

Manifesto for a



Rechtspfleger for Europe

The E.U.R. first created the concept of a European Rechtspfleger/Greffier in the Green Paper published in 2008. In 2016, the EUR introduced the concept of a Rechtspfleger/Greffier for Europe in the published White Paper. Thus, the European Rechtspfleger/Greffier logically became the Rechtspfleger/Greffier for Europe. The aim of the EUR has thus become to create a profession that can be established throughout the European Union and, if there is interest, beyond.

However, this idea only makes sense if there is a uniform understanding of this profession throughout the world. Chapter 6 of the White Paper convincingly shows the positive effects that the establishment of a Rechtspfleger profession can have on the effectiveness of justice in the countries. However, this chapter was written by a German Rechtspfleger and reflects his experiences and views. These are not always compatible with the current picture of the judicial systems in the countries. This may lead to a lack of understanding and also rejection out of concern that grown structures and professions could be endangered as a result.

A first approach to address this led to a discussion on a common designation of this profession. However, this very soon came up against the insurmountable difficulty that not everywhere does a term used to describe an activity lead to the designation of a profession, especially when these activities still differ significantly.

The next approach was to describe all activities that could be subsumed under this profession. Unfortunately, this approach led to a dilution of the term. For some, the tasks listed included areas that, from the local understanding of the law, belonged in the area of judicial competence and could never be achieved without becoming a judge oneself. For others, tasks were included that are clearly below the competence acquired in these countries and must therefore under no circumstances be assigned to a Rechtspfleger.

The solution to this problem must therefore be found through a generally valid definition. On the basis of this definition, it can be determined in each country whether existing tasks can be assigned to a new occupational group in order to achieve a higher effectiveness of the justice system through this specialisation. The designation of this profession is then secondary and can be developed independently in the countries. For the official area of the European Union, however, the German word "Rechtspfleger" with the addition "European" should be used as a uniform term.

In various publications of the European Commission for the Efficiency of Justice (CEPEJ), definitions have been given in the meantime which are essentially the same. What is uniform is the reference to a form of independence and the fact that it must be a secured position that cannot be dissolved by the administrative action of a

government and is only responsible to the law itself. The question of whether this position must be secured by the country's constitution remains controversial.

The starting point for all considerations of a definition must be the democratic principle of the separation of powers, which is a cornerstone of the EU's values. All three state powers must function independently of each other and be subject to mutual control. The balance thus achieved guarantees legal peace and thus also social peace.

In this context, the structures of the justice systems in the countries are of particular importance. In principle, the justice represents the third power of the state, the "judiciary". In fact, however, the justice of the countries is embedded in the respective government. In many countries, the justice system is made up of administrative authorities, courts, public prosecutors' offices, educational institutions and law enforcement agencies. This entire complex thus contains units that deal with the actual jurisdiction as well as units that serve to support this administration of jurisdiction. Other areas, such as educational institutions or correctional institutions, do not fall into either of these complexes and should therefore rather be classified under the executive branch.

For the definition, therefore, a restriction to the actual area of the judiciary makes sense. It is undisputed that the jurisdictional aspect is the essential component of this state power. However, if one were to limit this area exclusively to the traditional professional group of judges, this would either lead to a very narrow view of the tasks that should sensibly be dealt with by this independent third state power, or to a considerably expanded need for judges with extensive training in many special fields. However, this is exactly what historically led to the introduction of a new profession in Germany and Austria. The lack of sufficiently trained judges made it necessary to choose between thinning out the influence of the third power and distributing the tasks among differently trained professionals.

In order to summarise all tasks of the extended judiciary, the term "judicature" should become established. It thus includes all duty bearers and professions in this sector, i.e. also lawyers or notaries. The narrower area of the judicature can be referred to as the state judicature and is limited to the duty bearers of the third state power.

One aspect in this context that is treated differently in the countries is the tasks of the administration of justice. In many countries, this task is assigned to the ministries of justice and their subordinate authorities. However, since these are in fact part of the executive state power of an elected government, the independence of the judiciary is questionable here.

The idea of an independent self-administration of the judiciary therefore plays a major role here. For this reason, consideration must also be given to placing the tasks of self-administration of the courts and public prosecutors' offices in the hands of legal professionals specially trained for this purpose. Here, too, Rechtspfleger can play a leading role, if this task is seen as an independent responsibility. This decision lies

with the countries themselves, which must create appropriate constitutional and procedural laws for this purpose.

Another significant aspect for the effectiveness of this system is the guarantee of the position as independent decision-makers for both, judges and Rechtspfleger. This guarantee must prevent outside influence. Such influence threatens here both from the executive and from forces outside the state power. In order to prevent this, a secure position in the constitution of the countries must be created, as well as the guarantee of a carefree economic provision for Rechtspfleger and judges that is appropriate to their social position.

These thoughts summarised lead to the following definition of the profession "Rechtspfleger for Europe":

Rechtspfleger are an independent organ of the judiciary. In the areas of responsibility assigned to them by law, they make decisions that can only be appealed through the courts. In doing so, they are subject only to the law and their conscience.

The position of judicial officers is guaranteed by the Constitution or a special law of a constitutional nature.

Rechtspfleger may also perform other tasks relating to the administration of justice and judicial administration, provided they require the qualification of a Rechtspfleger.