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COUNCIL OF EUROPE CONSEIL DE L'EUROPE

CCJE-GT(2013)4

**WORKING GROUP
OF THE CONSULTATIVE COUNCIL
OF EUROPEAN JUDGES
(CCJE-GT)**

**Report of the 24th meeting
Strasbourg, 24-26 April 2013**

Document prepared by the Secretariat
Directorate General I - Human Rights and Rule of Law

I. INTRODUCTION

1. The Working Group of the Consultative Council of European Judges (CCJE-GT) held its 24th meeting in Strasbourg from 24 to 26 April 2013. The meeting was chaired by Mr Bart VAN LIEROP (the Netherlands), Vice-President of the CCJE.
2. The agenda and the list of participants are appended to this report (Appendices I and IV respectively).

II. COMMUNICATION BY THE PRESIDENT, MEMBERS OF THE BUREAU AND WORKING GROUP OF THE CCJE

3. Mr Gerhard REISSNER (Austria), President of the CCJE, emphasised that the CCJE Opinions are quoted increasingly. The Conference in Paris in November 2012 on the relationship between judges and lawyers organised in co-operation with the Paris Bar Association was very successful. He also briefly mentioned the Bureau meeting on 24 April 2013, including information on the new organisational set-up and distribution of responsibilities within the Secretariat: Mr Stéphane LEYENBERGER, Acting Head of the Division for the independence and efficiency of justice is now directly responsible for the CCJE, together with Mr Artashes MELIKYAN. Mr REISSNER provided the members of the CCJE-GT with particulars of the meetings and other activities in which he, as well as other members of the Bureau, had participated in order to represent the CCJE (for details, see the report of the 13th meeting of the CCJE Bureau, document CCJE-BU(2013)3).
4. Mr REISSNER particularly referred to the preparation of the 2014-2015 Terms of Reference (ToR) for the CCJE which would have to be decided during the CCJE plenary on 13-15 November 2013. He invited the GT members to start discussion of possible topics.
5. Mr Nils ENGSTAD (Norway) initiated a discussion on the preparation of the Situation Report on the judiciary and judges in different member states in the light of previous discussions, and whether it may have monitoring elements which may be set out in the future ToR. However, after discussions, including the explanations by the Bureau, the overall consensus among all GT members was that such activities should be seen in the context of CCJE providing targeted cooperation to enable member States to comply with the Council of Europe standards concerning judges. It was underlined that the CCJE was not a monitoring body.
6. Mr Stéphane LEYENBERGER, Secretary of the CCJE, briefed the members of the CCJE-GT on the activities of the European Commission for the Efficiency of Justice (CEPEJ) and prospects of cooperation between the CEPEJ and the CCJE. In particular, the CEPEJ, through its three Working Groups, had undertaken a regular process for evaluating and strengthening the efficiency and quality of judicial systems in the member States and beyond. The last report evaluating the functioning of judicial systems was published in September 2012; the 2012 – 2014 evaluation cycle is under way and should result in a new report in 2014. This activity of CEPEJ may be relevant for the CCJE as regards the evaluation of judges' performance vis-a-vis the questions of qualitative and quantitative evaluation. The Working Group of the CEPEJ on the quality of justice was editing the guidelines for judicial experts which was also relevant for the CCJE work.
7. At the same time, it was stressed that there was no risk of duplication. On the opposite, the work by the CEPEJ and the CCJE complements each other. Their status, mandate and objectives are different. The CEPEJ is an intergovernmental body which serves (through members representing the member States) as an arm of the Committee of Ministers to develop the policies for improving the efficiency and quality of the public service of justice, whereas the CCJE is entrusted to advise (through individual judges appointed *ad personam*) the Committee of Ministers on issues related to the status of judges and the exercise of their function.

III. PREPARATION OF DRAFT OPINION NO. 16 ON THE RELATIONSHIP BETWEEN JUDGES AND LAWYERS

8. Mr Bart VAN LIEROP thanked Ms Natalie FRICERO, scientific expert, who was present at the meeting, for having prepared a draft structure of the Opinion No. 16 on the relationship between judges and lawyers and concrete means to improve the efficiency and quality of judicial proceedings (Document CCJE-GT(2013)1), on the basis of the replies to the relevant questionnaire submitted by 33 member States. He also thanked Ms FRICERO for the comprehensive document containing an analysis of these replies (Document CCJE-GT(2013)2), as well as for the compilation of replies (CCJE-GT(2013)3) listed question by question which provided a quick overview of the situation in the member States vis-à-vis each relevant issue. The GT members also intervened and emphasised the usefulness of these documents for the preparation of the draft Opinion.
9. The members of the CCJE-GT proceeded to discuss the topic, these documents and related aspects at a global, then at more detailed level. It was emphasised that judges and lawyers have quite different missions.

However, they should make efforts to understand each other's problems. The lawyers should not criticise in an abusive manner the judges. The starting point are the codes of ethics of both professions. As regards the possible establishment of common codes of ethics for judges and lawyers, it might be rather difficult because of their different missions. In this Opinion, CCJE should be careful to observe in what way the lawyers' profession is touched, and the CCJE's role is not to advise the Bar Associations but the judges, whereas the Bar Associations are invited to enter into discussion with judges. Therefore, the CCJE should limit itself to observations from the point of view of judges what would be desirable for lawyers. The lawyers should not have the impression that they are imposed specific provisions. Good practices between the both professions should be highlighted.

10. The members discussed in detail the issue of cooperation between judges and lawyers for better and faster justice. While some members stressed good prospects of such cooperation, others were more sceptical, taking into account different missions of judges and lawyers. However, everybody agreed on the necessity of efforts for such cooperation. The members of the CCJE-GT referred to the previous CCJE Opinions and other relevant instruments such as the Bangalore Principles of Judicial Conduct of 2002¹.
11. On the basis of extensive discussions, the CCJE-GT elaborated and adopted a detailed draft structure (CCJE-GT(2013)1rev4 reproduced in Appendix II to this report) comprising the following chapters:
- Introduction including aims of justice and respective roles of judges and lawyers (referring to Bangalore Principles, Bordeaux Declaration² and other relevant documents);
 - Elements of the relationship between judges and lawyers: which aspects should be overriding; what is common between the two professions (for example, ethical principles that are common); what are the governing principles of relationship between judges and lawyers (such as mutual respect, professionalism and competence of each, integrity, the ability of lawyers to contribute effectively to the administration of the justice, the ability of judges to react effectively to the submissions of lawyers and understand their problems etc.);
 - Problems and causes (insufficient participation of lawyers and parties in proceedings, lack of information between courts and lawyers, lack of adequate procedural legislation, of common training in relation to procedures, of mutual comprehension of roles and problems, of means of dialogue and communications between the two professions etc.);
 - Proposals for solutions (both objective and subjective, including procedural legislation, appreciation of common goals and the proper relationship between judges and lawyers, development of their training (including joint) in order to better understand each other and the importance of proper relations between them for promoting the fair and efficient disposal of cases, development of means of communication on pre-trial procedural hearings etc., development of discussions generally at institutional level and other relevant aspects).
12. Ms FRICERO, who closely participated in discussions and elaboration of this structure, kindly volunteered to prepare on this basis a preliminary draft Opinion by 6 May 2013. Thereafter, the draft would be forwarded to the members of the Bureau for their comments, after which the final approved document would be forwarded by mid-May to all members of the CCJE-GT for their comments by 31 May 2013. The compilation of these comments, along with the above mentioned document, would be submitted to the CCJE-GT in June.

IV. OTHER BUSINESS

13. The members of the CCJE-GT briefly discussed the list of possible topics for the Opinions of the CCJE in 2014 and 2015 (see the list of the discussed topics in Appendix III to this report). It was proposed to continue this discussion during the next CCJE-GT meeting.
14. This next meeting (25th) was scheduled in Rome, following an invitation by the Italian High Council of the Judiciary, on 12 (pm) – 14 June 2013. A conference on the relations between judges and lawyers would take place on 13 June (am). The Secretariat indicated that the changes in the dates of this meeting were proposed at the request of the Italian hosts.

¹ The Bangalore Draft Code of Judicial Conduct 2001 adopted by the Judicial Group on Strengthening Judicial Integrity, as revised at the Round Table Meeting of Chief Justices held at the Peace Palace, The Hague, 25-26 November 2002.

² The Bordeaux Declaration is part of the Joint Opinion of the CCJE and the Consultative Council of European Prosecutors (CCPE) "On the relations between judges and prosecutors in a democratic society" adopted in 2009.

APPENDIX I**AGENDA / ORDRE DU JOUR**

1. Opening of the meeting / *Ouverture de la réunion*
2. Adoption of the agenda / *Adoption de l'ordre du jour*
3. Communication by the President, members of the Bureau and the Secretariat / *Communication du Président, des membres du Bureau et du Secrétariat*
4. Preparation of the CCJE Opinion No. 16 on the relationship between judges and lawyers and concrete means to improve the efficiency and quality of judicial proceedings / *Préparation de l'Avis n° 16 sur les relations entre juges et avocats et les moyens concrets d'améliorer l'efficacité et la qualité des procédures judiciaires*
5. Other work of the CCJE / *Autres travaux du CCJE*
 - Participation of the CCJE in other meetings in and outside the Council of Europe / *Participation du CCJE à d'autres réunions au sein ou à l'extérieur du Conseil de l'Europe*
6. Any other business / *Divers*

Strasbourg, 26 April 2013

**WORKING GROUP
OF THE CONSULTATIVE COUNCIL OF EUROPEAN JUDGES (CCJE-GT)**

**OPINION (2013) N° 16
ON THE RELATIONSHIP BETWEEN JUDGES AND LAWYERS AND CONCRETE MEANS TO IMPROVE
THE EFFICIENCY AND QUALITY OF JUDICIAL PROCEEDINGS**

Plan of the opinion:

A. Introduction

1. Aim of justice: use the wording of previously produced Opinions of the CCJE
2. Role of judges/lawyers: again we can use existing statements of principles: Bangalore/Bordeaux/the CC European lawyers' statement. Identify the areas where they interact with one another in the course of the procedure.

B. Elements of the relationship between the judges and lawyers

3. What should be overriding? The role of judges and lawyers are different but there is an overriding duty: this is towards the overriding objectives of the procedural rules of the court to produce a judicial result fairly, and efficiently.
Comments (not necessarily for this chapter)
 - a. It is important to recognise that the time when there is a relationship between the two is limited. The lawyer has a relationship with his client before that with the judge and the relationship ends once the procedure has finished and the judge is left to write his judgment.
 - b. However there are elements in what the lawyer does with the client may have an impact on the relationship with the judge.
 - c. We must recognise the freedom of association of the lawyers both with their clients and with one another
4. What is common between the two? Should identify the ethical principles that are in common. The European lawyers have identified these. The most important thing maybe mutual respect, particularly for the independence of each and from each other.
5. What should the relationship be between the judges and lawyers:
 - a. Mutual respect for each other's roles in the procedure
 - b. Common professionalism
 - c. Integrity
 - d. Competence of each
 - e. The ability of the lawyer to contribute effectively to the administration of the justice by all aspects of the work that he does towards the procedure in a way that does not mislead the court or lead to delay
 - f. The ability of the judge to react effectively to the submissions of the lawyers and to understand their problems
 - g. The two have to contribute to the final result in the way that is relevant to their role in the proceedings.
 - h. The judge has to recognise that there may be an inequality of representation by the parties; one may have a lawyer and the other may not.
 - i. The lawyers have to contribute in the manner that is appropriate according to the procedural rules applicable in the jurisdiction concerned.
 - j. The advocate must present the arguments in a concise manner

C. Problems and Causes

6. What are the problems: these have been identified in the existing list: Point 10 needs remodelling: "Difficulties between judges and lawyers resulting from media coverage". Add Nos 13, 14 and 15:
 13. Lawyers and parties have insufficient part in the course of proceedings.

14. Lack of information between courts and lawyers.

15. Understanding the respective role of lawyers/judges in promoting the amicable settlement of disputes by conciliation, including mediation.

7. What are the general causes:

- a. Lack of adequate procedural legislation;
- b. Lack of common training in relation to procedures;
- c. Lack of mutual comprehension of roles and problems;
- d. Lack of means of dialogue and communications between the two;
- e. Lack of exchange between judge and lawyers in managing progress of the proceedings eg: fixing the timetable for evidence, statement of issues, dates for interlocutory hearings; trial date etc;
- f. Lack of co-operation in providing access to information relating to procedures and substantive law; including lack of information about case law on procedure which has not been published;
- g. Creation of "soft law" procedures which may be in conflict between one another and with legislation on procedures;
- h. Proliferation of differing procedures which detract from the principle of uniformity of procedures

Proposals for Solutions

8. What are our proposals for solutions, from the judges' point of view: these are both objective and subjective:

a. Objective:

- i. Ensure adequate procedural legislation (in accordance with Art 6) which is sufficiently firm, yet which permits flexibility when appropriate. This procedural legislation should ensure that there are clear and fair time limits for procedural steps, together with provision for flexibility where necessary;
- ii. Ensure the appreciation (through discussion) of common goals and the proper relationship between judges/lawyers, which are then recognised in adequate guidance in the codes of ethics of both lawyers and judges and ensure also their proper application in practice, to be kept under periodic review;
- iii. Development of training (both initial and continuing training) of the judges and advocates in order better to understand the role of the other and the importance of proper relations between them with the object of promoting the fair and efficient disposal of cases;
- iv. Development of common training so far as possible;
- v. Development of stages between judges/advocates during training and afterwards;
- vi. Development of means of communication on pre-trial procedural hearings etc;
- vii. Development of discussions generally between judges and advocates at the institutional level on the question of relations between judges and advocates;
- viii. Recognition of the need for transparency in procedure as between judges/advocates/others;
- ix. Ensure the proper participation of all (judges, advocates and parties) at all stages of procedure, with the aid of User Panels (including advocates) where appropriate;
- x. Ensure advocates/users are given full access to information as far as possible, including access to judgments where appropriate;
- xi. Development of judges' understanding of the proper role of the media/social networks and the correct approach in dealing with the media etc. and discussion of this issue with advocates/others at an institutional level;
- xii. Ensuring a proper understanding of the respective roles of judges/lawyers in promoting the amicable settlement of disputes by conciliation, especially mediation, in the course of common training amongst other things. Identifying the dangers for the judges of over-pressurizing the parties to settle a case;

b. Subjective:

- i. development of proper respect between judges and advocates of their proper role and activities during all hearings and in communications between judges and advocates.

APPENDIX III

**List of possible topics for future Opinions of the CCJE
as proposed by its members during the 13th plenary meeting
in Paris on 5-6 November 2012,
further discussed during the CCJE-GT 24th meeting
in Strasbourg on 24-26 April 2013**

*(the topics below are presented according to the actual order
of their presentation during the CCJE plenary meeting):*

1. Relations between courts and judicial experts *(proposed by Germany)*.
2. Relations between the judiciary and other state powers: the executive and the legislative powers *(proposed by Croatia)*.
3. Relations between the European Court of Human Rights and domestic courts *(proposed by the United Kingdom)*.
4. Evaluation of judges' performance and role of court presidents in such evaluation *(proposed by Austria and Norway)*.
5. Role of judges in the protection of fundamental rights in the context of an economic crisis *(proposed by Spain)*.
6. Declaration of property of judges and conflicts of interest *(proposed by Albania)*.
7. Judicial integrity: factors fostering judicial corruption, means of preventing it, integrity of judges with respect to their private life *(proposed by Croatia)*.

APPENDIX IV**LIST OF PARTICIPANTS****Members of CCJE-GT / Membres du CCJE-GT****CROATIA/CROATIE**

Mr Duro SESSA, Judge, Supreme Court of Croatia, ZAGREB

GERMANY/ALLEMAGNE

Mr Johannes RIEDEL, President of the Court of Appeal, KÖLN, Vice-President of the Constitutional Court of North Rhine-Westphalia

LITHUANIA/LITUANIE

Mr Virgilijus VALANČIUS, President of the Supreme Administrative Court of Lithuania, VILNIUS

LUXEMBOURG

Mr Jean-Claude WIWINIUS, Président de Chambre, Cour Supérieure de Justice, LUXEMBOURG

NORWAY/NORVEGE

Mr Nils ENGSTAD, Judge, Halogaland Court of Appeal, TROMSØ

PORTUGAL (excused/excusé)

Mr Orlando AFONSO, Judge, Supreme Court of Portugal, LISBONNE

SPAIN/ESPAGNE (excused/excusé):

Mr José Francisco COBO SÁENZ, Magistrato, Presidente de la Secc. 2a, Provincial de Navarra, PAMPLONA

SWITZERLAND / SUISSE

Mr Bernard CORBOZ, Juge fédéral, Tribunal fédéral, LAUSANNE

“THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA”/“L’EX-REPUBLIQUE YOUGOSLAVE DE MACEDOINE”

Ms Aneta ARNAUDOVSKA, Judge, Director of the Academy for training of judges and prosecutors, SKOPJE

Members of the CCJE-BU / Membres du the CCJE-BU**AUSTRIA/AUTRICHE (President of the CCJE/ Président du CCJE):**

Mr Gerhard REISSNER, President of the International Association of Judges, President of the District Court of Floridsdorf, VIENNA

THE NETHERLANDS/PAYS BAS (Vice-President of the CCJE/ Vice-Président du CCJE):

Mr Bart VAN LIEROP, Senior Justice, Administrative High Court for Trade and Industry, THE HAGUE

SLOVENIA/SLOVENIE :

Ms Nina BETETTO, Judge, Supreme Court of Slovenia, LJUBLJANA

UNITED KINGDOM/ ROYAUME-UNI :

Lord Justice Richard AIKENS, Royal Courts of Justice, Strand, LONDON

SCIENTIFIC EXPERT / EXPERT CONSULTANT

Ms Natalie FRICERO, Professor, University of Nice, NICE

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