



Strasbourg, 14 April 2015

CCJE-GT(2015)1

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

**Report of the 28<sup>th</sup> meeting  
Strasbourg, 18-20 March 2015**

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 28<sup>th</sup> meeting in Strasbourg from 18 to 20 March 2015. The meeting was chaired by Mr Richard AIKENS (United Kingdom), Vice-President of the CCJE.
2. The agenda and the list of participants are appended to this report (Appendices I and II respectively).

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

3. Mr Bart van LIEROP (The Netherlands), President of the CCJE, briefed the members of the Working Group on the discussions held during the Bureau meeting and developments since October 2014. He started with referring to the working lunch with the Secretary General of the Council of Europe in the presence of the chairpersons of the Council of Europe monitoring, standard-setting and consultative bodies<sup>1</sup>.
4. Mr van LIEROP went on to mention his participation, on 8-9 December 2014, in the meeting organised by the European Committee on Crime Problems (CDPC) to give the CCJE views on prison overcrowding. The plan was to prepare a white paper on prison overcrowding. The second meeting would take place in May 2015.
5. On 15 December 2014, he participated in the farewell ceremony for retirement of Mr Johannes RIEDEL (Germany), where the latter was particularly praised as a “proponent of a culture of dialogue”. On 14 January 2015, he presented the CCJE Opinion No. 17 (2014) on “The evaluation of judges’ work, the quality of justice and respect for judicial independence” to the Committee of Ministers of the Council of Europe in the course of its 1216<sup>th</sup> meeting. The Committee of Ministers welcomed the Opinion and also took note of the activities of the CCJE. On 30 January 2015, Mr van LIEROP took part in the opening of the judicial year in the European Court of Human Rights. As regards the upcoming events, he mentioned his expected participation in: 1) the conference for judges on 27-28 April 2015 in Bucharest organised by the Supreme Council of Magistracy of Romania in cooperation with Ms Aida POPA (Romania); 2) in the conference on finding a model for National Judicial Council on 13-14 May 2015 in Brno, organised by the Supreme Court of the Czech Republic; 3) in 2<sup>nd</sup> meeting on the prison overcrowding on 21 May 2015 in Strasbourg.
6. Concerning legislative and legal assistance, Mr van LIEROP mentioned the question from Luxembourg concerning the irremovability of judges and that Mr Alain LACABARATS (France) drafted, as entrusted by the CCJE Bureau, the comment regarding changes in the law on judicial organisation in Luxembourg. The comment was sent to the group of the magistrates from Luxembourg who applied to the CCJE, and was also published in the CCJE website. He went on to mention the request from Serbia concerning the Judicial Academy as a single entry point for judicial profession, where Mr Johannes RIEDEL (Germany) drafted a reply. Mr van LIEROP also mentioned the complaints from Ukraine<sup>2</sup> and Montenegro<sup>3</sup>. At the end of his introduction, he suggested to enlarge a group of the CCJE members who would be willing to participate in the drafting of expert opinions and comments. He also welcomed the publication of the brochure on the autonomy and independence of the judiciary, where the debates of the joint meeting of the CCJE Bureau and Working Group with the Commission of the German Federation and Länder for the Analysis of Judicial Autonomy in Europe (Judicial System Commission) on 23 June 2014 in Berlin were highlighted.
7. Mr Orlando AFONSO (Portugal) mentioned that he was invited by the French School of Magistrature to give a presentation; he finished a book on the CoE referring in particular to how the CCJE was set up; the translation of all Recommendations of all CCJE Opinions up to the Opinion No. 17 was carried out.
8. Ms Aida POPA (Romania) referred to two conferences organised in Romania. In the coming week, there would be another conference for which she prepared a questionnaire and would prepare

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<sup>1</sup> For more details, see the report on the 18th meeting of the CCJE Bureau in Strasbourg on 18 March 2015, document CCJE-BU(2015)2, para 14.

<sup>2</sup> Ibid., para 11.

<sup>3</sup> Ibid., para 12.

conclusions. In April 2015, she would take part in the conference on relations between the judicial and executive powers. Regarding the planned conference on 27-28 April 2015 in Bucharest on the Opinion No. 17(2014) on the evaluation of judges' work, the quality of justice and respect for judicial independence, the agenda has been finalised and sent to the participants.

9. Mr Johannes RIEDEL (Germany) mentioned the process of preparation of the CCJE comment in response to the letter from the Serbian Ministry of Justice on the Judicial Academy as a single entry point for the judiciary. The request was discussed with the CCJE Bureau, then shared with the Serbian member of the CCJE, following which Mr RIEDEL prepared the comment. He also went on to mention his involvement in the joint Council of Europe / European Union project in Albania on support to efficiency of justice; in particular as regards the individual evaluation of judges, he was surprised by the extended points system existing in Albania.
10. Ms Anne SANDERS, CCJE Scientific Expert, also mentioned her work within the framework of that project. She carried out, in February 2015, the assessment of the draft law on the system of evaluation of judges' performance taking into account the CCJE standards, in particular the CCJE Opinion No. 17 (2014). The assessment was forwarded to the Albanian authorities for consideration.
11. Ms Aneta ARNAUDOVSKA ("the former Yugoslav Republic of Macedonia") reported that the Opinion No. 17 (2014) has been translated. A conference was organised where this Opinion was presented; furthermore, the Opinion was used for improving the qualitative criteria for judges' performance.
12. Mr Raffaele SABATO (Italy) mentioned that in Italy a new law introduced a revised system of civil liability of judges, in which the filter of receivability of the action was eliminated, so that judges could be brought to court without a preliminary evaluation; the cases of the liability were increased; the wording of the law gave some room for ambiguity as to the recovery from the State onto the judge personally; also, the court summer recess period was cut.
13. Mr Duro SESSA (Croatia) reported that a delegation of Armenian judges would be visiting Zagreb next week; the system of evaluation would be examined with them; Mr Gerhard REISSNER (Austria) would also participate; the Opinion No. 17 (2014) would be presented and encouraged for application. In February 2015, Mr SESSA participated in a seminar for judges in Tbilisi, Georgia, and spoke on the CCJE Opinions concerning the codes of ethics and the Councils for the Judiciary.
14. Mr Gerhard REISSNER (Austria) emphasised that the Opinion No. 17 (2014) was being used by many member states and it was a success. He was involved in the Venice Commission's work: he participated in examining the Ukrainian lustration law regarding the judiciary and provided his assessment in spring of 2014, which resulted in some improvements; in autumn of 2014, another lustration law was adopted, not only regarding judges but all other public officials, and also several management positions in the economic area. The first law was boycotted by the fact that members were not nominated by the respective bodies. The second law as far as the judiciary was concerned was blocked by claims to the Constitutional Court. Both laws were not fully in accordance with European standards. The most recent law regarding the justice system ("Law on Fair Trial") was also partly very problematic and would be assessed. One part contained an amendment of all procedural codes, which should re-enforce the possibility of the Supreme Court to unify the application of the law. The other part introduced a new law on judges and judiciary, which specified how judges should be appointed and how they should be evaluated. This evaluation would include a test on theory and practice, the test should be tailored and specialised. This might be really dangerous, because who would define the criteria? The most questionable point is that, due to transitional provisions, also all judges with permanent tenure should undergo such a test, starting with the judges of the Supreme Court within the next six months.
15. Mr José Francisco COBO SÁENZ (Spain) stated that the principles pronounced in the Opinion No. 17 (2014) were applicable in Spain. Translation and dissemination of this Opinion was carried out.

### **III. PREPARATION OF THE DRAFT OPINION NO. 18 ON "THE INDEPENDENCE OF THE JUDICIARY AND ITS RELATIONS WITH THE OTHER POWERS IN A MODERN DEMOCRATIC STATE"**

16. On the first day of the Working Group's meeting (18 March 2015), its members briefly discussed the Opinion's significance, aims, scope and main areas. The fundamental character of the Opinion's

subject matter was emphasised. 35 responses from the member states were provided up to date to the questionnaire for the Opinion, containing a lot of useful information.

17. The importance of the seminar planned on 19 March 2015 was underlined for getting a clear picture for the initial structure of the Opinion. In the meanwhile, the members of the Working Group briefly shared their vision on the need to elaborate the concept of relations of the judicial power with other state powers with a view to the judicial independence. The responses of the member states to the questionnaire demonstrated how this problem, including the accountability of judges, has manifested itself in different states. The European Network of Councils for the Judiciary (ENCJ) distinguished between objective and subjective independence of judges. In addition to the concept of judicial independence, their legitimacy was also to be highlighted, the independence being its consequence. Different systems where judges are elected, where jury is present, where there is a direct participation in the administration of justice were mentioned. The professionalism and specialisation of judges were also touched upon. The politicians' comments in the media on judges were another important aspect.
18. The members of the Working Group agreed that the Opinion should not re-write the principles for the judiciary and repeat the Magna Carta of Judges adopted by the CCJE in 2010. The principle of legitimacy was indeed very important, since it followed from the principle of separation of powers. Institution building and safeguarding the judiciary should be addressed. The Opinion must have practical dimension, legitimacy should be referred to in a non-corporative and non-political manner; judges were legitimate in order to take judgments and fulfil their duties: this was the practical aspect of the legitimacy. The members of the Working Group also discussed whether to expand upon the issues of the inspection services and parliamentary commissions.

#### **SEMINAR**

19. The seminar on the topic of the judiciary and its relations with the other powers in a modern democratic state took place in the course of the morning of the second day of the Working Group's meeting (19 March 2015). It was attended, in addition to the members of the CCJE Bureau and Working Group and the Scientific Expert of the CCJE, by Professor Robert HAZELL from the University College in London, Mr Andrew DRZEMCZEWSKI, Head of Legal Affairs and Human Rights Department of the Secretariat of the Parliamentary Assembly of the Council of Europe and his colleagues, Mr Ziya TANYAR from the Venice Commission and Ms Ana-Maria TELBIS from the European Human Rights Association. They have all provided an extremely valuable feedback for the process of elaboration of the Opinion No. 18.
20. Professor HAZELL highlighted the issue of the judicial accountability. Judges should be accountable because they provide public service. High quality of that service without delays was expected. Accountability had two different meanings: 1) explanatory accountability and 2) sacrificial accountability. The explanatory accountability meant that the judges must be accountable for their judgments and decisions, as well as for the management of the court system. Judges were also responsible for the high standard of judicial conduct and judicial discipline. Sacrificial accountability referred to the sanctions in the case of judges' wrongdoings: in other words, they had to pay the price if something was done wrong.
21. First of all, judges are accountable to litigants: they must treat all parties with complete impartiality. Secondly, judges are accountable to other branches of the state power because the latter provides financing for efficient and fair justice which the judiciary must deliver. Judicial independence does not mean that the judiciary can be completely isolated from other powers of the state. The judiciary also has to give account to the media, and the public should be able to learn through media what the judges do. Media is an important power in a modern state.
22. The participants mentioned that the legitimacy of the judiciary was of entirely different nature than the legitimacy of other state powers. The input legitimacy was what the judges derived from, how they were appointed. The output legitimacy was what the judges produce through their work. The participants also mentioned that the issue of legitimacy may be used for interventions in the judiciary, as a pretext.
23. As regards the judicial independence, Mr TANYAR from the Venice Commission emphasised the importance of excluding the political organs from the judicial appointments.

24. Mr DRZEMCZEWSKI from the Parliamentary Assembly provided an introduction to the work of the PACE: his Department serviced two committees of the PACE: on human rights and legal affairs, and the new committee on elections of the judges of the European Court of Human Rights. He provided the Working Group with a useful contribution regarding the PACE's activities in the field of judiciary and went on to particularly highlight the issues of combating the judicial corruption.
25. The CCJE's contribution to the Bangalore Principles of Judicial Conduct which addressed the problem of judicial corruption from ethical point of view was mentioned by the participants. The CCJE also cooperated with the UN bodies fighting the corruption. In addition, Ms Aneta ARNAUDOVSKA ("the former Yugoslav Republic of Macedonia") is a member of the Group of States against Corruption (GRECO), which produced lots of important documents.
26. Ms Ana-Maria TELBIS from the European Human Rights Association provided an overview of the activities of the Association, in particular its surveys and researches.

#### ***CONTINUATION OF THE WORK ON THE OPINION NO. 18 AFTER THE SEMINAR***

27. Based on the conclusions of the seminar, the Working Group proceeded to discuss the initial structure of the Opinion No. 18 which was prepared by Mr AIKENS and Ms SANDERS.
28. The initial structure was then refined and developed further. It would undergo further development by Mr AIKENS and Ms SANDERS and shared with the Secretariat. Any further comments of the members of the Working Group were requested by 7 April 2015. The Working Group would receive the final version of the structure, both in English and French, by 27 May 2015, with a view to discussing the text of the Opinion in the course of the meeting on 3-5 June 2015 in Bergen, Norway.

#### **IV. OTHER BUSINESS**

29. The members of the Working Group were informed of the process of preparation of the next edition of the Situation Report on the judiciary and judges in the Council of Europe member states<sup>4</sup>. Mr van LIEROP underlined that this would be the first time to ask the CCJE members to provide information on the problems related to the judiciary, not only to rely on what was sent to the CCJE previously. In this regard, the drafting of the next edition of the Situation Report would involve a lot of work and a Task Force must be established in September 2015.
30. The next meeting of the CCJE Working Group would take place on 3-5 June 2015 in Bergen, Norway, hosted by the Norwegian Courts Administration. The CCJE's plenary meeting would take place in London on 14-16 October 2015, within the framework of the 800<sup>th</sup> anniversary of the Magna Carta, hosted by the Royal Courts of Justice.

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<sup>4</sup> Ibid., paras 7-9.

## APPENDIX I

### AGENDA / ORDRE DU JOUR

1. Opening of the meeting / *Ouverture de la reunion*
2. Adoption of the agenda / *Adoption de l'ordre du jour*
3. Communication by the President, members of the CCJE and the Secretariat / *Communication du Président, des membres du CCJE et du Secrétariat*
4. Preparation of the draft Opinion No. 18 on « the independence of the judiciary and its relations with the other powers in a modern democratic state » / *Préparation du projet d'Avis n° 18 sur «l'indépendance du système judiciaire et ses relations avec les autres pouvoirs dans un État démocratique moderne »*
5. This point of the agenda includes a seminar on the topic of « the judiciary and its relations with the other powers in a modern democratic state », which will be held in the same location on 19 March (9:00 – 12:00) / *Ce point de l'ordre du jour comprend un séminaire sur le thème du « système judiciaire et ses relations avec les autres pouvoirs dans un État démocratique moderne », qui aura lieu au même endroit le 19 mars (9:00-12:00)*
6. Other work of the CCJE / *Autres travaux du CCJE*
7. Any other business / *Divers*

## APPENDIX II

### LIST OF PARTICIPANTS

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

**GERMANY/ALLEMAGNE:**

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

**NETHERLANDS/PAYS BAS**

Mr Bart Van LIEROP, Justice, Court of Appeal for Trade and Industry, THE HAGUE

**SLOVENIA/SLOVENIE:**

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

**UNITED KINGDOM/ ROYAUME-UNI:**

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

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

**AUSTRIA/AUTRICHE:**

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

**BULGARIA/BULGARIE:**

Ms Maïia ROUSSEVA, Judge of the Sofia City Court, SOFIA  
(*excused/excusée*)

**CROATIA/CROATIE:**

Mr Duro SESSA, Judge, Supreme Court, ZAGREB

**ITALY/ITALIE:**

Mr Raffaele SABATO, Councillor, Supreme Court of Cassation, ROME

**NORWAY/NORVEGE:**

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

**PORTUGAL:**

Mr Orlando AFONSO, Juge à la Cour Suprême, ALMADA

**ROMANIA/ROUMANIE:**

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

**SPAIN/ESPAGNE:**

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

**« THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA »/**

**”L’EX RÉPUBLIQUE YUGOSLAVE DE LA MACÉDOINE” :**

Ms Aneta ARNAUDOVSKA, Judge, Director of the Academy for Training of Judges and Prosecutors, SKOPJE

#### SCIENTIFIC EXPERT / EXPERT CONSULTANT

Dr Anne SANDERS, M.Jur. (Oxford), Junioprofessorin, Rechts- und Staatswissenschaftliche Fakultät, Rheinische Friedrich-Wilhelms Universität, BONN, GERMANY

Mr Robert HAZELL, Director Constitution Unit, School of Public Policy, LONDON, UNITED KINGDOM

**TRAINEE / STAGIAIRE**

Mr Bartolomeo CAPPELLINA, Doctorant-PhD candidate, Centre Emile Durkheim, BORDEAUX, PESSAC

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

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**INTERPRETERS / INTERPRETES**

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