

Strasbourg, 12 May 2014

CCJE-GT(2014)5

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

**Report of the 26th meeting
Strasbourg, 17-19 March 2014**

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 26th meeting in Strasbourg from 17 to 19 March 2014. The meeting was chaired by Mr Richard AIKENS (the United Kingdom), Vice-President of the CCJE.
2. The agenda and the list of participants are appended to this report (Appendices I and III respectively).

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

1. Mr Bart van LIEROP (the Netherlands), President of the CCJE, briefed the members of the CCJE-GT on the discussions held during the Bureau meeting and developments since November 2013. He mentioned in particular the CCJE Bureau's meeting with Mr Philippe BOILLAT, Director General of Human Rights and Rule of Law, who emphasised the support for the CCJE activities, including in the area of targeted cooperation and coordination with other bodies and institutions of the Council of Europe, including the Parliamentary Assembly. Regarding the latter, the Bureau would meet with Mr Andrew DRZEMCZEWSKI, Head of Legal Affairs and Human Rights Department and Head of the corresponding Committee's Secretariat of the Parliamentary Assembly.
2. Mr van LIEROP referred to the increasing scale of the CCJE activities and importance of the follow-up to the above-mentioned meetings. The CCJE's visibility was expanding and its Opinions were increasingly quoted at national level in various documents, including in national judgments. The CCJE's participation in various events at international and national level was rising, and it was also increasingly called on to provide legislative expertise.
3. Mr Gerhard REISSNER (Austria), former President of the CCJE (in 2012-2103), briefed the participants on his presentation to the Committee of Ministers of the Council of Europe on 12 March 2014, whereby he focused on the CCJE Opinions and the Situation Report on the judiciary and judges in the Council of Europe member States. He mentioned that the activities of the CCJE were highly appreciated, and France suggested to reinforce the language of the corresponding document of the Committee of Ministers and "to welcome the Opinion No. 16 and to underline the importance of standards relating to the status of judges and the exercise of their functions to improve respect for the rule of law across Europe". This proposal was accepted by the Committee of Ministers.
4. Mr REISSNER also spoke of his work on assessing the draft law on the restoration of trust in the judiciary of Ukraine (so called lustration law) within the framework of the project implemented in Ukraine by the Council of Europe, and underlined the urgency and importance of this issue vis-à-vis the independence and status of judges in Ukraine.
5. Ms Aida-Rodica POPA (Romania) referred to the Action Plan to strengthen the judiciary in Romania and the initiative of the Superior Council of Magistracy of Romania to organise a conference for judges on 11-13 September 2014 in Bucharest. The conference would bring together the CCJE representatives and some

80 Romanian judges, and it would focus on the CCJE opinions and standards and their application in Romania.

6. Mr Orlando AFONSO (Portugal) mentioned that together with the European Commission for the Efficiency of Justice (CEPEJ) and the European Commission for Democracy through Law (the Venice Commission), he participated in the work with the government of Morocco. He also mentioned an event organised by the Association of Portuguese Judges in October 2013 on the subject of human rights where European standards were promoted.
7. Mr Raffaele SABATO (Italy) mentioned several activities in Italy in May 2014 in which the CCJE members would be involved. The President of the Supreme Court of Italy issued a letter to all judges on the subject of clarity and shortness of judgments. In the letter, a reference was made to the CCJE standards.
8. Mr Duro SESSA (Croatia) made a presentation, which would be published, at the Conference for Croatian lawyers highlighting the CCJE opinions.
9. Ms Nina BETTETO (Slovenia) mentioned her work as expert within the framework of the project “Strengthening the capacity of the judiciary as regards the implementation of the European Convention on Human Rights in Bosnia and Herzegovina” implemented by the Council of Europe. In particular, she participated in an assessment mission for consultations with the key stakeholders of the project and prepared an analysis of the evaluation criteria for judges in Bosnia and Herzegovina, which was available for the CCJE-GT members.

III. PREPARATION OF THE DRAFT OPINION NO. 17 ON JUSTICE, EVALUATION AND INDEPENDENCE

10. The members of the CCJE-GT thanked Ms Anne SANDERS, scientific expert, who also attended the present meeting, for having prepared the draft structure of the Opinion No. 17 (document CCJE-GT(2014)1), as well as the comprehensive analysis of the replies by the member States to the CCJE questionnaire elaborated for the Opinion No. 17 (Document CCJE-GT(2014)2).
11. Mr AIKENS suggested to start the discussion by focusing on the methodology and by the end of the meeting, to reach an agreement on the final structure of the Opinion covering its main contents so that by the time of the CCJE-GT next meeting in Berlin in June, the text of the Opinion is ready for the consideration.
12. The members of the CCJE-GT proceeded to the general discussion about the concerns and thoughts on the topic of the evaluation of judges. They underlined the great potential importance of this Opinion for all CoE member States and the common aim of all the systems to have the highest quality of justice. The only way for achieving this would be to have the judges of highest quality, and to ensure that, evaluation was needed. However, in some countries, it was questionable. In Denmark, the idea of evaluation was rejected because it was considered contrary to the judicial independence.
13. The members of the CCJE-GT discussed whether they needed to consider what should the evaluation consist of; how it should be done; who shall participate; was the evaluation a constitutional issue; whether they needed to consider the issue of

striking a balance; whether they had to consider evaluation for all judges, or only those appointed to permanent positions; and other aspects.

14. Mr REISSNER emphasised that in several countries, the evaluation of judges was a burning issue in the view of presumed conflict between the evaluation and independence, and the question was whether the evaluation was needed at all, and if yes, then for who it was needed, and whether it was possible to have an objective assessment, and what meant objectivity. He also mentioned that the qualitative and quantitative criteria were interrelated.
15. Ms BETTETO mentioned that there was no straightforward answer because it depended on the issue of the culture. Her concern was also about the criteria of evaluation and distinction between descriptive and other criteria.
16. Mr Jean-Claude WIWINIUS (Luxembourg) agreed with this idea and said that the cultural context was important for the evaluation. He also mentioned the issue of the judges' training and the consequences for their salaries.
17. Mr van LIEROP pointed out that the CCJE Opinion should take into account the experience of Denmark and Norway where evaluation did not exist, and what were the other mechanisms that these countries used to implement.
18. Mr Johannes RIEDEL (Germany) stressed that his concern was about the process and how the evaluation was practically implemented. He also mentioned the link between the evaluation and disciplinary proceedings.
19. Mr AFONSO mentioned that it was not the CCJE's task to impose something on the countries with well-functioning system, and all kinds of evaluation should keep in mind the quality of justice required by the population of the country. He also mentioned that it should be considered whether permanent and non-permanent judges would have to be evaluated, and that the quality of justice depended on the quality of evaluation.
20. Mr AIKENS mentioned that perhaps it would be better to confine the evaluation to those who were in established positions - judges in office. As regards the question why we have evaluation, it may be considered first, and before descending to the issue of organisation of the evaluation, three pillars: responsibility, independence and evaluation had to be considered. He also said that it was a fundamental point – if evaluation was used as means of assessing the pay of judges. He underlined that the outcome of the evaluation should never influence the remuneration of a judge.
21. Mr van LIEROP referred to the report of the European Network of Councils for the Judiciary (ENCJ) summing up possible aims, criteria, competent bodies and process of evaluation, and emphasised that the CCJE's task was not to give description again, but to focus on issues not dealt with in the ENCJ report.
22. Mr SESSA underlined that the objectivity of the evaluation was a very important aspect and therefore, whatever criteria were to be used, it should be carried out in an objective and impartial manner.
23. Mr Raffaele SABATO (Italy) mentioned the importance of the relationship between quality and quantity of judicial decisions and evaluation. The CCJE Opinion No. 11 on the quality of judicial decisions was a relevant instrument to be referred to. He also

mentioned the public sector offices' auditors and that in Italy, the judges were responsible for the organisation of the evaluation.

24. Ms SANDERS mentioned the relevant reports and she emphasised that it should be clarified what kind of criteria may be used for the evaluation and whether it affects the salaries of judges; other relevant factors - it can be important to improve the judicial system.
25. Mr AIKENS summarised the discussions and prepared the draft structure agreed by the members of the CCJE-GT (see Appendix 2).
26. The following timetable was agreed for the process of further preparation of the Opinion No. 17:
 - by 14 April 2014, Ms SANDERS would finalise the draft text for the Opinion No. 17 and send it to Mr AIKENS for review;
 - by 28 April 2014, Mr AIKENS would send the amended version to the CCJE Bureau and the Secretariat;
 - by 23 May 2014, the further amended version – in English and French - would be sent by the CCJE Secretariat to the CCJE-GT members;
 - by 10 June 2014, the CCJE-GT members would send their comments to the Secretariat which would then integrate them into the draft to be considered in the course of the next CCJE-GT meeting.

IV. OTHER BUSINESS

27. On 18 March 2014, the members of the CCJE Bureau met with Mr Andrew DRZEMCZEWSKI, Head of Legal Affairs and Human Rights Department and Head of the corresponding Committee's Secretariat of the Parliamentary Assembly of the Council of Europe.
28. On 18 March 2014, the Permanent Representation of Austria at the Council of Europe hosted, within the framework of the Austrian Chairmanship of the Committee of Ministers of the Council of Europe, a reception for the CCJE Bureau and GT members.
29. The next CCJE-GT meeting would take place on 24-26 June 2014 in Berlin, at the invitation of the Federal Ministry of Justice of Germany, and it would be preceded by a meeting on 23 June 2014 in the same venue of the Joint Commission of the German Federation and Lander for the Analysis of Judicial Autonomy in Europe.

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 draft Opinion No. 17 on the justice, evaluation and independence / *Préparation du projet d'Avis n° 17 sur la justice, évaluation et indépendance*
5. Other work of the CCJE / *Autres travaux du CCJE*
6. Any other business / *Divers*

APPENDIX II

CCJE-GT(2014)1Rev1

Strasbourg, 18 March 2014

CONSULTATIVE COUNCIL OF EUROPEAN JUDGES (CCJE)

<p>Draft structure for the preparation of the CCJE Opinion No. 17 (2014)</p> <p>on justice, evaluation and independence</p>

Introduction

Object of the Opinion

Key tasks of a judge

Primacy of the independence of judges

Aims of evaluation

- regular evaluation
- evaluation on promotion
- relationship between evaluation and discipline

Different aspects of evaluation

- criteria
- methods
- benefits of evaluation (including whether it assists the possibility of independence)
- what are possible dangers if any, such as link with remuneration
- reconciliation between evaluation and independence

Recommendations

APPENDIX III

LIST OF PARTICIPANTS

Members of CCJE-GT / *Membres du CCJE-GT*

AUSTRIA/AUTRICHE

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

CROATIA/CROATIE

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

ITALY/ITALIE

Mr Raffaele SABATO, Counsellor, Supreme Court of Cassation, Member, Board of Directors, School for the Judiciary, ROME

LUXEMBOURG

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

NORWAY/NORVEGE

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

PORTUGAL

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

ROMANIA/ROUMANIE

Ms Aida-Rodica POPA, Judge of the High Court of Cassation and Justice, BUCHAREST

SPAIN/ESPAGNE (apologized/excusé)

Mr José Francisco COBO SÁENZ, Judge, Chair of the Section. 2a, Provincial de Navarra, PAMPLONA

TURKEY/TURQUIE (apologized/excusé)

Mr Osman Nesuh YILDIZ, Reporter Judge, High Council for Judges and Prosecutors, ANKARA

Members of the CCJE-BU / *Membres du CCJE-BU*

THE NETHERLANDS/PAYS BAS (President of the CCJE/ *Président du CCJE*)

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

UNITED KINGDOM/ROYAUME-UNI (Vice-President of the CCJE/ *Vice-Président du CCJE*)

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

GERMANY/ALLEMAGNE

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

SLOVENIA/SLOVENIE

Ms Nina BETETTO, Judge, Vice-President of the Supreme Court, LJUBLJANA

**COUNCIL OF EUROPE'S SECRETARIAT /
SECRETARIAT DU CONSEIL DE L'EUROPE**

**Directorate General of Human Rights and Rule of Law/
Direction Générale des droits de l'homme et de l'état de droit**

**Division for the independence and efficiency of justice /
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