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Consultative Council of European Judges (CCJE)

Opinion no.10(2007) of the Consultative Council of European Judges (CCJE) to the attention of the Committee of Ministers of the Council of Europe on the Council for the Judiciary at the service of society

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CONTENTS

I. INTRODUCTION

II. GENERAL MISSION : TO SAFEGUARD THE INDEPENDENCE OF THE JUDICIARY AND THE RULE OF LAW

III. MEMBERSHIP : TO ENABLE AN OPTIMUM FUNCTIONING OF AN INDEPENDENT AND TRANSPARENT COUNCIL FOR THE JUDICIARY

- III. A. A Council for the Judiciary composed by a majority of judges
- III. B. Qualifications of members
- III. C. Selection methods
  - III. C. 1. Selection of judge members
  - III. C. 2. Selection of non- judge members
  - III. C. 3. Selection of the Chair
- III. D. Number of members and duration of their mandate
- III. E. Status of members

IV. RESOURCES (TO ENSURE FINANCING, PERSONNEL, TECHNICAL EXPERTISE) AND LEGITIMATE DECISIONS OF THE COUNCIL FOR THE JUDICIARY

- IV. A. Budget and staff
- IV. B. Decisions of the Council for the Judiciary
- IV. C. Technical expertise

V. EXTENSIVE POWERS IN ORDER TO GUARANTEE THE INDEPENDENCE AND THE EFFICIENCY OF JUSTICE

- V. A. Selection, appointment and promotion of judges
- V. B. Professional evaluation of judges
- V. C. Ethics and discipline of judges
  - V. C.1. Ethics
  - V. C.2. Discipline
- V. D. Training of judges
  - V. D. 1. Initial training
  - V. D. 2. Continuous training
- V. E. Budget of the Judiciary
- V. F. Court administration and management
- V. G. Protection of the image of justice
- V. H. The possibility to provide opinions to other powers of State
- V. I. Co-operation activities with other bodies on national, European and international level

VI. THE COUNCIL FOR THE JUDICIARY IN SERVICE OF ACCOUNTABILITY AND TRANSPARENCY OF THE JUDICIARY

SUMMARY OF CONCLUSIONS AND RECOMMENDATIONS

I. INTRODUCTION

1. In 2007, the Committee of Ministers of the Council of Europe entrusted the Consultative Council of European Judges (CCJE) with the task of adopting an Opinion on the structure and role of the High council for the judiciary or another equivalent independent body as an essential element in a state governed by the rule of law to achieve a balance between the legislature, the executive and the judiciary.

2. The diversity of European systems is reflected in the choice made by states and the discussions on the name of the bodies entrusted with the protection of the independence of judges. In order to facilitate the reading of this Opinion, the CCJE decided to use in this text the single term of "Council for the Judiciary"[1].

3. In accordance with its terms of reference, the CCJE considered the following points which appear in the Framework Global Action Plan for Judges in Europe[2]:
   - the respect for the guarantees of judicial independence in the member states at the constitutional, legislative and institutional levels (see Part I (a), (b), (c) and (d) of the Action Plan);
   - the setting up or strengthening of authorities which are independent from the legislative and/or executive authorities, with responsibility for managing judges' careers (see Part I (e) of the Action Plan).

4. The aim of this Opinion is to identify the core elements in relation to the general mission, composition and functions of the Council for the Judiciary with a view to strengthening democracy and to protecting the independence of the judiciary. The Opinion does not present a detailed description of principles for the composition or the functions of the Council for the Judiciary, neither does it create a single model for the Council for the Judiciary in Europe.

5. The composition and the functions of the Council for the Judiciary can vary from one country to another[3]. Conscious of this diversity but noticing at the same time a trend to create an independent Council for the Judiciary, the CCJE considered it necessary:
   - to stress the importance of the existence of a specific body entrusted with the protection of the independence of judges, in the context of respecting the principle of separation of powers;
   - to set guidelines and standards for member States wishing to implement or reform their Council for the Judiciary.

6. The provisions of this Opinion are relevant to all parts of the judicial system, in particular in the countries where a separate system of administrative justice exists, either within the framework of a single Council for the Judiciary (competent for ordinary and administrative justice), or through separate Councils[4].

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[1] This wording is already being used by the European Network of Councils for the Judiciary (ENCJ).
[2] Adopted by the Committee of Ministers at its 740th meeting – Document CCJE(2001)24.
[3] The detailed situation in the member states is described in the experts' reports (see paragraph 7) and in the national answers to the questionnaire which are available on the web site of the CCJE: www.coe.int/CCJE.
[4] Some Councils are responsible for safeguarding the independence of judges, but are also responsible for public prosecutors. The CCJE has chosen to focus on the role of the Councils for the Judiciary as regards judges, according to its general mission. This does not prevent this Opinion applying, so far as it concerns judges, to those Councils which are common to judges and prosecutors. The possible issues relating to prosecutors have not been addressed

7. When preparing this Opinion, the CCJE examined and duly took into account in particular:
   - the acquis of the Council of Europe and in particular Recommendation No.R(94)12 of the Committee of Ministers to member States on the independence, efficiency and role of judges[5], the European Charter on the Statute for Judges of 1998 as well as Opinions No. 1, 2, 3, 4, 6 and 7 of the CCJE;
   - the report on "Judicial Appointments" adopted in March 2007 by the Venice Commission during its 70th Plenary Session, as a contribution to the work of the CCJE[6];
   - the replies by 40 delegations to a questionnaire concerning the Council for the Judiciary adopted by the CCJE during its 7th plenary meeting (8-10 November 2006);
   - the reports prepared by the specialists of the CCJE, Ms Martine VALDES-BOULOUQUE (France) on the current situation in the Council of Europe member States where there is a High Council for the Judiciary or another equivalent independent body and Lord Justice THOMAS (United Kingdom) on the current situation in states where such a body does not exist;
   - the contributions of participants in the 3rd European Conference of Judges on the theme of "Which Council for justice?", organised by the Council of Europe in co-operation with the European Network of Councils for the Judiciary (ENCJ), the Italian High Council for the Judiciary and the Ministry of Justice (Rome, 26-27 March 2007).

II. GENERAL MISSION: TO SAFEGUARD THE INDEPENDENCE OF THE JUDICIARY AND THE RULE OF LAW

8. The Council for the Judiciary is intended to safeguard both the independence of the judicial system and the independence of individual judges. The existence of independent and impartial courts is a structural requirement of a state governed by the rule of law.

9. The independence of judges, in a globalised and interdependent society, should be regarded by every citizen as a guarantee of truth, freedom, respect for human rights, and impartial justice free from external influence. The independence of judges is not a prerogative or privilege granted in their own interest, but in the interest of the rule of law and of anyone seeking and expecting justice. Independence as a condition of judges' impartiality therefore offers a guarantee of citizens' equality before the courts.

10. The CCJE also takes the view that the Council for the Judiciary should promote the efficiency and quality of justice, so assisting to ensure that Article 6 of the European Convention on Human Rights is fully implemented, and to reinforce public confidence in the justice system. In this context, the Council for the Judiciary has the task to set up the necessary tools to evaluate the justice system, to report on the state of services, and to ask the relevant authorities to take the necessary steps to improve the administration of justice.

11. The CCJE recommends that the Council for the Judiciary be positioned at the constitutional level in those countries having a written Constitution, or in the equivalent basic law or constitutional instrument for other countries. Provisions should be made for the setting up of

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in this Opinion. They might be examined at a later stage, where appropriate in cooperation with the Consultative Council of European Prosecutors (CCPE).

[5] In particular Principle I, 2.c. and Principle VI.3.

[6] See document CDL-AD(2007)028

such body, for the definition of its functions and of the sectors from which members may be drawn and for the establishment of criteria for membership and selection methods[7].

12. Beyond its management and administrative role vis-à-vis the judiciary, the Council for the Judiciary should also embody the autonomous government of the judicial power, enabling individual judges to exercise their functions outside any control of the executive and the legislature, and without improper pressure from within the judiciary.

13. In this perspective, the CCJE considers that it would be inappropriate for the Council for the Judiciary to be restricted by other authorities in its autonomy to decide on its own operating methods and on subjects for discussion. The relations between the Council for the Judiciary and the Minister of Justice, the Head of State and Parliament need to be determined. Furthermore, considering that the Council for the Judiciary does not belong to the hierarchy of the court system and cannot as such decide on the merits of the cases, relations with the courts, and especially with judges, need careful handling.

14. The Council for the Judiciary is also obliged to safeguard from any external pressure or prejudice of a political, ideological or cultural nature, the unfettered freedom of judges to decide cases impartially, in accordance with their conscience and their interpretation of the facts, and in accordance with the prevailing rules of the law[8].

III. MEMBERSHIP: TO ENABLE AN OPTIMUM FUNCTIONING OF AN INDEPENDENT AND TRANSPARENT COUNCIL FOR THE JUDICIARY

III. A. A Council for the Judiciary composed by a majority of judges

15. The composition of the Council for the Judiciary shall be such as to guarantee its independence and to enable it to carry out its functions effectively.

16. The Council for the Judiciary can be either composed solely of judges or have a mixed composition of judges and non judges. In both cases, the perception of self-interest, self protection and cronyism must be avoided.

17. When the Council for the Judiciary is composed solely of judges, the CCJE is of the opinion that these should be judges elected by their peers.

18. When there is a mixed composition (judges and non judges), the CCJE considers that, in order to prevent any manipulation or undue pressure, a substantial majority of the members should be judges elected by their peers[9].

19. In the CCJE's view, such a mixed composition would present the advantages both of avoiding the perception of self-interest, self protection and cronyism and of reflecting the different viewpoints within society, thus providing the judiciary with an additional source of legitimacy. However, even when membership is mixed, the functioning of the Council for the Judiciary shall allow no concession at all to the interplay of parliamentary majorities and

[7] This principle has been stated by the CCJE in its Opinion No.1 (2001).
[8] See Recommendation No.R(94)12.
[9] The CCJE has not considered here the possible question of a Council for the Judiciary composed both by judges and prosecutors – see also footnote 4 above.

pressure from the executive, and be free from any subordination to political party consideration, so that it may safeguard the values and fundamental principles of justice.

20. When there is a mixed composition in the Council for the Judiciary, the CCJE is of the opinion that some of its tasks may be reserved to the Council for the Judiciary sitting in an all-judge panel.

III.B. Qualifications of members

21. Members, whether judges or not, must be selected on the basis of their competence, experience, understanding of judicial life, capacity for discussion and culture of independence.

22. The non-judge members may be selected among other outstanding jurists, university professors, with a certain length of professional service, or citizens of acknowledged status. Modern management of the judiciary might also require wider contributions from members experienced in areas outside the legal field (e.g. in management, finances, IT, social sciences).

23. Prospective members of the Council for the Judiciary, whether judges or non judges, should not be active politicians, members of parliament, the executive or the administration. This means that neither the Head of the State, if he/she is the head of the government, nor any minister can be a member of the Council for the Judiciary. Each state should enact specific legal rules in this area.

24. The CCJE considers that the composition of the Council for the Judiciary should reflect as far as possible the diversity in the society.

III.C. Selection methods

III. C. 1. Selection of judge members

25. In order to guarantee the independence of the authority responsible for the selection and career of judges, there should be rules ensuring that the judge members are selected by the judiciary.

26. The selection can be done through election or, for a limited number of members (such as the presidents of Supreme Court or Courts of appeal), ex officio.

27. Without imposing a specific election method, the CCJE considers that judges sitting on the Council for the Judiciary should be elected by their peers following methods guaranteeing the widest representation of the judiciary at all levels[10].

28. Although the roles and tasks of professional associations of judges and of the Council for the Judiciary differ, it is independence of the judiciary that underpins the interests of both. Sometimes professional organisations are in the best position to contribute to discussions about judicial policy. In many states, however, the great majority of judges are not members of associations. The participation of both categories of judges (members and non members of associations) in a pluralist formation of the Council for the Judiciary would be more

[10] See also the European Charter on the statute for judges, paragraph 1.3.

representative of the courts. Therefore, judges' associations must be allowed to put forward judge candidates (or a list of candidates) for election, and the same arrangement should be available to judges who are not members of such associations. It is for states to design an appropriate electoral system including these arrangements.

29. In order to meet citizens' expectations that the Council for the Judiciary should be "depoliticised", the CCJE shares the view that competition for elections should comply with the rules set out by the Council for the Judiciary itself so as to minimise any jeopardy to public confidence in the judicial system.

30. The CCJE would have no objection to the development by states of methods, other than direct elections, guaranteeing the widest representation of the judiciary in the Council for the Judiciary. A method guaranteeing diverse and territorial representation could be adopted from some countries' experiences in forming court panels, i.e. drawing by lot members on the basis of one or more territorial lists including eligible candidates upon nominations by a sufficient number of peers.

31. The CCJE does not advocate systems that involve political authorities such as the Parliament or the executive at any stage of the selection process. All interference of the judicial hierarchies in the process should be avoided. All forms of appointment by authorities internal or external to the judiciary should be excluded.

III. C. 2. Selection of non-judge members

32. Non-judge members should not be appointed by the executive. Although it is for each state to strike a balance between conflicting needs, the CCJE would commend a system that entrusts appointments of non-judges to non political authorities. If in any state any non judge members are elected by the Parliament, they should not be members of the Parliament, should be elected by a qualified majority necessitating significant opposition support, and should be persons affording, in the overall composition of the Council for the Judiciary, a diverse representation of society.

III. C. 3. Selection of the Chair

33. It is necessary to ensure that the Chair of the Council for the Judiciary is held by an impartial person who is not close to political parties. Therefore, in parliamentary systems where the President / Head of State only has formal powers, there is no objection to appointing the Head of State as the chair of the Council for the Judiciary, whereas in other systems the chair should be elected by the Council itself and should be a judge**.**

III.D. Number of members and duration of their mandate

34. The CCJE considers that the membership of the Council for the Judiciary should reflect the size of the judiciary and, consequently, the volume of tasks to be fulfilled. Although it is for the states to decide whether the members of the Council for the Judiciary should sit as full-time or part time members, the CCJE points out that full-time attendance means a more effective work and a better safeguard of independence. However, there is a need to ensure that judges sitting on the Council for the Judiciary are not absent for too long from their judicial work, so that, whenever possible, contact with court practice should be preserved.

Terms of office which entail exclusive sitting on the Council for the Judiciary should be limited in number and time[11].

35. The CCJE recommends that, in order to guarantee the continuity of the Council's activities, members of the Council for the Judiciary should not all be replaced at the same time.

III. E. Status of members

36. Members of the Council for the Judiciary (both judges and non-judges) should be granted guarantees for their independence and impartiality. The remuneration of the members of the Council for the Judiciary should be commensurate to their position and the workload within the Council.

IV. RESOURCES (TO ENSURE FINANCING, PERSONNEL, TECHNICAL EXPERTISE) AND LEGITIMATE DECISIONS OF THE COUNCIL FOR THE JUDICIARY

IV. A. Budget and staff

37. The CCJE stresses the importance of ensuring that the Council for the Judiciary is financed in such a way that it is enabled to function properly. It should have appropriate means to operate independently and autonomously as well as power and capacity to negotiate and organise its own budget effectively.

38. The Council for the Judiciary should have its own premises, a secretariat, computing resources and freedom to organise itself, without being answerable for its activities to any political or other authority. It should be free to organise its sittings and set the agenda for its meetings, as well as have the right to communicate directly with the courts in order to carry out its functions. The Council for the Judiciary should have its own staff according to its needs, and each member should have staff in accordance with the tasks assigned to him or her.

IV. B. Decisions of the Council for the Judiciary

39. Some decisions of the Council for the Judiciary in relation to the management and administration of the justice system, as well as the decisions in relation to the appointment, mobility, promotion, discipline and dismissal of judges (if it has any of these powers) should contain an explanation of their grounds, have binding force, subject to the possibility of a judicial review. Indeed, the independence of the Council for the Judiciary does not mean that it is outside the law and exempt from judicial supervision.

IV.C. Technical expertise

40. The Council for the Judiciary may request the expertise of other professionals on specific issues. Of course, these experts are not members of the Council and cannot take part in the decision process.

V. EXTENSIVE POWERS IN ORDER TO GUARANTEE THE INDEPENDENCE AND THE EFFICIENCY OF JUSTICE

[11] See, with reference to judges involved in training activities, Opinion No.4 (2003) of the CCJE, paragraph 21.

41. Overall the Council for the Judiciary should have a wide role in respect of competences which are interrelated, in order that it can better protect and promote judicial independence and the efficiency of justice.

42. The CCJE recommends that the Council for the Judiciary ensures that the following tasks, to be performed preferably by the Council itself, or in cooperation with other bodies, are fulfilled in an independent manner:
    - the selection and appointment of judges (see point V.A);
    - the promotion of judges (see point V.A);
    - the evaluation of judges (see point V.B);
    - disciplinary and ethical matters (see point V.C);
    - the training of judges (see point V.D);
    - the control and management of a separate budget (see point V.E);
    - the administration and management of courts (see point V.F);
    - the protection of the image of judges (see point V.G);
    - the provision of opinions to other powers of the State (see point V.H);
    - the co-operation with other relevant bodies on national, European and international level (see point V.I).
    - the responsibility towards the public: transparency, accountability, reporting (see point VI).

43. One must be aware of and take into account the fact that there might be conflicts between different functions of the Council for the Judiciary, such as between appointing and training of judges, or between training and disciplinary matters, as well as between training and evaluation of judges. One way of avoiding such conflict is to separate the different tasks between various branches of the Council for the Judiciary[12].

44. The CCJE emphasises that the various tasks of the Council for the Judiciary are closely linked to the constitutional role of the Council for the Judiciary and that therefore the tasks should be set out in the Constitution, basic law or constitutional instrument. In order to ensure the best discharge of the Council's responsibilities, the problems with possible external and internal pressure (e.g. pressure of the legislature/executive) should be prevented by defining the type of tasks and the way they should be carried out.

45. Also there should be a close connection between the composition and the competences of the Council for the Judiciary. Namely, the composition should result from the tasks of the Council for the Judiciary. Certain functions of the Council for the Judiciary may require for example members of the legal professions, professors of law or even representatives of civil society.

46. Among Councils for the Judiciary, a distinction can also be made between Councils performing traditional functions (e.g. in the so-called "Southern European model" with competences for appointment of judges and evaluation of the judiciary) and Councils performing new functions (e.g. in the so-called "Northern European model" with competences for management and budget matters). The CCJE encourages attributing both traditional and new functions to the Council.

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[12] See also Opinion No.4 (2003) of the CCJE.

47. Furthermore, the competences of the Council for the Judiciary may be related to the functions of other similar bodies, such as a Council for prosecutors or in some countries a separate Council for administrative judges. It is also one of the responsibilities of the Council for the Judiciary to develop relations with these different bodies as well as to expand European and international contacts/co-operation.

V. A. Selection, appointment and promotion of judges

48. It is essential for the maintenance of the independence of the judiciary that the appointment and promotion of judges are independent and are not made by the legislature or the executive but are preferably made by the Council for the Judiciary[13].

49. While it is widely accepted that appointment or promotion can be made by an official act of the Head of State, yet given the importance of judges in society and in order to emphasise the fundamental nature of their function, Heads of States must be bound by the proposal from the Council for the Judiciary. This body cannot just be consulted for an opinion on an appointment proposal prepared in advance by the executive, since the very fact that the proposal stems from a political authority may have a negative impact on the judge's image of independence, irrespective of the personal qualities of the candidate proposed.

50. Although this appointment and promotion system is essential, it is not sufficient. There must be total transparency in the conditions for the selection of candidates, so that judges and society itself are able to ascertain that an appointment is made exclusively on a candidate's merit and based on his/her qualifications, abilities, integrity, sense of independence, impartiality and efficiency. Therefore, it is essential that, in conformity with the practice in certain States, the appointment and selection criteria be made accessible to the general public by every Council for the Judiciary. The Council for the Judiciary shall also ensure, in fulfilling its role in relation to the court administration and training in particular, that procedures for judicial appointment and promotion based on merit are opened to a pool of candidates as diverse and reflective of society as a whole as possible.

51. In addition, where more senior posts are concerned, particularly that of a head of jurisdiction, general profiles containing the specificities of the posts concerned and the qualities required from candidates should be officially disseminated by the Council for the Judiciary in order to provide transparency and accountability over the choice made by the appointing authority. This choice should be based exclusively on a candidate's merits rather than on more subjective reasons, such as personal, political or an association/trade union interests.

V. B. Professional evaluation of judges

52. The issues relating to the professional assessment of judges are twofold: firstly, the assessment of the quality of the judicial system and, secondly, the professional ability of judges.

53. The question of the quality assessment of the judicial system was touched upon by the CCJE in Opinion No. 6[14]. As far as the present Opinion is concerned, it is very important

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[13] See also Opinion No.1(2001) of the CCJE.

[14] Opinion No.6(2004) of the CCJE shows that this question should not be confused with the appreciation of the professional abilities of judges and it should take into consideration the specific nature of the judicial activity, to avoid assimilating it to an ordinary public service.

that, in each member State, the Council for the Judiciary holds a vital role in the determination of the criteria and standards of quality of the judicial service on the one hand, and in the implementation and monitoring of the qualitative data provided by the different jurisdictions on the other.

54. Quality of justice can of course be measured by objective data, such as the conditions of access to justice and the way in which the public is received within the courts, the ease with which available procedures are implemented and the timeframes in which cases are determined and decisions are enforced. However, it also implies a more subjective appreciation of the value of the decisions given and the way these decisions are perceived by the general public. It should take into account information of a more political nature, such as the portion of the State budget allocated to justice and the way in which the independence of the judiciary is perceived by other branches of the government. All these considerations justify the active participation of Councils for the Judiciary in the assessment of the quality of justice and in the implementation of techniques ensuring the efficiency of judges' work. .

55. Where applicable, the question of the professional assessment of judges depends on whether a judge is recruited at the beginning of his/her career from among other candidates who have no previous professional experience or after many years of practice of a legal profession from among the most experienced and deserving practitioners. In the former case the candidate's professional qualities need to be assessed in order to determine his/her previously undisclosed abilities, while there is also utility in such an assessment in the latter case, having regard to the nature of the judicial role and the constant evolution of legal practice and the competencies it involves.

56. It is important to note that the assessment should not only consist of an examination of the legal expertise and the general professional abilities of judges, but also of more personal information, such as their personal qualities and their communication skills. If the practice of judicial functions presupposes great technical and personal qualities, it would be desirable to come to some common agreement at the European level concerning their identification. In this respect, the Council for the Judiciary should play a fundamental role in the identification of the general assessment criteria. However, the Council for the Judiciary should not substitute itself for the relevant judicial body entrusted with the individual assessment of judges.

V. C. Ethics and discipline of judges

V. C. 1. Ethics

57. The CCJE, when dealing with the questions of ethics and discipline in its Opinion No.3(2002), has pinpointed the need to clearly distinguish between these two matters.

58. The distinction between discipline and professional ethics brings about the need to provide judges with a collection of principles of professional ethics, which should be conceived as a working tool in judicial training and the everyday practice. The dissemination of case law on matters of discipline by the disciplinary authority marks a great improvement in the information available to judges; it allows them to engage in discussions on their practices, creating a "think tank" for these discussions. However, this is not sufficient in itself: the disciplinary decisions do not cover the entire scope of the rules of professional ethics, nor constitute the guide to good practices needed by judges.

59. The collection of principles of professional ethics should contain a synthesis of these good practices, with examples and comments; this should not amount to a code, the rigidity and falsely exhaustive nature of which being criticised. This guide of good practices should be the work of the judges themselves as it would be inappropriate for third parties, and in particular for other branches of government, to impose any principle on them.

60. Given the distinction between professional ethics and discipline drawn up by the CCJE, the drafting of this collection of principles should be done by a body other than the one responsible for judges' discipline. There are several solutions for determining the competent body which should be responsible for judicial ethics:
    (i) to entrust this activity to the Council for the Judiciary, if this Council does not have a disciplinary function or has a special body for disciplinary matters with a separate composition within the Council for the Judiciary (see paragraph 64 below);
    (ii) or to create, alongside the Council for the Judiciary, an ethics committee whose only function would be the drafting and monitoring of rules of professional ethics. Problems with the latter choice may arise from the criteria of selection of the committee members and the risk of conflict or disagreement between this committee and the Council for the Judiciary.

    The body entrusted with ethics could also, as the CCJE suggested in Opinion No. 3, advise judges on matters of professional ethics with which they are likely to be faced throughout their career.

61. In addition, the CCJE considers that associating persons external to the judiciary (lawyers, academics, representatives of the society, other governmental authorities) in the process of development of ethical principles is justified in order to prevent possible perception of self-interest and self protection, while making sure that judges are not deprived of the power to determine their own professional ethics.

V. C. 2. Discipline

62. The question of a judge's responsibility was examined by the CCJE in Opinion No.3(2002). The recent experiences of some States show the need to protect judges from the temptation to broaden the scope of their responsibility in purely jurisdictional matters. The role of the Council for the Judiciary is to show that a judge cannot bear the same responsibilities as a member of another profession: he/she performs a public function and cannot refuse to adjudicate on disputes. Furthermore, if the judge is exposed to legal and disciplinary sanctions against his/her decisions, neither judicial independence nor the democratic balance of powers can be maintained. The Council for the Judiciary should, therefore, unequivocally condemn political projects designed to limit the judges' freedom of decision-making. This does not diminish judges' duty to respect the law.

63. A judge who neglects his/her cases through indolence or who is blatantly incompetent when dealing with them should face disciplinary sanctions. Even in such cases, as indicated by CCJE Opinion No.3(2002), it is important that judges enjoy the protection of a disciplinary proceeding guaranteeing the respect of the principle of independence of the judiciary and carried out before a body free from any political influence, on the basis of clearly defined disciplinary faults: a Head of State, Minister of Justice or any other representative of political authorities cannot take part in the disciplinary body.

64. The Council for the Judiciary is entrusted with ethical issues; it may furthermore address court users' complaints. In order to avoid conflicts of interest, disciplinary procedures in first

instance, when not addressed within the jurisdiction of a disciplinary court, should preferably be dealt with by a disciplinary commission composed of a substantial representation[15] of judges elected by their peers, different from the members of the Council for the Judiciary, with provision of an appeal before a superior court.

V.D. Training of judges[16]

65. The responsibility for organising and supervising judicial training should in each country be entrusted not to the ministry of justice or any other authority answerable to the legislature or the executive, but to the judiciary itself or preferably to the Council for the Judiciary; judges' associations can also play a valuable role in that respect. Furthermore, the conception of training programmes and their implementation should be entrusted, under the authority of the judiciary or preferably the Council for the Judiciary, to a special autonomous body (e.g. a training academy) with its own budget and which should work in consultation with judges. A clear division of functions should be encouraged between the Council for the Judiciary and the training academy, when it exists.

66. The CCJE is of the opinion that, if the Council for the Judiciary has competence in training and appointment or promotion, a clear separation should be provided between its branches responsible for these tasks and ties should be avoided either with the ministry of justice (appointment of the trainers, budget allocation etc.), or with the ministry of education (accreditation, recognition of diplomas etc.).

67. The Council for the Judiciary should cooperate with the training body, during the initial and in-service training, to ensure an efficient and high quality training, and to guarantee that judges are selected based on objective and measurable criteria, a merit based system and proper training.

V. D. 1. Initial training

68. In order for candidates for appointment as judges to receive quality training, the CCJE recommends that the Council for the Judiciary should participate directly or in other ways cooperate with training institutions in the creation and the development of the programme for initial training, through which candidates will develop and deepen not only their legal knowledge of the national and international substantive and procedural law and practice, but also develop complementary skills, e.g. knowledge of foreign languages, ethics, alternative dispute resolution, so that society may be served by judges capable of applying the law correctly, and of critical and independent thinking, social sensitivity and open-mindedness.

69. In addition, the Council for the Judiciary should provide external evaluation of the initial training, in the sense that by following the professional development and success in everyday work of judges in the early years after appointment, it will evaluate the effectiveness of initial training and will be able to make suggestions for its improvement.

V. D. 2. Continuous training

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[15] See paragraph 71 of Opinion N° (2003) 3 of the CCJE.

[16] The significance of the training for maintenance and development of professional competence of judges is emphasised in various documents of the United Nations and the Council of Europe. See Opinion No.4 (2003) of the CCJE and the Lisbon Network Report on the contribution of judicial training bodies to the concrete implementation of Opinion No.4 (2003) of the CCJE of 11.10.2006

70. The Council for the Judiciary should promote participation of judges in all training activities, as a significant part of their professional activity. The legal and ethical duty and right of judges is to work on their own professional development through participation in the continuous training which should be understood as a life long learning process. Judges, during the performance of their duties, should, in particular, follow changes in national and international legislation and practice[17], be in touch with social trends and become acquainted with alternative dispute resolution methods. The CCJE recommends that the Council for the Judiciary should take into account judges' participation in training programmes when considering their promotion.

71. The reports and statistics for the evaluation of the work of the judges and the courts, annually prepared by the Council for the Judiciary, should contain data about the critical issues on which training should be focused[18], such as case management, time management, budgeting, improvement of working techniques, public relations skills, communication techniques, legal research etc.

72. More generally, the Council for the Judiciary should be widely consulted in the process of selection of the topics which will be included in the yearly training programmes; the Council for the Judiciary should also monitor the way the programme is carried out and evaluate its effects on the quality of the performance of the judiciary.

V. E. Budget of the Judiciary

73. Although the funding of courts is part of the State budget, such funding should not be subject to political fluctuations. Decisions on the allocation of funds to the courts must be taken with the strictest respect for judicial independence. The arrangements for parliamentary adoption of the judicial budget should include a procedure that takes into account the opinions of the judiciary[19]. If the Council for the Judiciary does not have a role of administration and management of the courts, it should at least be in a position to issue opinions regarding the allocation of the minimal budget which is necessary for the operation of justice, and to clarify its needs in order to justify its amount.

74. The CCJE is of the opinion that the courts can only be properly independent if they are provided with a separate budget and administered by a body independent of the executive and legislature, whether it is a Council for the Judiciary or an independent agency.

75. Although it is advocated by some States that the ministry of justice is better placed to negotiate the court budget vis-à-vis other powers, especially the ministry of finances, the CCJE is of the opinion that a system in which the Council for the Judiciary has extended financial competences requires serious consideration in those countries where such is not the case at present. It must be stressed that extended financial powers for the Council for the Judiciary imply its accountability not only vis-à-vis the executive and the legislature, but also vis-à-vis the courts and the public**.**

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[17] See Opinion No.9 (2006) of the CCJE.

[18] Especially the problem with duration of procedures in certain disputes, the most common breaches of human rights, backlog of cases, infringements of the law which most commonly lead to annulment and modification of judicial decisions, changes in the legislation, legal gaps which cause differences in the interpretation of the law, the need for harmonization of the case law, disciplinary procedures and their outcomes.

[19] See also Opinion No.2 (2001) of the CCJE.

V. F. Court administration and management

76. The determination of the conditions for the allocation of the budget to the various courts and the decision as to the body which should examine and report on the efficiency of the courts are sensitive issues. The CCJE considers that the Council for the Judiciary should have competence in this respect.

77. The Council for the Judiciary should not have competence in respect of performance management of individual judges.

78. The CCJE is of the opinion that the Council for the Judiciary can make a positive contribution to the promotion of quality of justice. Apart from developing policy in this respect, sufficient funding of the courts shall be provided to enable them to fulfil their obligations in this respect. In some countries systems have been set up to account for and measure the quality of justice; it is important to inquire into the results of such developments. As to developing policy measuring quality, it is important that the Council for the Judiciary can obtain from the courts relevant data and statistics.

79. The Council for the Judiciary should supervise the organisation of the inspection service so that inspection is compatible with judicial independence. This is particularly important where inspection services belong to the executive.

V.G. Protection of the image of justice

80. In its Opinion No.7(2005), the CCJE recommended the setting up of programmes, to be generally supported by the European judiciaries and states, aimed at going beyond the scope of giving general information to the public in the area of justice, and at helping to provide the correct perception of the judge's role in society. The CCJE considered that courts themselves should be recognised as a proper agency to organise programmes having the goal of improving the understanding and confidence of society with regard to its system of justice. In parallel, a role of co-ordinating the various local initiatives as well as promoting nation-wide "outreach programmes" should be given to the Council for the Judiciary which, with the assistance of professionals, may also provide more sophisticated information.

81. Again in its Opinion No.7(2005), the CCJE pointed out the role of an independent body – which could well be identified in the Council for the Judiciary or in one of its committees, if necessary with the participation of media professionals – in dealing with problems caused by media accounts of court cases, or difficulties encountered by journalists in carrying out their work.

82. Finally, in its above mentioned Opinion, the CCJE – dealing with the issue of judges or courts challenged or attacked by the media or by political or social figures through the media – considered that, while the judge or court involved should refrain from reacting through the same channels, the Council for the Judiciary or a judicial body should be able and ready to respond promptly and efficiently to such challenges or attacks in appropriate cases.

83. The Council for the Judiciary should have the power not only to disclose its views publicly but should also take all necessary steps before the public, the political authorities and, where appropriate, the courts to defend the reputation of the judicial institution and/or its members.

84. The Council for the Judiciary may also be the appropriate body to play a broader role in the field of the promotion and protection of the image of justice, as the performance of such a function often requires striking a balance between conflicting freedom of individuals, social and political actors, and the media, on the one hand, and the public interest in an independent and efficiently functioning justice system, on the other hand.

85. In this framework, the Council for the Judiciary could also address court users' complaints (See also paragraph 64 above).

86. The CCJE recommends that the Council for the Judiciary can perform such a function by availing itself of the help of the necessary professional assistance, as its staff in this area should not be restricted to lawyers but should also include journalists, social scientists, statisticians, etc.

V.H. Possibility to provide opinions to other powers of state

87. All draft texts relating to the status of judges, the administration of justice, procedural law and more generally, all draft legislation likely to have an impact on the judiciary, e.g. the independence of the judiciary, or which might diminish citizens' (including judges' own) guarantee of access to justice, should require the opinion of the Council for the Judiciary before deliberation by Parliament. This consultative function should be recognised by all States and affirmed by the Council of Europe as a recommendation.

V.I. Co-operation activities with other bodies on national, European and international level

88. The CCJE notes that in some States the responsibilities of the Council for the Judiciary are subdivided between several agencies. The resulting variety of national arrangements is further complicated by the fact that in some areas (e.g., training) a single institution may be competent, when in other areas competences are divided. It is not for the CCJE, at this stage, to take a stand with respect to an optimal scheme for the relations between separate agencies. Aware of the importance of national legal traditions as to the way in which such bodies have developed, the CCJE considers nonetheless the need to recommend that co-operation frameworks, under the leadership of the Council for the Judiciary, be set up, so that, when several agencies share the Council's tasks, smooth achievement of these tasks may be ensured. Such a process is also likely to favour institutional evolution in the sense of progressive unification of agencies (e.g. in the area of training). This also concerns co-operation with the Councils for the administrative judiciary. Cooperation with the Councils for the prosecutors, if such separate bodies exist, may also be appropriate.

89. The CCJE also stresses the importance of co-operation at the European and international levels between Councils for the Judiciary with respect to all areas in which Councils are active at the national level.

90. The CCJE acknowledges that the work of the European Network of the Councils for the Judiciary (which plays a general co-operative role between the councils for the judiciary) and the activities of the Lisbon Network and of the European Judicial Training Network (which are competent in the area of judicial training) deserve recognition and support. These Networks have been fruitful interlocutors for the CCJE.

VI. THE COUNCIL FOR THE JUDICIARY IN SERVICE OF ACCOUNTABILITY AND TRANSPARENCY OF THE JUDICIARY

91. Given the prospect of considerable involvement of the Council for the Judiciary in the administration of the judiciary, transparency in the actions undertaken by this Council must be guaranteed. Transparency is an essential factor in the trust that citizens have in the functioning of the judicial system and is a guarantee against the danger of political influence or the perception of self-interest, self protection and cronyism within the judiciary.

92. All decisions by the Council for the Judiciary on appointment, promotion, evaluation, discipline and any other decisions regarding judges' careers must be reasoned (see also paragraph 39 above).

93. As it has already been mentioned, transparency, in the appointment and promotion of judges, will be ensured by publicising the appointment criteria and disseminating the post descriptions. Any interested party should be able to look into the choices made and check that the Council for the Judiciary applied the rules and criteria based on merits in relation to appointments and promotions.

94. When the Council for the Judiciary has budgetary powers, it is only logical that it should be accountable for the use of the funds in question to the Parliamentary assembly which adopted the budget. The portion of the budget allocated to the judicial system should be controlled by the Audit Office in charge of supervising the use of public money, when it exists.

95. When the Council for the Judiciary has disciplinary powers, judges who are the subject of disciplinary proceedings shall be fully informed of the grounds of the decision so that they can evaluate if they should contemplate appealing against the decision (see paragraph 39 above). In addition, the Council for the Judiciary could consider the publication of decisions taken which are both formal and final, in order to inform, not only the whole of the judiciary, but also the general public of the way in which the proceedings have been conducted and to show that the judiciary does not seek to cover up reprehensible actions of its members.

96. The Council for the Judiciary should periodically publish a report of its activities, the aim of which being, on the one hand, to describe what the Council for the Judiciary has done and the difficulties encountered and, on the other, to suggest measures to be taken in order to improve the functioning of the justice system in the interest of the general public. The publication of this report may be accompanied by press conferences with journalists, meetings with judges and spokespersons of judicial institutions, to improve on the dissemination of information and on the interactions within the judicial institutions.

SUMMARY OF THE RECOMMENDATIONS AND CONCLUSIONS

In its Opinion No.10(2007) on « The Council for the Judiciary at the service of society », the CCJE recommends that:

A. In general:

a) it is important to set up a specific body, such as the Council for the Judiciary, entrusted with the protection of the independence of judges, as a an essential element in a state governed by the rule of law and thus respecting the principle of the separation of powers ;

b) the Council for the Judiciary is to protect the independence of both the judicial system and individual judges and to guarantee at the same time the efficiency and quality of justice as defined in Article 6 of the ECHR in order to reinforce public confidence in the justice system;

c) the Council for the Judiciary should be protected from the risk of seeing its autonomy restricted in favour of the legislature or the executive through a mention in a constitutional text or equivalent.

B. On the composition of the Council for the Judiciary:

a) in order to avoid the perception of self-interest, self protection and cronyism and to reflect the different viewpoints within society, the Council for the Judiciary should have a mixed composition with a substantial majority of judges, even if certain specific tasks should be held in reserve to an all-judge panel. The Council for the Judiciary may also be exclusively composed of judges;

b) prospective members, whether judges or not, shall be appointed on the basis of their competence, experience, understanding of judicial life and culture of independence. Also, they should not be active politicians or members of the executive or the legislature;

c) judge members should be elected by their peers, without any interference from political authorities or judicial hierarchies, through methods guaranteeing the widest representation of the judiciary; if direct elections are used for selection, the Council for the Judiciary should issue rules aimed at minimising any jeopardy to public confidence in the justice system;

d) appointment of non-judge members, with or without a legal experience, should be entrusted to non-political ; if they are however elected by the Parliament, they should not be members of the Parliament, should be elected by a qualified majority necessitating significant opposition support, and should be persons affording, in the overall composition of the Council for the Judiciary, a diverse representation of society.

C. On the functioning of the Council for the Judiciary:

a) terms of office of members could be full-time but limited in number and in time in order to preserve contact with court practice; members (judges and non-judges) should be granted guarantees for their independence and impartiality;

b) the Council for the Judiciary should manage its own budget and be financed to allow an optimum and independent functioning;

c) some decisions of the Council of the Judiciary shall be reasoned and have binding force, subject to the possibility of a judicial appeal ;

d) as an essential element of the public confidence in the justice system, the Council for the Judiciary should act with transparency and be accountable for its activities, in particular through a

periodical report suggesting also measures to be taken in order to improve the functioning of the justice system.

D. On the powers of the Council for the Judiciary:

a) the Council for the Judiciary should have a wide range of tasks aiming at the protection and the promotion of judicial independence and efficiency of justice; it should also ensure that no conflicts of interest arises in the Council for the Judiciary in carrying out its various tasks;

b) the Council of the Judiciary should preferably be competent in the selection, appointment and promotion of judges; this should be carried out in absolute independence from the legislature or the executive as well as in absolute transparency as to the criteria of selection of judges;

c) the Councils for the Judiciary should be actively involved in the assessment of the quality of justice and in the implementation of techniques ensuring the efficiency of judges' work, but should not substitute itself for the relevant judicial body entrusted with the individual assessment of judges;

d) the Council for the Judiciary may be entrusted with ethical issues; it may furthermore address court users' complaints;

e) the Council for the Judiciary may be entrusted with organising and supervising the training but the conception and the implementation of training programmes remain the responsibility of a training center, with which it should cooperate to guarantee the quality of initial and in-service training;

f) the Council for the Judiciary may have extended financial competences to negotiate and manage the budget allocated to Justice as well as competences in relation to the administration and management of the various courts for a better quality of Justice ;

g) the Council for the Judiciary may also be the appropriate agency to play a broad role in the field of the promotion and protection of the image of justice;

h) prior to its deliberation in Parliament, the Council for the Judiciary shall be consulted on all draft legislation likely to have an impact on the judiciairy, e.g. the independence of the judiciary, or which might diminish citizens' guarantee of access to justice;

i) co-operation with the different Councils for the Judiciary at the European and international levels should be encouraged.