Justice for All'. The conference began with a flamboyant opening ceremony – music, dancing and singing from the hosts. There was a keynote speech from the President of Tanzania, Jakaya Kikwete. We also heard from the the country's Chief Justice, Mohammed Chande Othman, who has been instrumental in promoting a significant number of women judges to the higher judiciary.

The opening plenary session reflected on the changing meaning of 'Justice for All' and the difficulties of providing access to justice in an economic climate driven by a need to reduce costs, something which resonated with many of the delegates. One of the panelists for this session was the UK Supreme Court's Lady Brenda Hale, a former President of the IAWJ. There were sessions on the need for a judiciary which reflects society as a whole and includes women; the specific challenges of working in international tribunals; and vulnerable witnesses and the experiences of different jurisdictions in dealing with associated problems.

We also heard about a number of IAWJ projects. One was the GLOW project, funded by the Netherlands, which tells the story of women on the international criminal tribunals in the Hague and Arusha, many of whom have been instrumental in developing the international jurisprudence on rape and sexual assault. The project translates lessons learned at the international tribunals to low-resource courts in developing judicial systems. For example, the application of procedural and evidential rules in a more user-friendly way in order to improve access to justice and break down cultural barriers that, in many countries, prevent women from using the judicial system.

We were told of other recent projects such as the provision of support to the Afghan Women Judges Association (yes, there are women judges in Afghanistan, and they were well represented at the conference) through computer and English

classes; projects in Zambia and Malawi on violence against women and girls; and work in Argentina and Haiti on human trafficking. Many of these projects are led by retired women judges.

There was a Moot Court dealing with a case of alleged sextortion, a form of corruption in which sex, rather than money, is the currency of the bribe. One of the highlights of the Moot was the court clerk, who opened and closed each session by shouting 'co-o-o-o-o-o-o-o-ourt' in one very long breath, apparently a throwback from British colonial rule.

On the practical side, there were sessions on case management, judicial communication, international child abduction and life after the bench.

The IAWJ Board is made up of a number of regional representatives and during the conference the association elected two UK members, myself and Anisa Dhanji, as representatives for Europe and the Middle East. I am a judge at London South Employment Tribunal and a member of the UKAWJ Committee. Anisa Dhanji is an immigration and asylum judge, who also sits as a recorder and Information Rights Tribunal judge. Our first official duty will be to attend a regional conference in the Philippines in 2015.

The conference closed in similar flamboyant fashion to the opening, with the presidency of the IAWJ being passed from Tanzania to the Philippines.

The next biennial conference will take place in Washington DC in May 2016.

Adenike Balogun is an Employment Tribunal judge.

NOTE: The IAWJ, while existing to look at legal issues affecting women, including the fact that women tend to be less well represented in judicial life than men, accepts men as members, certainly in the UK.

Details on membership can be found on the IAWJ's website at *www.iawj.org/membership.html*. Members of the UK association (see *www.ukawj.org/join.html*) can obtain affiliate membership of the international one.

College RAISES its game

John Phillips **on appointments designed to ensure a more professional approach in the international arena.**

The Judicial College will appoint a Director and Deputy Director of International Training for three years from 1 October 2014. Why?

International judicial education is something of an industry. In France, the Ecole Nationale de la Magistrature provides an extensive international training programme from its premises in Bordeaux. The American, Canadian and Australian judiciaries are particularly active in the field. Their common aim is to help developing countries maintain the rule of law and foster judicial independence.

This is not to say that England and Wales has taken a back seat. The College established an International Committee some years ago under the formidable guidance of Dame Linda Dobbs. To say she is enthusiastic about international judicial education is an understatement and she continues to deliver training abroad on a regular basis. When Dame Linda left the High Court Bench, Mr Justice Haddon-Cave succeeded her and also inherited her enthusiasm (probably he already had it).

[The College] never offered training to countries that might welcome it . . . it did not market its product. It was too ad hoc.

The committee's main job is to implement paragraph 24 of the College's strategy:

> 'The College should participate in appropriate international training projects which strengthen judicial independence and reinforce the judiciary as a key institution of democratic governance.'

That sounds pretty high flown. However, at successive meetings of the committee it became apparent that the College did not really have the tools to do the job. Since it was founded in April 2011 the College has received requests to provide training from the judiciary or judicial training institutions of at least 14 countries, from Albania to Rwanda and Malta to Mauritius. It has done what it can but a pound for every time we said, 'It's a good idea but we don't have the resources.' 'Resources' means judge time and money.

The committee was also conscious of two other important factors. First, when it did deliver training abroad, it did so by modifying domestic programmes rather than designing country-specific ones. This was not very satisfactory. Second, it only responded to requests made by others. It never offered training to countries that might welcome it. In other words it did not market its product. It was too ad hoc.

All these factors led the committee to the conclusion that it should professionalise its operation by the appointment of an international course director. It sought and obtained the permission of the Judicial Executive Board for this and a competition was launched, to which there was a heavy response from a high-quality field of applicants – so high, in fact, that the selection panel decided to appoint a deputy international course director as well.

The international course director will be Judge Joanna Korner CMG QC, now a crown court judge and formerly senior prosecuting counsel at the International Criminal Tribunal for the former Yugoslavia. Her deputy will be Judge Mark Ockleton, Vice-President of the Upper Tribunal (Immigration and Asylum Chamber) and a deputy High Court judge with a background in university teaching. Both have extensive international training experience.

What are they going to do? They will have a wide-ranging role whose main features will be:

- Designing training programmes and materials for international use, specifically tailored to the relevant jurisdiction and including topics such as judicial ethics and conduct, judicial skills and training the trainers.
- Marketing and delivering those programmes in collaboration with the Foreign and Commonwealth Office (FCO), the Department for International Development (DfID) and other third-party providers.
- Managing participation by England and Wales in the exchange programme and catalogue programme run by the European Judicial Training Network (EJTN).
- Participating in a new EJTN working group on judgecraft, training methods and judicial conduct and ethics.
- Deciding on and keeping up to date the content of the international area of the College's learning management system.

They will also have a major role in exploring sources of funding for international judicial education. Here the College expects to collaborate much more extensively with the FCO, DfID and other international agencies and providers.

The College wishes them both well. Together they will bring greater professionalism to the College's international activities and through them the College will become a much more active player in this important field.

John Phillips is Director of Training for Courts, Judicial College.

Enquiries for the attention of the Director of International Training or the International Committee should be sent to: *international@judiciary.gsi.gov.uk*.

AN EU IDEAL WRIT LARGE

Jonathan Lewis **was the UK representative on a study visit to the Court of Justice of the European Union.**

SOME 35 PARTICIPANTS from virtually all of the member states of the European Union took part in the November 2013 visit to Luxembourg. Excellently organised by the Exchange Programme Department of the European Judicial Training Network, the two intensive days included hearing part of a Swedish copyright case, presentations by people working at the court, a visit to the library, two gracious lunches and continuous fitness training traversing the long corridors of the court building.

Those who work within the Immigration and Asylum jurisdiction are accustomed to referring to European legal authorities. I realise that until now I have not sufficiently differentiated decisions of the Court of Justice of the European Union (CJEU), based in Luxembourg, and the European Court of Human Rights (ECHR), based in Strasbourg.

This distinction matters, because:

- Decisions of the CJEU are binding.
- For the most part the CJEU resolves issues, not cases, ruling on issues of EU law submitted by national courts in references for preliminary rulings and sending its decision to the national court to guide it in deciding the case.
- The CJEU must take all cases submitted to it which it judges to meet its criteria for admissibility, rather than being entitled to select its cases.

In each of these important respects, the CJEU differs from the ECHR. Decisions of the ECHR are not in legal principle binding; section 2(1) of the Human Rights Act 1998 provides that a national court is to 'take into account' its decisions. It decides cases substantively, and selects those which it will accept.

The CJEU sits in three tiers. The first is the European Union Civil Service Tribunal, with seven judges, any three of whom normally sit on a case. It determines disputes between EU institutions and members of their staff.

The second tier is the General Court. This comprises 28 judges, one from each member state of the EU, of whom normally any three sit on a case. It determines appeals against decisions of the European Union Civil Service Tribunal. It also determines substantively actions brought by member states against the European Commission and actions brought by individuals and organisations against institutions of the EU.

The Court of Justice comprises 28 judges, one from each member state. Its essential task is to interpret and rule upon EU law.

The third and highest tier is the Court of Justice. This also has comprises 28 judges, one from each member state. Its essential task is to interpret and rule upon EU law. It is not an appellate court from national courts. It rules on the interpretation of EU law to guide the referring national court, and is the unique point of reference for the interpretation of EU law. It has created much of the case law of EU law on issues such as the direct effect of EU law, free movement of people and goods, freedom to provide services, equal treatment, respect for fundamental rights and European citizenship.

The Court of Justice sits in various judicial configurations of one judge (occasionally), three judges (in 86% of its cases), five (in 1% of its cases), 13 (the Grand Chamber, sitting on complex cases or at the request of a member state or an EU institution) and 28 (rarely, on cases of exceptional importance).

The Court of Justice hears appeals from the General Court, deciding them substantively or remitting them. It also hears direct actions, normally brought by the European Commission, about whether a member state has fulfilled its obligations under EU law, and applications for the annulment of an action taken by a community institution, such as a regulation or a directive, or for the failure of a community institution to act. The vast majority of its work though is references for preliminary rulings.

Virtually all national courts and tribunals are entitled to make a reference for a preliminary ruling on an issue of EU law. The court considers some 600 references each year. When a reference is received it is translated into all of the other of the 24 official languages of the member states. It is submitted to the member states, to enable them to decide whether they wish to make submissions, as they are entitled to do. Norway, Iceland and Liechtenstein, although not member states, are also entitled to make submissions.

The court has an annual budget of €350 million. It employs more than 2,000 people, including some 600 to 700 lawyer linguists.

On a matter judged sufficiently important or novel, one of the Advocates-General will prepare an opinion to guide the court. The parties lodge written submissions. There is an oral hearing, addressed by legal representatives for the parties and for any state which chooses to make submissions. The submissions are interpreted simultaneously into each of the languages of the listeners. Sometimes the oral hearing is of relatively little importance, because the issues have already been developed in written submissions.

The judges meet to discuss the case, which by custom they do in French, which is the working language of the court. One of the judges is appointed the reporting judge, and he takes the lead in writing and circulating the judgment. The court aims to provide a single judgment. So this is sometimes a negotiated compromise, which can result in the reasoning not being as tight as it might be. If necessary there is also a minority dissenting judgment. The judgment is translated into all of the other official languages of the EU member states. Typically the process for a reference for a preliminary ruling takes some 18 months.

The court has an annual budget of €350 million. It employs more than 2,000 people, including some 600 to 700 lawyer linguists. There are 24 linguistic units, representing the 24 official languages of the member states. So there are 552 (24 x 23) linguistic combinations. In 2012, almost one million pages were translated. Each of the linguists must be fluent in at least two official languages of the EU as well as in French. Language training is provided to enable linguists to learn other languages.

(For my two-day visit, I was in the fortunate position that the language used was English, all of my fellow participants kindly speaking my first language throughout.)

The building which houses the CJEU is grand and its facilities gracious. There are several buildings housing the staff, including two tower blocks for the linguists. The building exudes the supra-nationalism of the EU and the grandeur of the European ideal. Wherever one finds oneself on the spectrum of views about the European venture – from a noble cause in the aspiration towards integration, harmony and the European ideal to a misguided, hubristic and profligate folly – the building and the operation of the CJEU will substantiate that view. Perhaps the last word should be that of the Polish judge who said to me: 'I'm just a little judge from a little town.'

Jonathan Lewis sits in the Upper Tribunal (Immigration and Asylum Chamber).

Any Questions? in SKOPJE

Martha Street **on the pleasures of brainstorming in different dialects and the sight of 'monumental mothers'.**

Off the dual carriageway in the centre of Skopje, approaching midnight, down what appears to be a dirt road with a deep ditch alongside, through someone else's car park, we stop at a fan-shaped, glistening white flight of steps debouching nowhere in particular. Two flights up (no lift, no ramp), is the entrance to the hotel – well-equipped, comfortable, with stunning views of Skopje from the roof terraces and ready access to the old town through someone else's cafe. An additional feature is the swimming pool – occupying half the top-floor restaurant, but purely for ornament.

The Former Yugoslav Republic of Macedonia declared independence in 1991. Its official name is the Republic of Macedonia, but it is admitted to the United Nations under the acronym FROM while negotiations, particularly with Greece, continue. FROM is a lamentable name for a country, so I will assume that the negotiations eventually permit the title 'Macedonia'.

The Organisation for Security and Cooperation in Europe invited the Judicial College to provide a seminar on judicial writing skills to Macedonian judges, so three of us – myself, Hugh Howard, Regional Tribunal Judge, and Christa Christensen, Employment Judge – set off from Bristol in early October, destination Skopje.

The training was in Macedonian, so we worked with simultaneous translation by two interpreters who had no small task during heated group discussions, since they were dealing with a number of different dialects and accents. Attending the course were judges from the country's minority Albanian community. A lot of attention is paid to full representation of the ethnic mix, with the minority groups such as Albanian and Roma guaranteed political influence. Albanians are perhaps 25 per cent of the population, with the other minority ethnic groups some 10 per cent. More than half those attending, including the two most senior judges present, were women.

We were training judges who deal with criminal matters, at all levels, from the President of the Court of Criminal Appeals to a clerk working towards a judicial career.

We had been sent examples of their judgments in advance. It is perhaps fair to say they were long and elaborate, abiding to strict formal requirements including lengthy recitations but lacking clarity in terms of the explanations for the decisions made.

The lack of experience of participative training provided some interesting moments.

From our invaluable interpreters we learnt that our Macedonian colleagues were unused to participative training; they also gave us useful insights on the small-group discussions which were not fully translated.

The lack of experience of participative training provided some interesting moments. In having a brainstorming session, armed with flip charts, we had expected pithy, perhaps one-word, contributions from the floor. Instead, in answer to the opening question 'What makes a good judgment?' we had a lengthy peroration from the President of the Appeal Court, explaining fluently the formal requirements, ending with a smooth reiteration that all those requirements were fully met by the judiciary. Others held to the same style, so each contribution was in measured terms, carefully argued – a bit like the BBC's Any Questions? but at greater length and without the interruptions!

They had treated the opening exercise with similar seriousness; when asked to give a numeric value to a number of words referring to probability – 'How likely is likely?' – they pondered conscientiously and then gave a satisfactorily wide range of answers, which successfully got some laughs and broke the ice. This is an exercise Hugh has used for many years with happily surprising results: interesting that it worked in a language we knew so little of.

The case studies used provided some challenges. The first one was based on an allegation of sexual harassment by a dental nurse, the complaint being against the dentist in whose practice she worked. The initial task was about the assessment of credibility and there was a vigorous debate, with the participants identifying reasons for being convinced by the nurse. On splitting into groups to write a judgment, however, a silent majority declared itself. One of the witnesses in the case is dismissive about sexual harassment: 'You have to put up with it.' There was some sympathy for that view and that it would not be reasonable to take it too seriously. The dentist's business and reputation were, after all, at risk.

The second exercise was on a criminal assault case and we were using the kind of reasoning that we train our own judges in – working from the known facts to the disputed ones, analysing the evidence and identifying and explaining what is preferred and why evidence is rejected. Macedonia is one of the Council of Europe countries but not in the European Union. So European directives do not apply, and the thinking about discrimination issues is perhaps somewhat old fashioned. We were therefore also quietly raising issues about preconception and prejudice, using for example, the recent article in *Tribunals* by Linda Seymour on confirmation bias, and encouraging them in every case to test their thinking by constructing the best case that they could for the opposite outcome.

The focus of the training was on giving clear reasons for assessments made. The issue of formal language was addressed – there were the same bad habits as our own lawyers in the use of language that is not transparent even to a sophisticated reader. From the translated judgments came expressions such as 'substantiated the above listed', 'the dispositive part', 'the competent institution', 'the court opines', none of which you would hear over the breakfast table. Our task was to encourage effective communication in emphasising that judgments have to be understood by everyone, not just lawyers and academics.

This is a new country, with the government establishing new political and cultural institutions.

It was not all work: we had time in the evening to wander round Skopje and a tour was arranged for us. One of the government's responses to the recession has been to create jobs by constructing a grandiose city centre, well peopled by giant sculptures of folk heroes – somewhat bemusing the public to whom these heroes are not just unfamiliar but unknown! This is a new country, with the government establishing new political and cultural institutions. Skopje itself was devastated by the 1963 earthquake so the town now is a mixture of old, with some good reconstruction and some patching up, and the hyper-modern. We visited a mosque, drank Turkish tea, bargained for sweet and hot paprika, and tested the local beers while illuminated by pink, green and mauve lights from the fountains that bathed the feet of the lions, the warriors, the horsemen and, glory be, the monumental mothers!

Our reception was overwhelmingly and gratifyingly warm. A great experience.

Martha Street is a District Tribunal Judge of the First-tier Tribunal (Social Entitlement Chamber).

AIMS AND SCOPE

1 To provide articles to help those who sit on tribunals to maintain high standards of adjudication while remaining sensitive to the needs of those appearing before them.

2 To address common concerns and to encourage and promote a sense of cohesion among tribunal members.

3 To provide a link between all those who serve on tribunals.

4 To provide readers with material in an interesting, lively and informative style.

5 To encourage readers to contribute their own thoughts and experiences that may benefit others.

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