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Collaborators at domestic jurisdiction: the case of the Basque Government in the setting up of the new Judicial Office in the Basque Country

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Abstract

The Administration of Justice in Spain is going through a deep modernisation process aiming both at procedural and organisational reforms. The setting up of the new Judicial Office is precisely the major change of the organisation of the Administration of Justice in the last century. In this context, there is a shift in the role played by the regional governments with responsibilities in the field of Justice, as far as these regional governments are not only collaborators of the Judiciary at domestic jurisdiction, but they also become “actors” as they have decision making powers to create, to design and to organise the common procedural services of the Judicial Office and, hence, to set up the Judicial Office in each judicial district in their territory.

This text presents the context and the reasons behind the setting up of the Judicial Office as a new way of organisation of the Spanish Administration of Justice; the Judiciary in Spain and the responsibilities of the regional governments in the Administration of Justice; the meaning of the Judicial Office and its guiding principles; the role of the Basque Government in setting up the Judicial Office in the Basque Country, paying special attention to its activity in the field of standardization of processes, the quality system, and of information, communication and coordination; the results of the first Judicial Offices. Finally the paper questions whether the regional or national governments are just “collaborators” or real “actors” of the Administration of Justice at domestic jurisdiction.

Key words

Modernisation of the Administration of Justice; Judicial Office; units directly assisting the judges (*UPAD - unidad procesal de apoyo directo-*); common procedural services (*servicios comunes procesales*); role of the Basque government in the Judicial Office; standardization; quality system; information; coordination; devolution and autonomy in the field of Justice; Basque Government competences in Justice.

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Introduction

The organisation of the Administration of Justice in Spain has not been changed in more than 100 years. This "stagnation" means that the organisational structures have not been adapted to new requirements and circumstances in order for the Administration of Justice to be able to provide efficient services meeting quality requirements. Consequently, there has been a general long-standing poor opinion in the perception of the performance of the Administration of Justice in Spain and, with a view to identifying the real causes of the weaknesses of the Administration of Justice, the Spanish General Council of the Judiciary worked on a White Paper on the Justice approved in 1997 (*Libro Blanco de la Justicia* 1997).

The White Paper on Justice drew some key conclusions on the need for rearranging the organisation of the Administration of Justice: the judicial system could not afford providing a small Administration based on one-judge, on a single individual, and it should concentrate the common services needed by all judges in "common procedural services", i.e. units that would assist all judges. By applying this reform, the Administration of Justice would work according to principles such as specialisation and efficiency. Moreover, it was considered necessary to organise the Judicial Office under a clear hierarchical organisation with differentiation of responsibilities. As regards the personnel, two main points should be dealt with: on the one hand, each of the three categories of the so called "personnel" –not needing a higher education degree– should have clearly defined commitments, tasks and duties, avoiding a situation where different categories do exactly the same work; on the other hand, the personnel should proceed, if not identically, at least in a similar way, no matter for which judge, or court they work or in which judicial district. The latter point would apply not only to the personnel but also to the clerks, with a view to reinforcing the legal security of proceedings also in the organisation of the Administration of Justice.

Following the prescriptions of the White Paper, in 2002 the two main Spanish political parties, the socialist party and the conservative party, reached a State-agreement on the reform of the Administration of Justice¹. A year later, in 2003, all political parties represented in the Spanish Parliament adopted unanimously a Chart on the rights of citizens before the Administration of Justice², highlighting that the Administration of Justice should be also considered as a public service and, therefore, citizens should be provided with the best public service possible.

Finally in 2003³, the Organic Law of the Judiciary was modified to introduce, among others, a new organization of the so called "Judicial Office": the organisation to support the judges and magistrates in the performance of their judiciary commitments, i.e., to judge and to assure that judgements are enforced. Notwithstanding, the implementation of the Judicial Office had to wait until May 2010, when the required accompanying laws entered into force, after being adopted in November 2009⁴.

The Judicial Office is one of the driving measures foreseen to "modernize" the Administration of Justice in Spain. In fact, it is under the headline of the

¹ *Pacto de Estado por la Justicia* agreed on 20th May 2011 by the Spanish Government, by the Socialist Party (*Partido Socialista Obrero Español – PSOE*) and by the Conservative Party (*Partido Popular*).

² *Carta de derechos de los ciudadanos ante la Justicia*. A non-legislative proposal approved unanimously by the Plenary of the Congreso de los Diputados on 16 April 2002.

³ Ley Orgánica 19/2003, de 23 de diciembre, de modificación de la Ley Orgánica 6/1985, de 1 de julio, del Poder Judicial (LOPJ). Boletín Oficial del Estado (BOE) num. 309, 26 December 2003.

⁴ Ley Orgánica 1/2009, de 3 de noviembre, complementaria de la Ley de reforma de la legislación procesal para la implantación de la nueva Oficina judicial, por la que se modifica la Ley Orgánica 6/1985, de 1 de julio, del Poder Judicial. 9 and Ley 13/2009, de 3 de noviembre, de reforma de la legislación procesal para la implantación de la nueva Oficina judicial. Boletín Oficial del Estado (BOE) núm. 266, de 4 de noviembre de 2009.

"Modernisation of the Administration of Justice"⁵ where all initiatives related to the reform of this Administration are to be found within the organisational structure both of the Spanish General Council of the Judiciary and of the Ministry of Justice. Nevertheless, although the Judicial Office is the main pillar of this reform, there are also other important initiatives, such as boosting the use of new technologies and, more precisely, instructing each case or file through a digital application (*aplicación informática procesal*) and working on requirements to make possible the development of the digital file (*expediente digital*)⁶ and the paper-free Office.

As regards the notion of the Judicial Office, it has to be said that it relates not only to organisational matters, but also to procedural ones.

This paper will focus on the organisational point of view of the new Judicial Office and on the role played by the Basque Government in its implementation in the judicial districts in the Basque Country.

1. The Judiciary in Spain and the responsibilities of the regional governments in the Administration of Justice.

The Spanish Constitution (1978) in its Title VI sets the main principles of the Judiciary. More precisely, according to article 117, the Judiciary is single or unitary for the whole of Spain. Besides, within Title VIII on the territorial organisation of the State and the distribution of competences, article 149.5 assigns to the State the exclusive responsibility of the Administration of Justice.

Nevertheless, the Spanish Constitutional Court, in Plenary, in its Judgement 56/1990, of March 29th made the distinction between the strict sense of the Administration of Justice understood as the Judiciary or the jurisdictional power, and the extensive interpretation of the Administration of Justice, taken as the provision of human and material resources required to assist the judges in fulfilling their jurisdictional commitments, this is, "the Administration of the Administration of Justice". By this Judgment, the Constitutional Court recognizes the responsibilities of the Spanish regions or Autonomous Communities in the provision of material and human means for the Administration of Justice or within, the so called, "Administration of the Administration of Justice", whenever it is so foreseen in their "basic laws" i.e. in their Statutes of Autonomy.

In the case of the Basque Country, article 13.1. of the Basque Statute of Autonomy⁷ provides that the Basque Government will have the same powers as those conferred to the Spanish Government by the organic laws of the Judiciary as well as the General Council of the Judiciary. Moreover, the Basque Statute has a specific Chapter (number III) devoted to the Administration of Justice in the Basque Country. Special attention is to be paid to article 35.3 that assigns to the Basque Government the responsibility of providing the material, economic and personal means to the service of the Administration of Justice. This specific legal provision is especially important, because having or not this type of responsibilities makes the difference between regions with or without powers in the field of the Administration of Justice in the wider sense. In fact, in terms of the territorial organisation of the "Administration of the Administration of Justice", a distinction is made between the "territory of the Ministry of Justice" –it relates to the central judicial organs for the

⁵ *Plan de Modernización de la Justicia 2009-2012* (www.mjusticia.gob.es) of the Ministry of Justice and *Plan de Modernización de la Justicia* approved on 12th November 2008 by the Plenary of the General Council of the Judiciary (www.poderjudicial.es).

⁶ On 4 March 2011, the Spanish Government approved and forwarded to the Parliament a legislative proposal on the use of communication and information Technologies in the Administration of Justice (*Proyecto de ley reguladora del uso de las tecnologías de la información y la comunicación en la Administración de Justicia*). On 5 July 2011 the Spanish Parliament adopted the bill proposal and it became *Ley 18/2011, de 5 de Julio, reguladora del uso de las tecnologías de la información y la comunicación en la Administración de Justicia*.

⁷ *Ley Orgánica 3/1979, de 18 de diciembre* (Jefatura del Estado), de Estatuto de Autonomía para el País Vasco. BOE num. 306, 22nd December 1979.

whole of Spain, as well as to those regions with no responsibilities in the field of Justice⁸- and the Autonomous Communities or regions with responsibilities in the provision of human and material resources⁹.

In 1987 the Basque Government took up the transfer of the responsibilities for providing the Administration of Justice with material and economical resources¹⁰. A vast programme of new court buildings, palaces of justice, was put in place. Almost ten years later, in 1996, the Basque Government received the transfer for the provision of human resources¹¹.

In 2003 an important milestone was introduced in the organisation of the Administration of Justice, not only as far as the creation of the Judicial Office is concerned, but also in relation to the nature of new responsibilities attached to the Autonomous Communities with powers or obligations in this field: these regions would not only have the power (or the obligation) to provide human and material resources to the Administration of Justice, but for the first time, they will also have the power to create and set up the Judicial Office in the various judicial districts of their territories. These regions have experienced a qualitative shift in the role they play in the Administration of Justice: they are no longer just "providers", but they have become also decision-makers in the field of the organisation of the Administration of Justice, as will be explained later.

2. The Judicial Office

The Judicial Office is defined as the instrumental organisation foreseen to support the judges and the courts in performing their jurisdictional duties¹².

The Judicial Office will be necessarily composed of two types of units¹³: (1) the units directly assisting the judges (*UPAD – unidad procesal de apoyo directo*), which is part of the corresponding judicial organ, together with the judge and (2) the common procedural services, which might be of different types and assist all judges indistinctively, without taking part of any particular judicial organ.

The number of units directly assisting the judges and courts are fixed by law: there will be as many as the number of judicial organs¹⁴. The field of action or responsibilities of these units is not defined by law, so that, a contrario, they will take up all the activities and services not delivered by the common procedural services.

As regards the common procedural services, the number and the type of services provided by these units will be defined either by the Ministry of Justice in its territory or by the Autonomous Communities with responsibilities in the field of Justice within their territory. Therefore, the design of the Judicial Office is flexible¹⁵. More precisely, the Ministry of Justice and the regions with responsibilities in the field of Justice have the same powers or responsibilities as regards the common

⁸ Balearic Islands, Castilla-Leon, Castilla-La Mancha, Extremadura, and the autonomous cities of Ceuta and Melilla.

⁹ Basque Country, Catalonia, Galicia, Andalucía, Asturias, Cantabria, La Rioja, Community of Valencia, Aragon, Canary Islands, Navarre, Community of Madrid.

¹⁰ Real Decreto 1684/1987, de 6 de noviembre sobre traspaso de funciones de la Administración del estado a la Comunidad Autónoma del País Vasco en materia de provisión de medios materiales y económicos para el funcionamiento de la Administración de Justicia. BOE num. 313, 31st December 1987.

¹¹ Real Decreto 514/1996, de 15 de marzo, sobre traspaso de funciones y servicios de la Administración del Estado a la Comunidad Autónoma del País Vasco en materia de medios personales al servicio de la Administración de Justicia. BOE num. 89, 12th April 1996.

¹² Article 435, 1. LOPJ

¹³ Article 435, 2. LOPJ

¹⁴ Article 437, 2 LOPJ. The draft of Organic Law modifying/derogating the Organic Law 6/1985, of 1st July, of the Judiciary establishing the Courts of Instance deletes points 2 and 3 of article 437 and it envisages a single UPAD unit per Court, so that, in a judicial district there will be only one UPAD and not as many as unipersonal judicial organs or judges.

¹⁵ Article 436, 3 LOPJ.

procedural services: to create, to design and to organize the common procedural services in their corresponding territories¹⁶.

Although the Judicial Office is conceived to support the judges, the managers of the Office are the judicial secretaries or clerks –who depend on the Ministry of Justice–. Hence, the judges will concentrate in fulfilling their jurisdictional duties and the clerks will assume the leadership and management of the Office, as well as other procedural commitments which are not related to jurisdictional powers, and, consequently, reserved to the judiciary. Therefore, the role of the clerks is reinforced and the judges will be discharged of either managerial tasks or some organizational aspects of the proceedings, being able to devote their time to their judicial function¹⁷. This is one of the main features of the new organisation¹⁸.

The guiding principles of the Judicial Office are the following three¹⁹:

- (1) hierarchy: the Judicial Office will be directed by the clerk, who has to observe:
 - a) as regards the organisational and procedural matters, the guidelines provided by both the regional chief-clerk²⁰, i.e. the clerk of the High regional Court –*secretaria* or *secretario de Gobierno*– and the provincial chief-clerk –*secretaria* or *secretario coordinador provincial*– and
 - b) as far as the jurisdictional field is concerned, the criteria settled by the judges²¹;
- (2) division of tasks and responsibilities between all actors or parties working in the Judicial Office;
- (3) coordination between all actors or parties and institutions involved, i.e. the General Council of the Judiciary, the Prosecutors, the Ministry of Justice, the Basque Government, the trade unions, and the lawyers.

Moreover, the Judicial Office is expected to provide the citizens with services of quality and proximity and, therefore, it should work taking into account the following criteria: agility, effectiveness, efficiency, work-rationalisation, responsible management and coordination and cooperation between Administrations²².

3. The Judicial Office in the Basque Country

In July 2008, the Basque Government approved a Plan to implement the Judicial Office as well as the "Prosecutor's" Office²³ in the Basque Country. A year earlier, in March 2007, the Basque Government approved the III agreement on working conditions and on the Judicial Office, reached between the Department of Justice of the Basque Governments and the trade unions of the personnel to the service of the Administration of Justice²⁴. Given that the required state regulation did not enter into force until May 2010, the III agreement did not apply, but a new IV

¹⁶ Article 438, 3 LOPJ.

¹⁷ Article 2 LOPJ and articles 5 to 12 of the Regulation of the judicial clerks. *Real Decreto 1608/2005, de 30 de diciembre, por el que se aprueba el Reglamento Orgánico del Cuerpo de Secretarios Judiciales*. BOE núm. 17, de 20 de enero de 2006 (Galdana Pérez Morales, 2010).

¹⁸ The Judicial Office is regulated within the Book V. of the Organic Law of the Judiciary

¹⁹ Article 435, 2. LOPJ

²⁰ *Real Decreto 1608/2005, de 30 de diciembre, por el que se aprueba el Reglamento Orgánico del Cuerpo de Secretarios Judiciales*. BOE num. 17, 20th January 2006. Articles 16 and 18.

²¹ Article 437,3 and article 438, 6. LOPJ.

²² Article 435, 3 LOPJ.

²³ www.justizia.net. Although the title of the Plan covers the Fiscal Office as well, the Plan is mainly focused in the Judicial Office.

²⁴ *Decreto 38/2007, de 6 de marzo, por el que se aprueba el III Acuerdo regulador de las condiciones de trabajo del personal funcionario al servicio de la Administración de Justicia en la Comunidad Autónoma de Euskadi y de reforma de la Oficina Judicial entre el Departamento de Justicia, Empleo y Seguridad Social y las organizaciones sindicales CC.OO., CSI/CSIF, LAB y UGT*. *Boletín Oficial del País Vasco*. (BOPV), num.53, 15th Marzo 2007.

agreement was reached -this time by all trade unions- which was approved by the Basque Government in August 2010²⁵.

The Plan defined that in the judicial districts of the Basque Country there might be up to three types of common procedural services: (1) the general common procedural service –logistics related to the post, acts of communication, assistance at the hearings-rooms / attendance of the hearings/ conferences–; (2) the executive common procedural service –procedures regarding the execution of the judgements and related judicial resolutions–; (3) the common procedural service for the planning of the procedure (*ordenación del procedimiento*) –in charge of the impulse of the procedure, from the beginning of the case until the judgement–.

Depending on the size of the judicial district, in terms of work-load and the available human resources, the number and type of common judicial services vary. Only the three city capitals of Bilbao, Donostia-San Sebastian and Vitoria-Gasteiz, as well as in the town of Barakaldo, there will be the three types of common services. In the other judicial districts, there will be either just the general type²⁶ or both, the general service and the execution service, organized in two sections of a single common procedural service.

The Plan foresees that the common procedural services in each judicial district will be created by a Decision of the Basque Minister of Justice and that a Resolution of the Basque Government Director in charge of the Judicial Office will go into the details of the corresponding Decision. The list of the posts and functions (*relación de puestos de trabajo*) will be approved initially by a Regulation of the Basque Government, being finally approved by a Decision of the Spanish Ministry of Justice. All these legal norms are previously subject to a preliminary opinion of the General Council of the Judiciary. In 2011, ten out of fourteen judicial districts have set up the Judicial Office²⁷, this is, all but the three capitals and Barakaldo.

4. Towards standardisation: the role of the Basque Government

Up until now, the Administration of Justice has worked in practice as if there were as many administrative units as existing judges and *Juzgados*²⁸, given that the administrative structure to assist the judge would work independently from each other, acting differently in the provision of services. The Judicial Office intends to unify as much as possible the fundamental criteria to deliver a service, with a view of guaranteeing a basic uniformity in the organisation of the Judicial Office, so that the personnel know what to do and how to act, no matter the Judicial Office where they work, and the users gain in security as the arbitrariness should tend to disappear.

Moreover, another endemic problem of the Administration of Justice is assigning identical tasks to different categories of the personnel, which has generated frustration and unfair situations, based on the differences in salaries, as well as in the conditions required to access higher categories. In order to avoid these bad practices, in the Judicial Office, the type of tasks to be performed by each category

²⁵ Decreto 223, 2010, de 31 de agosto, por el que se aprueba el IV Acuerdo regulador de la equiparación del personal funcionario al servicio de la Administración de Justicia en la Comunidad Autónoma de Euskadi con el personal funcionario de la Administración General Vasca y de implantación de la Oficina Judicial y Fiscal entre el Departamento de Justicia y la Administración Pública y las organizaciones sindicales CC.OO., ELA, CSI/CSIF, LAB y UGT. BOPV, num. 177, 14th 2010.

²⁶ In 2002 and 2003 the Basque Government created in all judicial districts the precedent of the general common procedural service, known as "*servicios comunes de apoyo*".

²⁷ The Decisions, Resolutions and the Regulation related to the judicial offices in Amurrio, Azpeitia, Eibar, Getxo, Irun were published in Basque Official Journal, *Boletín Oficial del País Vasco* (BOPV) num. 143, 27th July 2010 and in the Spanish Official Journal, *Boletín Oficial del Estado* (BOE) num. 216, 6th September 2010. Those of Balmaseda, Bergara, Durango, Gernika and Tolosa were published in BOPV num. 42, 52 and 53 of 2nd, 16th and 17th March 2011, respectively and in BOE num. 102, 29th April 2011.

²⁸ According to article 2 of the Organic Law of the Judiciary the exercise of the judiciary powers corresponds either to *Juzgados* or to Courts.

of the personnel²⁹ should be defined beforehand and these tasks should be different for each category, although sometimes this distinction will not be possible, as they are common to all or various categories (i.e., providing information).

In this scenario, the Basque Government has two ways of intervening: (1) on the one hand, it has the power to create, design and organise the common procedural services; (2) on the other hand, it has the responsibility for managing the personnel attached to the Administration of Justice³⁰.

Combining the two of them, the Basque Department of Justice has worked, in collaboration with the clerks and the trade unions, in depicting different flow-charts for each of the services to be provided in the common procedural services. Each flow-chart identifies all actions necessary to deliver a service properly and defines to which category of the personnel each activity corresponds³¹.

On the base of the information provided by the flow-charts, the Basque Government has approved the so called "monograph" of each post, where it is described what each post is responsible for within the Judicial Office.

Taking into account the flow-charts of the services, the clerk of the High Court of the Basque Country has approved a protocol of conduct³² for procedural as well as governing matters to be applied³³ in the Judicial Offices. The protocols are a key instrument for the standardisation of conducts as it is binding for all clerks, as well as for the personnel. Moreover, the protocols will also observe that in the jurisdictional field the Judicial Office will apply the decisions of the judges³⁴, as well as the general criteria the General Council of the Judiciary may adopt with the aim of guaranteeing uniformity in the activities of similar common procedural services in Spain, which in no case must interfere with the jurisdictional functions of judges nor with the responsibilities or powers of other public Administration in the field of the Administration of Justice, as it is the case of the Basque Government.

5. Quality system

In order to assure the quality of the services provided by the Administration of Justice, the Basque Government considers it necessary to work within a real system of quality and this need has also been taken up within the last IV Agreement between the Department of Justice and the trade unions for the implementation of the Judicial Office³⁵. Therefore, besides building up this system to be applied in the common procedural services (as it has no power to act within the units directly assisting the judges –UPAD-), the Basque Government has created in all Judicial Offices a new post within the higher category of the personnel, known as "responsible manager" (*gestor responsable*), a position for managing responsibilities predominantly in the field of the system of quality, as well as organising matters related with human resources. The responsible manager will work closely with the clerk director of the corresponding procedural service and under his or her direction.

The Basque quality system for the Administration of Justice has been defined and elaborated by the Directorate of the Judicial and Fiscal Office of the Department of

²⁹ Art. 435, 2 LOPJ "división de funciones".

³⁰ The Basque Government has the responsibility for the management of the three categories of the personnel (*cuerpo de gestión procesal y administrativa; cuerpo de tramitación procesal y administrativa; y cuerpo de auxilio judicial*) but these three categories are conceived for the nacional level, so that the responsibility for the provision of the positions/posts... such as concurso or public competitions belongs to the Spanish Ministry of Justice.

³¹ Available at the Basque webpage for the Administration of Justice www.justizia.net

³² Article 8, c of the Regulation of the judicial clerks. *Real Decreto 1608/2005, de 30 de diciembre, por el que se aprueba el Reglamento Orgánico del Cuerpo de Secretarios Judiciales.*

³³ www.justizia.net

³⁴ Article 437, 3 and article 438, 6-7 LOPJ and article 8 of the Regulation of the judicial clerks.

³⁵ Article 28 of the IV Agreement on "Implementation and consolidation of a quality management system".

Justice³⁶, which has also created a new service in it to deal with this quality system. This quality system observes the main common guidelines adopted at the Quality State Commission for possible different quality systems of the Administration of Justice in Spain and it has also been submitted to the Quality Basque Regional Commission

The Basque quality system for the Administration of Justice system is composed of the following processes³⁷: service-processes, planning-process, documentation-process, control-process, measuring and analysis process, decision-making and improvement-process, and the assistance-process. All these processes together with the instructions and instruments derived from them, such as samples or forms to collect information, make up the quality handbook of the Administration of Justice.

This quality system will develop in line with the pioneer GICA-Justice³⁸ (*Gestión Integral de la Calidad y la Acreditación en la Justicia*), a model created in Costa Rica from a EUROsocial Justice initiative of the European Commission's EuropeAid. GICA-Justice, lead by the Judiciary, was approved in Costa Rica in April 2010 as a quality norm, the unique existing quality norm specifically designed for the Administration of Justice. In July 2010 the Basque Government signed a collaboration agreement with the Judiciary of Costa Rica in this field of quality.

The Basque system of quality has a board composed of the high representatives of the Judiciary, the clerks, the prosecutors, forensic doctors, and the Basque Government. This board constitutes at the same time the Quality Autonomous or regional Commission that is represented at the Quality State Commission³⁹, promoted by the Ministry of Justice. The Basque Government plays an active role within the Quality State Commission at the Spanish level and within its working groups, sharing as well all the documentation produced by the Department of Justice for the Basque quality system.

6. Information, communication and coordination

The setting up of the Judicial Office is a challenge in itself, mainly because of two reasons: (1) it brings a revolutionary change in the organisation of the Administration of Justice in terms of efficiency and quality of the services –it creates synergies when creating common procedural services, it promotes team-work, there is a clear direction identifying the responsibilities of the clerk and of the each of the categories of the personnel, it is supposed to work within a permanent improvement cycle through a quality-system...-; (2) there are many institutions involved and a close coordination among them is a precondition for the success the Judicial Office (Bonilla Correa 2010).

In order to prepare the personnel to the changes of working in a Judicial Office of these characteristics, the Basque Government organises training courses⁴⁰ on the Judicial Office and its impact, on the changes it produces on procedural law, and on the meaning of "team-work". Besides, the clerk-directors and the responsible-managers of the common procedural services will receive a specific training on leadership, on management and on the system of quality.

Regarding coordination, the Department of Justice has created different coordination fora⁴¹ involving a representation of the judiciary, of the prosecutors, of the clerks, of the personnel, of the lawyers, of the social workers and of the

³⁶ It is based on the publication by Rosa Gómez Álvarez (2004).

³⁷ www.justizia.net

³⁸ www.poder-judicial.go.cr/gica

³⁹ www.mjjusticia.qob.es

⁴⁰ Article 25 of the IV Agreement on "Implementation and consolidation of a quality management system".

⁴¹ *Los órganos del plan organizativo de las Oficinas Judiciales y Fiscales de la Administración de Justicia en Euskadi* available at www.justizia.net

Department of Justice itself, with a view to providing information on the guidelines of the Basque Government to implement the Judicial Office, as well as to exchanging information between all members of these coordination groups. The coordination groups are the following: at regional level there is the High Level Group, gathering the representatives at the highest level of all parties in a meeting once a year, and the "Team for change" (*Equipo de Gestión del Cambio*), composed of the higher representatives of the clerks and the Department of Justice and meeting monthly or every two months; at provincial level, there is an "Implementation Team", meeting monthly or every two months; at a judicial district level, together with the setting up of the Judicial Office, a "Commission of Coordination and Improvement" (*Comisión de Coordinación y Mejora*) is created with meetings every two months at the beginning and then at least once every six months. Moreover, within the framework of the system of quality, there are meetings of the board of this system, as well as inter-district meetings of coordination between the clerk-directors, the responsible managers, the superior clerks and the Department of Justice. It is noteworthy that the Department of Justice works very closely with the clerks, as well as with the trade unions through the whole process to implement the Judicial Office. The relation with the Ministry of Justice is also fluid, as the clerks are part of the Ministry of Justice. The Department takes also part in the meetings with other Autonomous Communities with responsibilities in the field of the Administration of Justice.

As regards information, the Department of Justice has adopted a communication plan⁴². The information and documents produced by the Department are published in the internet web page and on the intranet of the Administration of Justice in the Basque Country. Moreover, an e-mail account⁴³ has been open to mail all questions related to the Judicial Office to the Department of Justice -it has undertaken to respond to all the messages received- and takes part in the social networks⁴⁴.

7. First Judicial Offices

The Basque Government has started with the implementation process of the Judicial Office in the judicial districts of the towns and it has already set up all the Offices apart from those of the three capitals and Barakaldo⁴⁵. Moreover, the Department of Justice is just about to set up the Prosecutor's Office in the Basque Country and the new organisation of the Basque Institute of Legal-Forensic Medicine, following the same efficiency and quality ruling criteria of the Judicial Office.

The first results have been relatively positive⁴⁶, although it has also been demonstrated that the change requires the involvement of all parties, as well as some understanding from all of them. The change in the organisation of the Administration of Justice is the biggest lived so far, as it has consequences not only on the rearrangement of work, but also on the buildings and the distribution of the places/spaces/rooms, on informatics, and, the most important, on the change of the mentality and on breaking with a long tradition in doing things in a certain way. In the Basque Country, at the first stage of the implementation process there was a kind of cleavage between the common procedural services and the units assisting directly the judges, given that the first would work from the beginning complying with the principles and ruling criteria of the Judicial Office and the latter would keep on working as before the reform. Soon this problem was solved by reinforcing both the common guidelines fixed by the superior clerks and the self-coordination of the

⁴² *Plan de comunicación para la implantación de la NOJ* available at www.justizia.net

⁴³ noj-bjb@aju.ej-qv.es

⁴⁴ In Twitter as @bulegojudiziala and in Facebook as Bulego Judiziala.

⁴⁵ The calendar of the Department of Justice for the implementation of the Judicial Office in the Basque Country is available at www.justizia.net

⁴⁶ The Department of Justice will produce an annual report on the implementation of the Judicial Office in the Basque Country. The 2009-2010 report is available at www.justizia.net

clerks within a judicial district. In any case, the impact and the challenges of the transformation are so significant (Alías Garoz, Casado Navarro 2009) that on-going adaptation process will be rather long, especially bearing in mind that there are many other projects on the table within the framework of the Modernization of Justice, such as the Courts of Instance (*Tribunales de Instancia*) that should replace the current *Juzgados*⁴⁷.

The Ministry of Justice has also started to set up the Judicial Office in some capitals under its responsibility, i.e. of Autonomous Communities without powers in the field of the Administration of Justice, and the balance made by the Ministry is a positive one⁴⁸.

8. The Basque Government, regional or national governments: just “collaborators” or “actors” of the Administration of Justice at domestic jurisdiction contributing to a better public service?

The conception and the implementation of the Judicial Office as it is foreseen in the Spanish Organic Law of the Judiciary constitute a turning point in the role played by the governments in the organisation of the Administration of Justice.

It is clear that the jurisdictional functions are just exclusive to the judiciary and that the Administration of Justice, in its broader sense, must help the judges perform their functions in the best possible way, as the final aim of the Administration of Justice is to provide a service of quality to the society, as it is highlighted by the Spanish Constitution, by the Chart of the rights of citizens, and by the Organic Law of the Judiciary, i.e. the Administration of Justice as a public service.

In the framework of taking the Administration of Justice as a public service, before the implementation of the Judicial Office, the Basque Government would have responsibilities just to provide material and human resources for the Administration of Justice, but its capacity for planning and organization was very limited. Currently, however, it is the Basque Government who has the power to set up and consolidate the Judicial Office in the different judicial districts of the Basque Country, due to the fact that the Organic Law of the Judiciary provides that it is the Public Administrations with responsibilities in Justice that are entrusted with the establishment of the Judicial Office: in order for a Judicial Office to be created, it is necessary to create first one of its two units, the common procedural services, which can only be created by the above mentioned Public Administrations⁴⁹.

The Judicial Office has been foreseen as a rearrangement of the Administration of Justice necessary to improve its efficiency and quality. Consequently, the legislator has enhanced the capacity of intervention and organisation of the Public Administration in the Administration of Justice in its broader sense, leaving aside the deliberation powers of judges in performing their jurisdictional functions. Therefore, it could be said that the Basque Government, in our case, is not just a “collaborator” but a real “actor” in the Administration of Justice, together with judges, in the first place, prosecutors, and judicial clerks, insofar as it has the decision-making power to create the Judicial Office itself, as well as to design and organise the common procedural services. On the other side, the “collaborators” would be those who lack decision-making power in the broad sense of the Administration of Justice but who help the Administration of Justice to work in the best possible way, as it is the case in the first instance of the personnel, who are

⁴⁷ This proposal to modify the Organic Law of the Judiciary to abolish the one-judge “Juzgados” and replace them with Courts of Instance foreseen that there will be a unique unit to assist directly to all judges belonging to the Court, instead of one unit per judge. In this new scenario, the Basque Government foresees to enlarge the types of procedural services in the judicial districts where the Judicial Office is already set up.

⁴⁸ www.mjusticia.gob.es

⁴⁹ The other unit, the unit to assist directly the judge, are automatically created by the Organic Law of the Judiciary, but just at the same time the common procedural service is created and not before.

crucial and necessary for the provision of services of the Administration of Justice, together with Public Administration itself when providing human and material resources, as well as other collaborators as lawyers, social graduates, and even the journalists and the mass-media.

All in all, the actors and the collaborators of the Administration of Justice should work together with the aim of delivering the best possible service to its main and end-client: the citizens, the people and society at large.

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