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**CONSULTATIVE COUNCIL OF EUROPEAN JUDGES
(CCJE)**

Report of the 6th meeting
Strasbourg, 23-25 November 2005

REPORT TO THE COMMITTEE OF MINISTERS

FOREWORD

The CCJE invites the Committee of Ministers to:

- a) note that, in accordance with its terms of reference, it has prepared for the Ministers' attention Opinion No.7 (2005) on "Justice and Society" (see part II and Appendix III below);
- b) note that it has forwarded Opinion No.7 (2005) to the European Committee on Legal Co-operation (CDCJ), the European Committee on Crime Problems (CDPC), and the Steering Committee for Human Rights (CDDH), and that it has transmitted this Opinion to the Steering Committee on the Media and New Communication Services (CDMC) and to the European Commission for the Efficiency of Justice (CEPEJ);
- c) note that it has contributed to the preparations for the 2nd European Conference of Judges and considered follow-up to that Conference (see part III and Appendix IV below);
- d) take note of the working session which its Working party held with Polish judges in Katowice (see part IV below);
- e) take note of Observations No. 1 (2005) on the draft action plan to follow up Opinions of the CCJE (see part VI and Appendix V below);
- f) adopt the draft specific terms of reference of the CCJE for 2006-2007 (see part IX and Appendix VII below);
- g) agree to hear its Chair on the CCJE's past and future work and set a date for this hearing (if possible, 8 November 2006);
- h) take note of this report as a whole.

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REPORT TO THE COMMITTEE OF MINISTERS

I. INTRODUCTION

1. The Consultative Council of European Judges (CCJE) held its 6th meeting from 23 to 25 November 2005 at Council of Europe headquarters in Strasbourg, with Mr Alain LACABARATS (France) in the chair. The list of participants is set out in Appendix I to this report and the agenda in Appendix II.

2. The CCJE's main task is to prepare opinions for the Committee of Ministers on general questions concerning the independence, impartiality and competence of judges, and to contribute to the implementation of the framework global action plan for judges in Europe adopted by the Committee of Ministers at the 740th meeting of the Deputies (7 February 2001).

3. In accordance with its terms of reference and pursuant to the decision taken at its 4th meeting (see CCJE (2003) 43, part VII, A), the CCJE adopted, for the attention of the Committee of Ministers, Opinion No.7 (2005) on “justice and society”. The text of Opinion No. 7 (2005) is set out in Appendix III to this report (see also part II below).

4. Pursuant to the decision taken at its 4th meeting (see CCJE (2003) 43, part V), the CCJE contributed to preparations for the 2nd European Conference of Judges. It considered follow-up to that conference. The list of conference participants, the programme, the consolidated report and the conference conclusions are set out in Appendix IV hereto (see also part III b below).

5. Following the Third Summit of Heads of State and Government, the CCJE considered the impact of the Warsaw Declaration and of the Summit Action Plan on the CCJE's activities and working methods (see part V below).

6. In accordance with its terms of reference, the CCJE adopted its Observations No. 1 (2005) on the draft action plan for follow-up to CCJE opinions as prepared by the European Commission for the Efficiency of Justice (CEPEJ). Observations No. (2005) 1 of the CCJE are set out in Appendix V hereto (see also part VI below). It invites the Committee of Ministers to take note of them.

7. The CCJE invites the Committee of Ministers to adopt, subject to any changes it might wish to make, the draft of the CCJE's specific terms of reference for 2006-2007, as set out in Appendix VII hereto (see also part IX below).

8. With a view to preparing its next opinion, the CCJE adopted the questionnaire on the role of the judge and the balance between protection of the public interest and human rights in the context of terrorism. The questionnaire appears in Appendix VIII hereto (see also part IX A below).

9. The CCJE took note of:

- i) the report of the CCJE member for Moldova on the training session in judicial mediation held in the framework of follow-up to the 1st European Conference of Judges (see part III a below);
- ii) the CCJE-GT's exchange of views with members of the National Council of Justice of Poland and Polish judges in the Katowice region on relations between justice and society, held during the joint working session on 27 April 2005 on the occasion of its 8th meeting (see part IV below);
- iii) the hearing of the CCJE Chair by the Committee of Ministers (see part VIII below);
- iv) the proposal by the Permanent Representation of Romania to organise an event involving the CCJE during the Romanian chairmanship of the Committee of Ministers (see part X below);
- v) the invitation by the CCJE member for Cyprus to hold the 11th meeting of the CCJE-GT in Cyprus (see part X b below);
- vi) the comments made by the CCJE-GT on the framework programme "*A new objective for judicial systems: the processing of each case within an optimum and foreseeable timeframe*", as established by the CEPEJ (see part VII and Appendix VI below);
- vii) the CCJE-GT's exchange of views with the secretary of the Steering Committee on the Media and New Communication Services (CDMC) (see part X c below);
- viii) development of the contacts established with the European Network of Councils for the Judiciary (ENCJ) (see parts III c and X f below);
- ix) the information on the European Union's "Judicial Authorities Exchange Programme" (see part X g below).

10. Mr Raffaele SABATO (Italy) was elected Chair, and Mrs Julia Laffranque (Estonia) was elected Vice-Chair, of the CCJE as from 1 January 2006 (see part XI d below).

II. ADOPTION OF OPINION No. 7 (2005)

11. After considering the written and oral observations presented by delegations, and the comments presented by Mr Eric COTTIER (Switzerland), a CCJE specialist, the CCJE amended the draft opinion prepared by the CCJE-GT and unanimously adopted the text of Opinion No. 7 (2005) on "justice and society".

12. The CCJE was pleased to note that the discussions at the 2nd European Conference of Judges (Cracow, 25-27 April 2005) and the conclusions of that conference had effectively enriched its thinking on the content of that opinion (see part III b below).

13. It welcomed the fact that, thanks to the replies from 30 member and observer states, it had been able to prepare its opinion assisted by a wealth of varied national experience, and encouraged all states to play an active part in the preparation of future opinions by sending replies.

14. It noted with satisfaction the written contribution of the Japanese delegation to the preparation of the opinion and saluted the interest taken by Japan and Mexico in the CCJE's work.

15. In accordance with its terms of reference, the CCJE transmitted Opinion No. 7 (2005) to the Committee of Ministers as set out in Appendix hereto.

16. The CCJE invited the Committee of Ministers to note that it had communicated Opinion No. 7 (2005) to the CDCJ, the CDPC and the CDDH for the purpose of considering any action, in particular standard-setting action which might be appropriate, and to the CDMC and the CEPEJ for the purpose of taking it into account in future work.

17. Its work on Opinion No. 7 (2005) now being completed, the CCJE thanked all those who had been involved in its preparation for their valuable contributions; in particular it thanked its specialist Mr Eric COTTIER for the report and the very useful information he had supplied, and the Polish authorities for their specific support for this project.

III. EUROPEAN CONFERENCES OF JUDGES

a) 1st European Conference of Judges

18. The CCJE was pleased to note that, as part of follow-up to the 1st European Conference of Judges, held in Strasbourg on 24-25 November 2003 on the theme of "Early settlement of disputes and the role of judges", a training session in judicial mediation had been held in Montreal (3-7 October 2005) on a proposal by Mrs Louise OTIS, a Quebec judge who had made a statement at that conference. The session had been organised in conjunction with the Court of Appeal of Quebec in the framework of Council of Europe cooperation programmes to strengthen the rule of law.

19. The aim of this international exchange programme was to develop and/or improve an integrated judicial mediation system in the various fields of law (civil, commercial, family and criminal) and judicial authorities (first instance and appeal courts). It had been designed as a "case study". The programme set out in particular to develop the following skills in participants:

- assess the interest of judicial mediation for their court in view of its costs and benefits;
- determine the implications for the judicial system and the judges of introducing/modifying judicial mediation in their court;
- determine the implications for the litigant involved in the implementation/mediation of judicial mediation in their court;
- define a legislative and organisational structure for judicial mediation to be introduced/modified in their court;
- determine the implications (legal, ethical, social, psychological) of the process of judicial mediation;

- determine the training implications for judges mediators;
- introduce a judicial mediation system or propose changes to the existing one.

20. About 80 persons took part in the training - delegations of 3 experts (a judge of at least appeal court rank, a judges' training officer and a person with responsibility for defining legislative policy on the justice system) from central and Eastern Europe (Armenia, Bulgaria, Georgia, Moldova, Romania, the Russian Federation and Ukraine), and judges mediators from other European countries (France, Germany, Netherlands, Norway), several Canadian provinces, Australia, Mexico and the Caribbean.

21. This training session provided the necessary information for participants to acquire the foundations on which to build the skills which the programme aimed to develop. Working along pragmatic lines and very ably directed by judges mediators having the requisite experience, it contributed to the mutual enrichment of persons representing a variety of judicial systems in the practical aspects of judicial mediation.

22. The CCJE sincerely thanked the Canadian authorities for having organised the training session in judicial mediation in the framework of follow-up to the 1st European Conference of Judges, and considered that, in order to consolidate the knowledge gained during the session and in response to the action plan of the Third Council of Europe Summit, which recommended making "proper use of the opinions given by the Consultative Council of European Judges (CCJE) (...) and developing alternative means for the settlement of disputes", there should be follow-up to this activity in the form of regular meetings of participants and support for the relevant training.

23. Consequently, it wished the appropriate initiatives to be taken both at European level and at national level within each member state.

24. The CCJE welcomed the fact that Mr Mihai POALELUNGI, its member for Moldova, had taken part in the training session and thanked him for his pertinent report. It expressed its special gratitude to Mr Michel ROBERT, chief judge at the Court of Appeal of Quebec, and to Mrs Louise OTIS, for the excellent preparation and organisation of this important event.

25. It also welcomed the publication of the proceedings of the 1st European Conference of Judges, and hoped that the proceedings of the 2nd Conference would be published very soon.

b) 2nd European Conference of Judges

26. The CCJE was gratified to observe that making citizens aware of legal issues and improving the level of their legal culture lie at the heart of states' concerns; this had found expression in the incorporation of the 2nd European Conference of Judges in the programme of the Polish chairmanship of the Committee of Ministers.

27. It warmly thanked the Polish authorities, and in particular the National Council of Justice, the Ministry of Justice and the Cracow Court of Appeal, for their excellent organisation of the 2nd European Conference of Judges. It thanked in particular Mrs Irena PIOTROWSKA, President of the Katowice District Court and CCJE member for Poland, for her initiative in hosting the conference in her country and for having conducted the preparatory work and implemented this important event.

28. The CCJE was pleased that the judiciary was represented at the conference at a high level and considered that the large number of participants – nearly 140 persons from all over Europe and the observer states – were evidence of the relevance of the subject of the event. However, it regretted the fact that the media were poorly represented.

29. It saluted the active participation in the proceedings and the high standard of debate, which had yielded conclusions embodying concrete proposals for future work on the relationship between justice and the media. The conference conclusions, the consolidated report, the programme and the list of participants are set out in Appendix IV to this report.

30. As the theme of the conference was closely linked to that of the opinion being drafted (see part II above), the CCJE took account of the results of the conference when finalising the text of that opinion.

31. The CCJE noted that its Chair had reported on the 2nd European Conference of Judges to the Committee of Ministers during the hearing which took place on 29 June 2005 (see part VIII below).

32. It was pleased to note the information from the Estonian delegation on the follow-up to the conference at national level and sent its best wishes to the round table to be held in March 2006 in Estonia on relations between justice and the media, and more especially on the role of television.

c) 3rd European Conference of Judges

33. The CCJE emphasised the need that was felt in judicial circles that there should be a place for the exchange of ideas, information and best practices at European level, in view of the great interest taken by representatives of the judiciary in the work of the two Council of Europe European Conferences of Judges that had already taken place. It considered that these conferences, intended for all judges, whatever their specialisation or their position in the judicial hierarchy, constituted a unique and ideal forum for closer links between judicial systems and for the advancement of a judicial culture common to all the member states.

34. It welcomed the suggestion made at the 2nd European Conference of Judges and confirmed at the 6th meeting of the CCJE by Mr Luigi BERLINGUER, Chair of the European Network of Councils for the Judiciary (ENCJ), that a future conference should be devoted to the role of the high councils for the judiciary.

35. It was pleased to receive the Network's proposal to contribute to the implementation of this project.

36. It considered that this conference should be held in 2007, since the CCJE would then – subject to adoption of its terms of reference by the Committee of Ministers – be preparing an opinion on the structure and role of the judicial service commission or another equivalent independent body as an essential element in a state governed by the rule of law for a balance between the legislative, executive and judicial authorities. It wished information about the holding of this conference to be circulated widely and in good time so as to enable all interested persons to make the necessary arrangements to take part.

37. It was pleased to accept the invitation to participate in the meeting of the Steering Committee of the ENCJ (The Hague, 17 February 2006) to discuss the relevant cooperation arrangements and appointed its Chair, Mr Alain LACABARATS, to represent the CCJE at that meeting.

IV. RELATIONS BETWEEN JUSTICE AND SOCIETY – WORKING SESSION WITH POLISH JUDGES

38. The CCJE Chair expressed his heartfelt gratitude, also on behalf of the working party, to the Polish National Council of Justice and to Mrs Irena PIOTROWSKA for their invitation to hold the Working party's 8th meeting in Katowice, and for their splendid organisation of the working session to exchange experience between members of the CCJE-GT and the judges from courts in the Katowice region.

39. The CCJE noted with interest that during the discussion, participants had spoken of their concerns over the accuracy of the information conveyed by the media both about the quality of the judiciary and about court proceedings; that they had mentioned the need to train journalists in legal concepts, while appreciating the difficulty of organising such training; and that they had stressed the need for court spokespersons to be trained in press relations and the need for an exchange of information between spokespersons at the European level. It believed that such an exchange could be organised with associations of spokespersons, whose creation in countries where they did not yet exist should be encouraged.

40. It also noted that the educational role which courts should play had been mentioned several times and that the development of courts' communication policies, the holding of "open days", the familiarisation of young people with the functioning of judicial systems and the availability of judgments on the Internet had also been referred to as ways of bringing justice and society closer together and raising the standard of general legal culture.

41. The CCJE greatly appreciated this exchange of views and believed that the results constituted a real contribution to the substance of the opinion on relations between justice and society. It thanked the Polish authorities for their confidence in the CCJE's expertise. The record of the meeting is set out in doc. CCJE-GT(2005)8, part VI.

V. FOLLOW-UP TO THE THIRD SUMMIT OF HEADS OF STATE AND GOVERNMENT (Warsaw, 16-17 May 2005)

42. The CCJE took note of the Warsaw Declaration and the Action Plan adopted at the close of the Third Council of Europe Summit of Heads of State and Government and considered that, where it was concerned, it should develop its own working methods in order to implement the provisions of those documents.

a) Decisions of the Third Council of Europe Summit of Heads of State and Government of direct concern to the CCJE

43. The CCJE was pleased to note that at the Third Summit of Heads of State and Government (Warsaw, 16-17 May 2005) the highest political authorities in the member states had reaffirmed the importance they attached to the framework global action plan for judges in Europe, which aimed to consolidate the judiciary as an essential element in a state governed by the rule of law, committing themselves in the "Warsaw Declaration" to "*strengthening the*

rule of law throughout the continent, building on the standard setting potential of the Council of Europe ... [and stressing] the role of an independent and efficient judiciary in the member states in this respect”.

44. The CCJE welcomed the recognition by the Heads of State and Government of the work and the decisive role of the CCJE in consolidating the rule of law in the member states, as explicitly confirmed by their decision in the Action Plan of the Third Summit *“to make proper use of the opinions given by the Consultative Council of Judges of Europe (CCJE) in order to help member states to deliver justice fairly and rapidly and to develop alternative means for the settlement of disputes”.*

45. The CCJE appreciated the scale of the problem arising from the overload on the European Court of Human Rights and welcomed the fact that the Action Plan of the Third Summit set great store by the efficient operation of that court. It considered that for member states to make good use of the CCJE’s opinions, as recommended in the Action Plan, could contribute much to reducing the number of applications under Article 6 of the European Convention on Human Rights. In addition, it recalled that it had issued an opinion (Opinion No. 5 (2003)) of direct relevance to the European Court of Human Rights.

46. The CCJE noted with great interest that the Heads of State and Government had decided at the Third Summit to broaden the role of the Council of Europe Development Bank to include action designed to *“to facilitate ... the implementation of policies which aim at the consolidation of democracy, the promotion of the rule of law and respect for human rights, notably in the field of training of magistrates, ... as well as in the organisation, operation and infrastructure of ... judicial ... services* (see Action Plan, point 5). It wished contact to be taken up with the Development Bank in order to agree on the co-operation arrangements.

b) Adjustment of the CCJE’s working methods in view of the decisions taken at the Third Council of Europe Summit of Heads of State and Government

47. The CCJE considered that its working methods, and those of its Working Party, should be developed taking account of the decisions taken at the Third Council of Europe Summit in order to meet the expectations of the Heads of State and Government.

48. Having examined the document “CCJE structures and working methods”, which had been prepared in this connection by the Chair of the CCJE-GT, and the comments made by that working party’s members (doc. CCJE (2005) 30), the members of the CCJE proposed drafting a report in 2006 for the Committee of Ministers containing detailed proposals / observations on steps to be taken to ensure that proper use was made in the member states of the opinions it had issued, and in particular:

- the need for specific solutions to enable the CCJE’s terms of reference to be fully implemented (in particular, developing the CCJE’s function as practical advisor to national courts and encouraging participation in the judicial field under the aegis of the CCJE);
- development of measures taken by states individually;
- coordination between the CCJE and other relevant Council of Europe bodies in the implementation of its opinions;

- development of links with observers.

49. It agreed that the CCJE's visibility should be enhanced and its opinions circulated more widely. These aims could be achieved in particular through the European Conferences of Judges, which should be convened at regular intervals, through closer contacts with national judicial systems and through fuller exchanges between judges (see also part XI below).

c) Arrangements made to give publicity to CCJE opinions in member and observer states

50. The CCJE took note of the measures taken by states individually to ensure that the recommendations contained in its opinions were known and applied, and invited all member states to help circulate the results of its work. In this connection, it welcomed the following initiatives which had been brought to its attention:

- ▶ Czech Republic: information about the CCJE's work had been given at a seminar organised by the judges' association and at a conference organised by the European Union;
- ▶ Denmark: Opinion No. 5 (2003) had received abundant media coverage; its recommendations should be taken into account when the judge was elected to the Court of Justice in Luxemburg in respect of Denmark (unfortunately, opinions were not translated into the national language);
- ▶ Estonia: information in a legal journal on the CCJE's opinions; establishment of a computer link between the Estonian courts and the CCJE website (unfortunately the Estonian version was not available, but the Supreme Court was planning to have it translated);
- ▶ France: establishment of a committee to examine the rules of ethics governing judicial conduct; publication and availability on the website of summaries of Council of Europe texts in the justice field, including the CCJE's opinions;
- ▶ Germany: interest in Opinion No. 3 (2002);
- ▶ Italy: presentation of opinions on the occasion of training sessions organised by the High Council for the Judiciary; presentation in Naples of Opinion No. 3 (2002) at a Franco-Italian conference on the occasion of the 10th anniversary of the code of ethics for Italian judges, attended by representatives of the High Council for the Judiciary of France and Italy, the *Institut des Hautes Etudes Judiciaires* of Paris, the Italian Association of Judges, the University of Naples and the CCJE member for Italy (unfortunately, the Italian version of the opinions was not available);
- ▶ Latvia: translation of Opinion No. 6 (2004);
- ▶ Luxemburg: circulation to judges of opinions and summaries of opinions by heads of courts;
- ▶ Moldova: presentation of opinions in an annual activity report; translation of opinions into Moldovan in progress;
- ▶ Mexico: holding of a debate on Opinion No. 1 (2001) at an international colloquy on the theme of "The independence of the judiciary. The role of the High Council for the Judiciary. Prospects and challenges" organised by the Council for Federal Judiciary of Mexico on the occasion of its 10th anniversary, in which the Vice-Chair of the CCJE participated; abundant reference made to Opinion No. 3 (2002) during celebration and adoption of the Code of ethics for federal judges;
- ▶ Netherlands: a draft set of ethical principles applicable to judges was to be launched;
- ▶ Spain: CCJE opinions placed on the website of the General Council of the Judiciary (unfortunately, the Spanish version was not available);

- ▶ “The former Yugoslav Republic of Macedonia”: all opinions were translated into the national language; information about the CCJE was broadcast on national radio and television;
- ▶ United Kingdom: CCJE opinions were archived in the Supreme Court library and could be consulted by interested persons.

51. The CCJE agreed to step up efforts to publicise its opinions at national level.

VI. ADOPTION OF OBSERVATIONS No. 1 (2005)

52. The CCJE noted that the CDCJ had decided at its 80th plenary meeting (Strasbourg, 20-22 April 2005) to request the CEPEJ to examine the opinions of the CCJE in order to draw up an action plan to be examined by the CDCJ in the framework of future activities relating to judicial standards (see doc. CDCJ (2005) 12, part 3(e)).

53. It also noted that its Chair had agreed with the Chair of the CEPEJ that the draft action plan would be submitted by the CEPEJ to the CCJE for opinion before being forwarded to the CDCJ.

54. The CCJE welcomed the CDCJ’s initiative whereby the latter’s opinions would be examined for purposes of follow-up.

55. It examined the draft observations prepared by its Chair and amended by the CCJE-GT under written procedure and, after taking delegations’ comments into account, unanimously adopted the text of Observations No. 1 (2005) as set out in Appendix V to this report. It invited the Committee of Ministers to take note of these Observations.

56. The CCJE observed in particular that the draft action plan covered fields on which the CCJE had not yet expressed a view, and some of which were to be the subject of forthcoming opinions.

57. In addition, it considered that the CEPEJ should follow the spirit which emerged from its Opinions No. 3 (2002) (on the professional ethics of judges) and No. 6 (2004) (in particular the paragraphs concerning the qualitative evaluation of justice and the professional assessment of judges) when interpreting them in its proposals to the CDCJ.

58. The CCJE considered that all its opinions should be analysed by the CDCJ and wished to be involved in the follow-up work on them.

59. It agreed that Mr Gerhard REISSNER, its member for Austria, would represent the CCJE at the CEPEJ meeting on 8 December 2005.

VII. COMMENTS ON THE FRAMEWORK PROGRAMME DRAWN UP BY THE CEPEJ

60. The CCJE took note of Comments No. 2 on the framework programme of the CEPEJ, entitled: *“A new objective for judicial systems: the processing of each case within an optimum and foreseeable timeframe”* which its Working party had prepared in accordance with the decision taken at the 5th meeting (see doc. CCJE (2004) 36, paragraph 37).

61. It also noted that these comments had been presented by its Chair at the plenary meeting of the CEPEJ (June 2005) and forwarded by the CEPEJ Secretariat to the members of the CEPEJ-TF-DEL (CEPEJ Task Force on Judicial Timeframes) so that it could take them into account in its work.

62. It thanked the CCJE-GT for having drawn up the comments and hoped that the CEPEJ would make full use of them. Comments No. 2 (2005) are set out in Appendix VI to this report.

VIII. HEARING WITH THE COMMITTEE OF MINISTERS

63. The CCJE Chair informed the meeting that he had been invited to present the current work and future activities of the CCJE, as well as the results of the 2nd European Conference of Judges, at the 932nd meeting of the Committee of Ministers (29 June 2005). The Chairman of that Committee had referred to the importance which the Heads of State and Government, at the Warsaw Summit, had attached to the CCJE's work in deciding to make proper use of its opinions.

64. The CCJE noted with satisfaction that its work had been saluted by several Deputies who had been keen to express their countries' support for the CCJE's role in the Council of Europe and in the member states. The relevance of Opinion No. 6 (2004) had been emphasised in particular in that it fitted into the current political debate on the measures that should be put in place or developed to ensure compliance with the obligation to administer justice within a reasonable time, as required by the European Convention on Human Rights.

65. It was pointed out that reforming the system of human rights protection was a priority for the Council of Europe in view of the decisions taken at the Third Summit, and that the whole of the CCJE's work should contribute to the proper operation of the protection machinery for those rights, in particular by suggesting to member states ways in which the situation of the judiciary might be improved.

66. It was also stressed that the CCJE constituted added value in the Council of Europe through its ability to give practical help to member states of a unique kind, being based on a comparative approach.

67. The Ministers' Deputies had expressed keen interest, especially in the progress made in implementing the framework global action plan for judges in Europe, methods of following up and implementing CCJE opinions, relations with the CEPEJ and other bodies operating in the field of justice, and the willingness of the CCJE to provide practical help to member states.

68. The Representative of Romania said that his country wished to organise an event with the participation of the CCJE during the Romanian chairmanship of the Committee of Ministers, starting in November 2005 (see also part X a below).

69. The CCJE Chair was pleased to note the support and confidence accorded to the CCJE by the Heads of State and Government and by the Committee of Ministers, and confirmed the wish of the Consultative Council to continue working in accordance with the tasks entrusted to it.

70. The Chair of the Committee of Ministers observed, in the light of the presentation by the CCJE Chair and of the ensuing discussion, that the CCJE played an essential role in ensuring impartial, efficient justice in Europe and operated in perfect complementarity with other Council of Europe bodies responsible for improving the functioning of courts and the protection of human rights. He further observed that the CCJE's concern for its opinions to be better known in the member states reflected the general concern of the Committee of Ministers to communicate the Council of Europe's work to a broader public, including the international community.

71. The CCJE underlined the importance of dialogue between itself and the political authorities of the Council of Europe in order to ensure that the opinions it issued were really taken into account both at European level and in individual member states. It welcomed the support of the Ministers' Deputies for the holding of European Conferences of Judges at regular intervals.

72. The CCJE expressed the wish that its Chair could be heard by the Committee of Ministers in 2006. Subject to an invitation from the Ministers' Deputies, that hearing could take place on 8 November 2006.

IX. CONTRIBUTION AS FROM 2006 TO IMPLEMENTATION OF THE FRAMEWORK GLOBAL ACTION PLAN FOR JUDGES IN EUROPE

A. Adoption of specific terms of reference for the CCJE for 2006-2007

73. After examining the preliminary draft terms of reference for 2006-2007 as drawn up on its instructions by its Working party, the CCJE supplemented and adopted the draft as set out in Appendix VII to this report.

74. Those draft terms of reference took account of the decisions taken by the Heads of State and Government at their Third Summit and of the priorities laid down in the framework global action plan for judges in Europe (see doc. CCJE (2001) 24).

75. The CCJE invited the Committee of Ministers to adopt, subject to any amendment they might wish to make, the draft specific terms of reference for 2006-2007.

76. In accordance with the draft terms of reference, the CCJE proposed drafting:

i) in 2006:

a. An opinion on the role of the judge and the balance between protection of the public interest and human rights in the context of terrorism

77. The CCJE-GT observed that this subject was directly in line with the concerns expressed by the Heads of State and Government in the action plan adopted at the close of their Third Summit – on the one hand, effective protection of human rights and, on the other, stepping up the fight against terrorism.

78. In the framework of this subject, the CCJE would examine in particular the following questions contained in the framework global action plan for judges in Europe (see doc. CCJE (2001) 24):

- application by national judges of the European Convention on Human Rights and its case-law, European Community law and other international legal instruments (see point IV (b) of the plan);
- dialogue between national and European judicial bodies (see point IV (c) of the plan);
- the availability of information and documentation on all the relevant international texts (see point IV (d) of the plan).

79. When drawing up the opinion on this subject, the CCJE should also take into account the results of the multilateral meeting organised by the Council of Europe in 1995 in Bucharest on the theme of “The judge and international law” and the conclusions of the 2nd meeting of the Lisbon Network (Bordeaux, 1997) on the theme of “Training of judges in the application of international conventions”.

80. The Chair and Vice-Chair of the CCJE had drawn up a questionnaire for the purpose of preparing that opinion. The CCJE examined and approved it, subject to a few changes to be made as decided during the meeting. The questionnaire would be sent as soon as possible to CCJE delegations for reply. Replies to the questionnaire should reach the Secretariat by 16 January 2006. The questionnaire appears in Appendix VIII to this report.

81. On the basis of the replies to the questionnaire, two specialists would be asked to prepare their report, which would be communicated to the CCJE working party. The latter would draw up an explanatory document at the first meeting in 2006, and a drafting group would prepare a draft opinion with the Secretariat. This would be discussed and finalised at the second meeting of the CCJE-GT and submitted to the CCJE for adoption at its 2006 meeting.

82. Delegations wishing to submit written comments would email them to the Secretariat in good time.

83. In accordance with the terms of reference, subject to their adoption, the opinion on the role of the judge and the balance between protection of the public interest and human rights in the context of terrorism would then be forwarded to the Committee of Ministers.

84. The CCJE would send that opinion also to the CDCJ, the CDPC and the CDDH so that they could consider any additional action, in particular standard-setting action, which might be appropriate, and to the CEPEJ for information.

b. Report on measures to be taken to ensure that proper use is made of opinions given by the CCJE

85. With reference to the Action Plan adopted at the Third Summit, the CCJE considered that a consolidated programme aimed at the broad application of the recommendations contained in its opinions should be proposed to member states. In this connection, it envisaged preparing a report for the Committee of Ministers containing detailed proposals on the measures to be taken for this purpose.

86. This work would be carried out by the Working party and finalised by the CCJE at its next plenary meeting.

ii) in 2007:

An opinion on the structure and role of the judicial service commission or an equivalent independent body as an essential element in a state governed by the rule of law for a balance between the legislature, the executive and the judicial authorities

87. Within the framework of this subject, the CCJE could examine in particular the following questions contained in the framework global action plan for judges in Europe:

- institutional guarantees of judicial independence in the member states (see part I (a) of the plan);
- the importance of observing the principle of the separation of powers (see part I (b) of the plan);
- participation of judges in decisions affecting the functioning of the judiciary and their advisory role in preparing legislative and institutional reforms intended to ensure the independence of the judiciary (see part I (c) of the plan);
- possible disparities between the fundamental principles of an independent judiciary and law provisions in the member states (see part I (d) of the plan);
- the setting up or strengthening of authorities, which are independent from the legislative and executive authorities and with responsibility for managing judges' careers (see part I (e) of the plan).

88. The CCJE considered that the work on the draft opinion on this subject should be coordinated with the organisation of the European Conference of Judges on the role of judicial service commissions or equivalent bodies, to which representatives of these institutions should be invited as well as judges.

89. It pointed out that the Chair of the European Network of Councils for the Judiciary had expressed the wish to contribute to the organisation of the conference on this subject (see part III c above).

90. This work would be carried out in consultation with the Venice Commission and along similar lines to those described in paragraphs 81 and 82 above: delegations would be invited to send replies to the questionnaire drawn up by the Chair, preferably by July 2006. On the basis of these replies, a specialist would prepare a report to serve as a basis for the Working party's discussions. The latter would begin by drafting an explanatory document, followed by a draft opinion which would be submitted to the CCJE for adoption.

91. In accordance with the terms of reference, subject to their adoption, the opinion on the role and structure of the judicial service commission would then be submitted to the Committee of Ministers.

92. The CCJE would send that opinion also to the CDCJ, the CDPC and the CDDH so that they could consider any additional action, in particular standard-setting action, which might be appropriate.

B. Work of the CCJE in 2008

93. The CCJE took note of the CCJE-GT's proposal to draft an opinion on relations between judges and prosecutors (see point VII (a) of the framework global action plan for judges in Europe). It would revert to this question at its next meeting.

C. Other work

94. The CCJE was willing to provide practical assistance in order to help states comply with the standards for judges, in particular those set down in its opinions. It proposed in particular to conduct studies of good practice which could be communicated to all the member states.

95. It confirmed its willingness to advise steering committees on the expediency and manner of updating the Council of Europe legal instruments relating to the judiciary and to cooperate with the Venice Commission on constitutional issues related to the judiciary.

96. The CCJE was willing to draft texts or opinions at the request of the Committee of Ministers or other Council of Europe bodies.

X. COOPERATION WITH OTHER BODIES

a) Romanian National Institute of Magistrates (NIM)

97. The CCJE welcomed the invitation from the Romanian National Institute of Magistrates (NIM) to its Working party to hold a joint working session on the recruitment of judges (Bucharest, 23 March 2006). It warmly thanked Mr Mihai SELEGEAN, director of the NIM, for having come to the meeting in person to confirm this invitation. It pointed out that this proposal to involve the CCJE directly in the national debate on the rules to be applied to the recruitment of judges was entirely in keeping with the CCJE's terms of reference, which required it in particular to give practical assistance in order to help the member states comply with the standards for judges.

98. The CCJE welcomed the importance which the Romanian authorities attached to the quality of the judiciary. It greatly appreciated the fact that a debate on the recruitment of judges at European level featured among the priority activities of the Romanian Chairmanship at the Council of Europe.

b) Supreme Court of Cyprus

99. The CCJE welcomed the invitation to its Working party to hold its 11th meeting in Nicosia. On the occasion of that meeting, the Cypriot authorities wished to organise an exchange of views between the CCJE-GT and the members of the Supreme Court and district court judges, in particular on the application of international law, and especially human rights, by the national courts. As this question was to be tackled by the CCJE in 2006, subject to adoption of its terms of reference by the Committee of Ministers, the exchange of views in the Supreme Court of Cyprus would make a real contribution to the substance of its forthcoming opinion.

c) Steering Committee on the Media and New Communications Services (CDMC)

100. The CCJE took note of the exchange of views which its Working party had had with the secretary of the Steering Committee on the media and new communications services (CDMC). It considered that cooperation with the CDMC would be extremely useful for the purpose of drafting the European Declaration on relations between justice and the media, recommended in the conclusions of the 2nd European Conference of Judges, and was pleased that the CDMC had designated its representative to that conference. It instructed the Secretariat to follow possible developments in such cooperation.

101. It agreed that its Chair would represent it in the debate on the decriminalisation of defamation to take place during the 2nd meeting of the CDMC (Strasbourg, 29 November – 2 December 2005).

d) Consultative Council of European Prosecutors (CCPE)

102. The CCJE welcomed the creation of the CCPE and agreed to invite its representative to take part in CCJE meetings.

e) European Committee on Legal Cooperation (CDCJ)

103. The CCJE expressed the wish to be associated with the CDCJ's work on follow-up to its opinions (see also part VI above).

f) European Network of Councils for the Judiciary (ENCJ)

104. The CCJE was gratified by the development of contacts with the ENCJ, particularly in the context of the organisation of the 3rd European Conference of Judges (see also part III above).

g) Annual seminar of Presidents of French courts of appeal

105. The CCJE was pleased by the exchange of views it had had with the Presidents of French courts of appeal (Strasbourg, 23 November 2005) in the framework of their annual meeting. It appreciated the quality of the debate, the interest of the speakers in its work on the independence, impartiality and competence of judges and the support received from them. It believed that this exchange not only made a useful contribution to the CCJE's work but was also an effective means whereby judges could take cognisance of its opinions.

h) Ecole Nationale de la Magistrature (ENM) (France)

106. The CCJE warmly thanked Mrs Sylvie CECCALDI-GUEBEL, director of in-service training and international relations at the *Ecole Nationale de la Magistrature* (ENM), and Mr Jean-Louis CASANOVA, the ENM *chargé de mission* for the presentation of objectives, the target public and conduct of the programme of judicial authority exchanges established by the European Commission.

107. It noted that from 2006 onward the implementation of this programme would be the responsibility of the European Judicial Training Network.

108. It appreciated the importance of this project, which had its support, and wished to be associated with it in the context of its task of developing partnerships in the judicial field.

i) United Nations (UN)

109. The CCJE emphasised the importance of continuing and developing its cooperation with the United Nations in the field of justice.

j) European Union

110. The CCJE noted with regret that neither the European Union nor the General Secretariat of the Council of the European Union were represented at its meeting. It believed that more sustained cooperation between the CCJE and these bodies would assist in strengthening the judiciary in Europe as advocated in the Council of Europe framework global action plan for judges.

XI. OTHER BUSINESS

a. Visibility of the CCJE

Visibility on the Council of Europe website

111. The CCJE wished to thank the Secretariat for having improved the accessibility of its website; now that the address had been simplified, access to working papers was easier. However, in order to enhance the CCJE's visibility, steps should be taken to ensure that the site was readily accessible from the Council of Europe's portal. Further, the CCJE expressed the wish that its meetings should be the subject of press releases available on the Council of Europe website.

Visibility in the member states

112. The CCJE again encouraged its delegations to publicise the opinions in the member states and ensure that they were widely circulated in the national language. Delegations of states where French or English were not official languages were therefore invited to supply the Secretariat with national language versions of the opinions and to inform the CCJE at its next meeting of the arrangements that had been made to publicise the opinions in their countries. The Secretariat would publish these language versions on the Council of Europe website (see also part V b above).

113. The CCJE reminded the meeting that delegations who had been invited by various organisations or authorities to present issues covered by the CCJE's work were invited to inform the Secretariat, who would draw up a list of these statements and keep it regularly up to date.

Publications

114. The CCJE welcomed the publication of its opinions, the information brochure about the CCJE, the conclusions of the 2nd European Conference of Judges and the proceedings of the 1st Conference. It believed that these publications would help to improve the CCJE's visibility and afford easier access to the results of its work in the member states. It thanked the Secretariat for having prepared the publications and wished them to be widely circulated.

115. The Chair of the CCJE-GT proposed that in later editions of the opinions, the text which appeared on the brochure should be included.

b. Agenda of the next CCJE meeting

116. The CCJE agreed on the following agenda for its next meeting:

- Preparation of the opinion for the attention of the Committee of Ministers on the role of the judge and the balance between protection of the public interest and human rights in the context of terrorism;
- Exchange of views on the preparatory work for the 3rd European Conference of Judges;
- Exchange of views on the draft questionnaire on the subject to be dealt with in 2007;
- Exchange of views on the questions to be examined by the CCJE from 2008 onwards;
- Exchange of views on practical assistance to states in the field of justice;
- Exchange of views on partnership in the judicial field;
- Election of the Chair and Vice-Chair of the CCJE;

c. Election of the Chair and Vice-Chair of the CCJE

117. Mr Raffaele SABATO (Italy) and Mrs Julia LAFFRANQUE (Estonia) were elected respectively Chair and Vice-Chair of the CCJE.

d. Working Party of the CCJE

118. In accordance with its specific terms of reference and subject to the latter's adoption by the Committee of Ministers, the CCJE appointed its Working Party (CCJE-GT) with the following composition: Mrs Julia LAFFRANQUE (Estonia), Chair, and 11 members: Mr Gerhard REISSNER (Austria), Mr Stelios NATHANAEL (Cyprus), Mr Robert FREMR (Czech Republic), Mr Alain LACABARATS (France), Mr Otto MALLMANN (Germany), Mr Raffaele SABATO (Italy), Mr Kevin O'HIGGINS (Ireland), Mr Virgilijus VALANČIUS (Lithuania), Mr Nils A. ENGSTAD (Norway), Mr Orlando AFONSO (Portugal), Ms Aneta ARNAUDOVSKA ("The former Yugoslav Republic of Macedonia").

119. Lord MANCE (United Kingdom) was the substitute member of the CCJE-GT.

120. For the sake of continuity in its activities, the CCJE was keen that former chairpersons should take part not only in the work of the CCJE but also in that of the CCJE-GT. It thanked Lord MANCE (the first Chair) and Mr LACABARATS (the second Chair) who, despite their very heavy workloads, had agreed to participate in the CCJE-GT's work: Lord MANCE in his capacity as substitute member and Mr LACABARATS as titular member of the Working Party.

e. Dates of future meetings

121. The CCJE noted that its next plenary meeting would take place in Strasbourg from 8 to 10 November 2006. The tenth meeting of the CCJE-GT would take place in Bucharest (Romania) from 22 to 24 March, and its eleventh meeting in Nicosia from 21 to 23 June 2006, subject to authorisation by the Committee of Ministers.

APPENDIX I

LISTE OF PARTICIPANTS / *LISTE DES PARTICIPANS*

MEMBER STATES / *ETATS MEMBRES*

ALBANIA/ALBANIE : Mr Perikli ZAHARIA, Judge of the Supreme Court of the Republic of Albania, TIRANA

ANDORRA/ANDORRE : APOLOGISED / EXCUSE

ARMENIA/ARMENIE: Mr Stepan MIKAELYAN, Judge of the Malatia-Sebastia Community Court of Armenia, YEREVAN

AUSTRIA/AUTRICHE : Mr Gerhard REISSNER, Vice-President of the Austrian Association of Judges, VIENNA

Mr Heinz WIETRZYK, President of the Superior Court of Appeal of Graz, GRAZ

AZERBAIJAN/AZERBAÏDJAN : APOLOGISED / EXCUSE

BELGIUM/BELGIQUE : APOLOGISED / EXCUSE

BOSNIA AND HERZEGOVINA/BOSNIE ET HERZEGOVINE :
APOLOGISED / EXCUSE

BULGARIA/BULGARIE :
Mrs Maia ROUSSEVA, Judge, Sofia City Court, SOFIA

CROATIA/CROATIE: Mr Ivo GRBIN, Judge, Supreme Court, ZAGREB

CYPRUS/CHYPRE : Mr Stelios NATHANAEL, Judge, President of the Nicosia District Court, NICOSIA

CZECH REPUBLIC/REPUBLIQUE TCHEQUE: Mr Robert FREMR, Presiding Judge at the High Court in Prague, PRAGUE

DENMARK DANEMARK: Mr Boerge DAHL, Justice, Supreme Court, COPENHAGEN

ESTONIA/ESTONIE: Mrs Julia LAFFRANQUE, Judge of the Supreme Court of Estonia, TARTU

FINLAND/FINLANDE :
Mr Gustav BYGGLIN, Judge, Supreme Court, HELSINKI

FRANCE: M. Alain LACABARATS, Directeur du Service de Documentation et d'Etudes de la Cour de Cassation, PARIS, (Chairman of the CCJE/Président du CCJE)

GEORGIA/GEORGIE :

Mr Teimuras TODRIA, Judge, Supreme Court of Georgia, TBILISI

GERMANY/ALLEMAGNE: Mr Otto MALLMANN, Judge of the Federal Administrative Court, LEIPZIG

GREECE/GRECE: Mr Theodore APOSTOLOPOULOS, Judge of the Supreme Court of Greece, ATHENS

HUNGARY/HONGRIE: Mr Károly HORECZKY, Justice in the Supreme Court, BUDAPEST

ICELAND/ISLANDE : APOLOGISED / EXCUSE

IRELAND/IRLANDE :

Mr Kevin O'HIGGINS, Judge of the High Court, DUBLIN

ITALY/ITALIE : Mr Raffaele SABATO, Juge, Tribunal de Naples, NAPLES (Vice-Chairman of the CCJE/Vice-Président du CCJE)

LATVIA/LETTONIE :

Mrs Aija BRANTA, Judge, Constitutional Court of the Republic of Latvia, RIGA

LIECHTENSTEIN : APOLOGISED / EXCUSE

LITHUANIA/LITUANIE : APOLOGISED / EXCUSE

LUXEMBOURG : M. Jean-Claude WIWINIUS, Premier Conseiller à la Cour Suprême de Justice, Luxembourg

M. Jean-Marie HENGEN, Juge de Paix Directeur, Justice de Paix, ESCH-SUR-ALZETTE

MALTA/MALTE: Mr Joseph D. CAMILLERI, Justice of Court of Appeal and Constitutional Court, VALLETTA

MOLDOVA : Mr Mihai POALELUNGI, Judge, Supreme Court of Justice, CHISINAU

MONACO :

Mme Isabelle BERRO-LEFEVRE, Premier Juge, Palais de Justice, MONACO

NETHERLANDS/PAYS-BAS :

Mr R. VERSCHUUR, Justice at the Court of Appeal of Leeuwarden, LEEUWARDEN

Mr Bart VAN LIEROP, Justice at the Court of Appeal of The Hague, DEN HAAG

NORWAY/NORVEGE :

Mr Lars Oftedal BROCH, Justice, Supreme Court of Norway, OSLO

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

POLAND/POLOGNE:

Mrs Irena PIOTROWSKA, Member of the National Council of the Judiciary, KATOWICE

PORTUGAL : M. Orlando AFONSO, Juge Conseiller à la Cour d'Appel d'Evora, ALMADA

ROMANIA/ROUMANIE : APOLOGISED / EXCUSE

RUSSIAN FEDERATION/ FEDERATION DE RUSSIE : APOLOGISED / EXCUSÉ

SAN MARINO/SAINT-MARIN: APOLOGISED / EXCUSE

SERBIA AND MONTENEGRO/SERBIE-MONTENEGRO: Mrs Spomenka ZARIĆ, Judge of the Supreme Court, BELGRADE

SLOVAKIA/SLOVAQUIE: Mr Milan KARABIN, President of the Supreme Court of the Slovak Republic, BRATISLAVA

Mrs Eva RUPCOVÁ, Director of the Office of the President of the Supreme Court of the Slovak Republic, BRATISLAVA

SLOVENIA/SLOVENIE :

Mrs Jasna ŠEGAN, High Court Judge, Vice-President of the Administrative Court of the Republic of Slovenia, LJUBLJANA

SPAIN/ESPAGNE :

Mr José Francisco COBO SÁENZ, Magistrat, President of the 2nd Seccion at the Audiencia Provincial (Navarra), PAMPLONA

SWEDEN/ SUEDE : APOLOGISED / EXCUSE

SWITZERLAND/SUISSE: M. Giusep NAY, Juge Fédéral, Président du Tribunal Fédéral suisse, LAUSANNE

M. Jacques BÜHLER, Secrétaire Général Suppléant, Tribunal Fédéral Suisse, LAUSSANE

“THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA” / “L’EX-REPUBLIQUE YUGOSLAVE DE MACEDOINE”: Mrs Aneta ARNAUDOVSKA, Judge, Basic Court of Skopje, SKOPJE

TURKEY/TURQUIE

Mr Tufan TURAN, Judge, Head of Department in the Ministry of Justice, BAKANLIKLAR, ANKARA

UKRAINE : APOLOGISED / EXCUSE

UNITED KINGDOM/ROYAUME-UNI: Lord MANCE, Lord of Appeal in Ordinary , House of Lords, LONDON

SPECIALIST / SPECIALISTE

M. Eric COTTIER, Juge, Tribunal cantonal du canton de Vaud, Palais de l'Hermitage, LAUSANNE, Suisse

**OBSERVERS WITH THE COUNCIL OF EUROPE /
OBSERVATEURS AUPRES DU CONSEIL DE L'EUROPE**

CANADA : APOLOGISED / EXCUSE

HOLY SEE/SAINT-SIEGE : APOLOGISED / EXCUSE

JAPAN/JAPON: Mr Takao NAKAYAMA, Chief Judge, Nagano District and Family Court, TOKYO

Mr Yuji MIKI, Judge of Yokohama District Court, TOKYO

Mr Yasushi FUKU, Consul, Consulate General of Japan, Strasbourg

MEXICO/MEXIQUE :

Mrs Elvia Díaz DE LEÓN D'HERZ, Judge, Counsellor, Federal Judiciary Council, MEXICO

Mr Joaquín GONZALEZ-CASANOVA, Director General, National and International Relations, Federal Judiciary Council, MEXICO

**OBSERVERS WITH THE CCJE/
OBSERVATEURS AUPRES DU CCJE**

ASSOCIATION "MAGISTRATS EUROPEENS POUR LA DEMOCRATIE ET LES
LIBERTES" (MEDEL)

M. Miguel CARMONA RUANO, President, Audiencia Provincial de Sevilla, SEVILLA, Espagne

ASSOCIATION OF EUROPEAN ADMINISTRATIVE JUDGES/
FEDERATION DES JUGES ADMINISTRATIFS EUROPEENS

M. Pierre VINCENT, Président, Cour Administrative d'Appel, NANCY, France

EUROPEAN ASSOCIATION OF JUDGES (EAJ)/
ASSOCIATION EUROPEENNE DES MAGISTRATS(AEM)

Mr Joseph David CAMILLERI, Judge, Court of Appeal and Constitutional Court, The Courts of Justice, VALLETTA, Malta

**NATIONAL SCHOOL OF MAGISTRATES (France)/
ECOLE NATIONALE DE LA MAGISTRATURE (France)**

Mme Sylvie CECCALDI-GUEBEL, Directrice de la formation continue et des relations internationales

M. Jean-Louis CASANOVA, chargé de mission

NATIONAL INSTITUTE OF MAGISTRATES (NIM) (Romania)/
INSTITUT NATIONAL DE LA MAGISTRATURE (INM) (Roumanie)

Mr Mihai SELEGEAN, Directeur de l'Institut National de la Magistrature (INM), BUCAREST, Romania

EUROPEAN NETWORK OF THE COUNCILS OF JUDICIARY (ENCJ) /
RESEAU EUROPEEN DES CONSEILS DE LA JUSTICE (RECJ)

Mr Luigi BERLINGUER, President of the European Network of Councils for the Judiciary, ROME, Italy

Mrs Edith VAN DEN BROECK, Présidente du Conseil Supérieur de la Justice, BRUXELLES, Belgique

Ms Marlies BOUMAN, Policy adviser, Netherlands Council for the Judiciary, THE HAGUE, Netherlands

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

Mr Guy DE VEL, Director General of Legal Affairs / Directeur Général des Affaires Juridiques

Mr Alexey KOZHEMYAKOV, Head of the Department of Private Law, Directorate General I - Legal Affairs / Chef du Service du droit privé, Direction Générale I - Affaires Juridiques

Mme Danuta WIŚNIEWSKA-CAZALS, Administrative Officer, Secretary of the CCJE, Directorate General I - Legal Affairs / Administratrice, Secrétaire du CCJE, Direction Générale I - Affaires Juridiques

Mrs Lucy ANCELIN, Assistant, Department of Private Law, Directorate General I - Legal Affairs / Assistante, Service du droit privé, Direction Générale I - Affaires Juridiques

Mme Emily WALKER, Assistant, Department of Private Law, Directorate General I - Legal Affairs / Assistante, Service du droit privé, Direction Générale I - Affaires Juridiques

Mme Christine COLEUR, Assistant, Department of Private Law, Directorate General I - Legal Affairs / Assistante, Service du droit privé, Direction Générale I - Affaires Juridiques

Mrs Julia WESTMACOTT, Assistant, Department of Private Law, Directorate General I - Legal Affairs / Assistante, Service du droit privé, Direction Générale I - Affaires Juridiques

INTERPRETERS / INTERPRETES

Mr Christopher TYCZKA
Mr Didier JUNGLING
Mr Philippe QUAINÉ

APPENDIX II

AGENDA / *ORDRE DU JOUR*

1. Opening of the meeting by Mr Guy DE VEL, Director General of Legal Affairs / *Ouverture de la réunion par M. Guy DE VEL, Directeur Général des Affaires Juridiques*
2. Adoption of the agenda / *Adoption de l'ordre du jour*
3. Information by the Secretariat / *Informations par le Secrétariat*
4. Examination and adoption of the draft opinion on « Justice and society » / *Examen et adoption d'un projet d'avis sur « Justice et société »*

Working document / Document de travail

Draft opinion prepared by the CCJE-GT, based on the texts prepared by the drafting group, the specialist and the replies sent by States to a questionnaire on this subject / *Projet d'avis préparé par le CCJE-GT, basé sur les textes élaborés par le groupe de rédaction, le spécialiste et les réponses envoyées par les Etats au questionnaire sur ce sujet*

CCJE-GT (2005) 8
Appendix/Annexe IV
CCJE-GT (2005) 5 Rev

Background documents / Documents de référence

Report prepared by Mr Eric COTTIER, Judge, Court of Canton, Vaud Canton (Switzerland) / *Rapport établi par M. Eric COTTIER, Juge, Tribunal cantonal du Canton de Vaud (Suisse)*

CCJE-GT (2005) 3

Explanatory note and questionnaire on “Justice and society” / *Note explicative et questionnaire sur le thème : “Justice et société”*

CCJE (2004) 33

Conclusions of the 2nd European Conference of Judges (Cracow, 25-26 April 2005) / *Conclusions de la 2^e Conférence européenne des Juges (Cracovie, 25-26 avril 2005)*

CCJE-CONF (2005) concl

Answers to the questionnaire provided by national delegations / *Réponses au questionnaire fournies par les délégations nationales :*

Romania/Roumanie

CCJE (2005) 1

English only/anglais seulement

Belgium/Belgique

CCJE (2005)2

French only/français seulement

Lithuania/Lituanie

France	CCJE (2005)3 <u>English only/anglais seulement</u>
Moldova	CCJE (2005)4 <u>French only/français seulement</u>
Czech Republic/ <i>République Tchèque</i>	CCJE (2005)5 <u>French only/français seulement</u>
Cyprus/ <i>Chypre</i>	CCJE (2005)6 <u>English only/anglais seulement</u>
« the Former Yugoslav Republic of Macedonia »/ « <i>l'ex République yougoslave de Macédoine</i> »	CCJE (2005)7 <u>English only/anglais seulement</u>
Italy/ <i>Italie</i>	CCJE (2005)8 <u>English only/anglais seulement</u>
Switzerland/ <i>Suisse</i>	CCJE (2005)9 <u>English only/anglais seulement</u>
Croatia/ <i>Croatie</i>	CCJE (2005)10 <u>French only/français seulement</u>
Estonia/ <i>Estonie</i>	CCJE (2005)11 <u>English only/anglais seulement</u>
Ukraine	CCJE (2005)12 <u>English only/anglais seulement</u>
Albania/ <i>Albanie</i>	CCJE (2005)13 <u>English only/anglais seulement</u>
Germany/ <i>Allemagne</i>	CCJE (2005)14 <u>English only/anglais seulement</u>
Japan/ <i>Japon</i>	CCJE (2005)15 <u>English only/anglais seulement</u>
Luxembourg	CCJE (2005)16 <u>English only/anglais seulement</u>
Sweden/ <i>Suède</i>	CCJE (2005)17 <u>French only/français seulement</u>
Malta/ <i>Malte</i>	CCJE (2005)18 <u>English only/anglais seulement</u>

Russian Federation/ <i>Fédération de Russie</i>	CCJE (2005)19 <u>English only/anglais seulement</u>
Slovenia/ <i>Slovénie</i>	CCJE (2005)20 <u>Russian only/Russe seulement</u>
Slovak Republic/ <i>République Slovaque</i>	CCJE (2005)21 <u>English only/anglais seulement</u>
Portugal	CCJE (2005)22 <u>English only/anglais seulement</u>
Andorra/ <i>Andorre</i>	CCJE (2005)23 <u>French only/français seulement</u>
Hungary/ <i>Hongrie</i>	CCJE (2005)24 <u>French only/français seulement</u>
Spain/ <i>Espagne</i>	CCJE (2005)25 <u>French only/français seulement</u>
Bulgaria/ <i>Bulgarie</i>	CCJE (2005)26 <u>French only/français seulement</u>
United Kingdom/ <i>Royaume-Uni</i>	CCJE (2005)27 <u>English only/anglais seulement</u>
Norway/ <i>Norvège</i>	CCJE (2005)28 <u>English only/anglais seulement</u>
Latvia/ <i>Lettonie</i>	CCJE (2005) 32 <u>English only/anglais seulement</u>
	CCJE (2005) 38 <u>English only/anglais seulement</u>

Report of the 8th and 9th meetings of the Working Party of the Consultative Council of European Judges (CCJE-GT) (Katowice, 27-29 April 2005 and Strasbourg, 29 June-1 July 2005) / Rapport des huitième et neuvième réunions du Groupe de travail du Conseil Consultatif de Juges Européens (CCJE-GT) (Katowice, 27-29 Avril 2005 et Strasbourg, 29 juin-1 juillet 2005)

CCJE-GT (2005) 8

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10. Election of the Chair and the Vice Chair of the CCJE / *Election du Président ou de la Présidente et du Vice-président ou de la Vice-présidente du CCJE*

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11. Calendar of the future meetings of the CCJE and the CCJE-GT / *Calendrier des futures réunions du CCJE et du CCJE-GT*

12. Any other business / *Divers*

12.1. Report by Mr. Alain Lacabarats on hearing with the Committee of Ministers / *Rapport de M. Alain Lacabarats sur l'audition au Comité des Ministres*

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Presentation by Mr. Alain Lacabarats given during the 880th meeting of the Committee of Ministers / *Exposé de M. Alain Lacabarats présenté lors de la 880^e réunion du Comité des Ministres*

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12.2. Report by Mr Mihai Poalelungi on the follow up to the 1st European Conference of Judges / *Rapport de M. Mihai Poalelungi sur le suivi de la 1^{ère} Conférence européenne des juges*

12.3. Exchange of views on practical assistance to the States in the field of the judiciary / *Echange de vues sur l'assistance pratique aux Etats dans le domaine de la justice*

12.4. Exchange of views on partnership in the judicial sphere / *Echange de vues sur le partenariat dans le domaine judiciaire*

12.5. Review of the membership of the Working Party in the light of the theme identified for 2006 under the specific terms of reference / *Réexamen de la composition du Groupe de travail à la lumière du thème à traiter en 2006 selon le mandat spécifique*

12.6. Exchange of views on measures taken to publicise the Opinions of the CCJE in the member states / *Echange de vues sur des dispositions prises en vue de faire connaître les Avis du CCJE dans les Etats membres*

12.7. Information by Mr Alain Lacabarats on “programme d'échanges d'autorités judiciaires 2004 /2005 / *Information par M. Alain Lacabarats sur le « programme d'échanges d'autorités judiciaires 2004/2005 »*

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Consultatif de Juges Européens (CCJE-GT) (Katowice, 27-29 Avril 2005 et Strasbourg, 29 juin-1 juillet 2005)

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APPENDIX III

OPINION No. 7 (2005)

**of the Consultative Council of European Judges (CCJE)
to the attention of the Committee of Ministers
of the Council of Europe
on “Justice and Society”**

INTRODUCTION

1. For 2005 the Consultative Council of European Judges (CCJE) was given the task¹ of adopting an opinion on "Justice and Society" for the attention of the Committee of Ministers of the Council of Europe.

2. In this regard, the CCJE considered the following points which appear in the Framework Global Action Plan for Judges in Europe:

- ❑ relations with the public, the educational role of the courts in a democracy (see Part V b of the Action Plan),
- ❑ relations with all those involved in court proceedings (see Part V c of the Action Plan);
- ❑ accessibility, simplification and clarity of the language used by the court in proceedings and decisions (see Part V d of the Action Plan).

3. The preparatory work was carried out on the basis of:

- consideration of the *acquis* of the Council of Europe as well as of the results of the 5th meeting of the Presidents of European Supreme Courts on “The Supreme Court: publicity, visibility and transparency” (Ljubljana, 6-8 October 1999), the Conference of the Presidents of the Associations of Judges on “Justice and society” (Vilnius, 13-14 December 1999) and the European Ministerial Conference on Mass Media Policy (Kyiv, Ukraine, 10-11 March 2005);
- replies by delegations to a questionnaire (with an explanatory note) prepared by the Vice Chair of the CCJE and submitted to the CCJE plenary meeting which took place in Strasbourg on 22-24 November 2004;
- a report prepared by the specialist of the CCJE on this topic, Mr Eric COTTIER (Switzerland);
- the contributions of participants in the 2nd European Conference of Judges on the theme of "Justice and the Media", organised by the Council of Europe within the framework of the Polish Chairmanship of the Committee of Ministers on the initiative of the CCJE in co-operation with the Polish National Council of the Judiciary and with the support of the Polish Ministry of Justice (Cracow, Poland, 25-26 April 2005)²;

¹ See specific terms of reference of the CCJE for 2004-2005, adopted by the Committee of Ministers at the 876th meeting of the Ministers’ Deputies (17 March 2004, item 10.1).

² The Conference participants – i.e. judges and other people with a professional interest in the subject, including representatives of the media and international organisations, parliamentarians and experts on the subject under discussion – focused, on the one hand, on the relevant provisions of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), the case-law of the European Court of Human Rights, and Council of Europe texts and other instruments on the right to public information, which the press effectively safeguards, and, on the other, on the requirements of the right to a fair public trial by an independent and impartial

- a draft opinion prepared by the Working Party of the CCJE (CCJE-GT) in 2005.

4. In preparing this Opinion, the CCJE also considered the “Warsaw Declaration”, issued by the Third Summit of Heads of State and government of the Council of Europe, held in Warsaw on 16-17 May 2005, whereby the Summit reaffirmed the commitment “to strengthening the rule of law throughout the continent, building on the standard setting potential of the Council of Europe”. In this framework, the Heads of State and government stressed “the role of an independent and efficient judiciary in the member States”.

5. This Opinion concerns (A) the relations of the courts with the public, with special reference to the role of the courts in a democracy, (B) the relations of the courts with those involved in court proceedings, (C) the relations of the courts with the media, and (D) accessibility, simplification and clarity of the language used by the courts in proceedings and decisions.

A. THE RELATIONS OF THE COURTS WITH THE PUBLIC WITH SPECIAL REFERENCE TO THE ROLE OF THE COURTS IN A DEMOCRACY

6. The development of democracy in European states means that the citizens should receive appropriate information on the organisation of public authorities and the conditions in which the laws are drafted. Furthermore, it is just as important for citizens to know how judicial institutions function.

7. Justice is an essential component of democratic societies. It aims to resolve disputes concerning parties and, by the decisions which it delivers, to fulfil both a “normative” and an “educative” role, providing citizens with relevant guidance, information and assurance as to the law and to its practical application³.

8. Courts are, and are accepted by the public at large as being, the proper forum for the ascertainment of legal rights and obligations and the settlement of disputes relative thereto; the public at large have respect for and confidence in the courts' capacity to fulfil that function⁴. However, the understanding of the role of the judiciary in democracies - especially, the understanding that the judge's duty is to apply the law in a fair and even-handed manner, with no regard to contingent social or political pressures – varies considerably in different countries and socio-economic settings in Europe. The levels of confidence in the courts' activity are consequently not uniform⁵. Adequate information about the functions of the judiciary and its role, in full independence from other state powers, can therefore effectively contribute toward an increased understanding of the courts as the cornerstone of democratic constitutional systems, as well as of the limits of their activity.

9. Most citizens' experience of their court system is limited to any participation they might have had as litigants, witnesses, or jurors. The role of the media is essential in broadcasting

tribunal with a view to protecting human dignity, privacy, the reputation of others and the presumption of innocence, the ultimate aim being to find ways of striking a balance between conflicting rights and freedoms.

³ See Conclusions of the Fifth Meeting of the Presidents of European Supreme Courts, Ljubljana, 6-8 October 1999, paragraph 2.

⁴ See, e.g., European Court of Human Rights, case *Sunday Times vs. United Kingdom*, judgment of 26 April 1979, Series A, No. 30 where the notions mentioned in the text are said to be included in the phrase “authority of the judiciary” contained in art. 10 of the ECHR.

⁵ See Conclusions of the Meeting of the Presidents of the Associations of Judges on “Justice and Society”, Vilnius, 13-14 December 1999, paragraph 1.

information to the public on the role and the activities of the courts (see section C below); but, aside from communication through the media, the CCJE's discussions have highlighted the importance of creating direct relations between the courts and the public at large. Integrating justice into society requires the judicial system to open up and learn to make itself known. The idea is not to turn the courts into a media circus but to contribute to the transparency of the judicial process. Admittedly, full transparency is impossible, particularly on account of the need to protect the effectiveness of investigations and the interests of the persons involved, but an understanding of how the judicial system works is undoubtedly of educational value and should help to boost public confidence in the functioning of the courts.

10. The first way to make judicial institutions more accessible is to introduce general measures to inform the public about courts' activities.

11. In this connection, the CCJE would refer to its recommendations in Opinion No. 6 (2004) regarding the educative work of courts and the need to organise visits for schoolchildren and students or any other group with an interest in judicial activities. This does not alter the fact that it is also the state's important duty to provide everyone, while at school or university, with civic instruction in which a significant amount of attention is given to the justice system.

12. This form of communication is more effective if those who work in the system are directly involved. Relevant school and university education programmes (not confined to law faculties) should include a description of the judicial system (including classroom appearances by judges), visits to courts, and active teaching of judicial procedures (role playing, attending hearings, etc.)⁶. Courts and associations of judges can in this respect co-operate with schools, universities, and other educational agencies, making the judge's specific insight available in teaching programmes and public debate.

13. The CCJE has already stated in general terms that courts themselves should participate in disseminating information concerning access to justice (by way of periodic reports, printed citizen's guides, Internet facilities, information offices, etc.) ; the CCJE has also already recommended the developing of educational programmes aiming at providing specific information (e.g., as to the nature of proceedings available; average length of proceedings in the various courts; court costs; alternative means of settling disputes offered to parties; landmark decisions delivered by the courts) (see paragraphs 12-15 of the CCJE's Opinion No. 6 (2004)).

14. Courts should take part in general framework programmes arranged by other state institutions (Ministries of Justice and Education, Universities, etc.). But, in the CCJE's opinion, courts should also take their own initiatives in this respect.

15. Whereas relations with individual justice users have traditionally been dealt with by the courts, albeit in an unstructured way, courts have been reluctant in the past to have direct relations with the members of the general public who are not involved in proceedings. Publicity of hearings in the sense enshrined in Art. 6 of the European Convention on Human Rights (ECHR) has been traditionally viewed as the only contact between courts and the general public, making the mass media the sole interlocutors for courts. Such an attitude is rapidly changing. The duties of impartiality and discretion which are the responsibility of judges are not to be considered today as

⁶ See Conclusions of the Meeting of the Presidents of the Associations of Judges on "Justice and Society", Vilnius, 13-14 December 1999, paragraph 1.

an obstacle to courts playing an active role in informing the public, since this role is a genuine guarantee of judicial independence. The CCJE considers that member states should encourage the judiciaries to take such an active role along these lines, by widening and improving the scope of their "educative role" as described in paragraphs 9-12 above. This is no longer to be limited to delivering decisions; courts should act as "communicators" and "facilitators". The CCJE considers that, while courts have to date simply agreed to participate in educational programmes when invited, it is now necessary that courts also become promoters of such programmes.

16. The CCJE considered direct initiatives of the courts with the public, not depending on the activity of the media and/or actions for which other institutions are responsible. The following measures were considered and recommended:

- creation of offices in courts in charge of reception and information services;
- distribution of printed materials, opening of Internet sites under the responsibility of courts;
- organisation by courts of a calendar of educational fora and/or regular meetings open in particular to citizens, public interest organisations, policy makers, students ("outreach programmes").

17. A specific discussion was devoted by the CCJE to these "outreach programmes". The CCJE notes with interest that in some countries courts have been known to organise, often with the support of other social actors, educational initiatives that bring teachers, students, parents, lawyers, community leaders and the media into the courts to interact with judges and the justice system. Such programmes usually incorporate the use of professionals with prepared resources and provide a network for teachers' professional development.

18. Some actions are tailored for individuals who, because of their socio-economical and cultural conditions, are not completely aware of their rights and obligations, so that they do not exert their rights or, worse still, find themselves involved in legal proceedings due to not carrying out their obligations. The image of justice in the neediest social groups is therefore dealt with through programmes that are closely linked to arrangements for "access to justice", including but not limited to legal aid, public information services, free legal counsel, direct access to the judge for small claims, etc. (see section A of the CCJE's Opinion No. 6 (2004)).

19. The CCJE recommends a general support from the European judiciaries and the states, at the national and international levels, for judicial "outreach programmes" as described above; they should become a common practice. The CCJE considers that such programmes go beyond the scope of general information to the public. They aim at shaping a correct perception of the judge's role in society. In this context, the CCJE considers that – while it is for the Ministries of Justice and Education to provide for general information on the functioning of justice and to define school and university teaching syllabi – courts themselves, in conformity with the principle of judicial independence, should be recognised as a proper agency to establish "outreach programmes" and to hold regular initiatives consisting in conducting surveys, arranging focus groups, employing lawyers and academics for public fora, etc. In fact, such programmes have the goal of improving the understanding and confidence of society with regard to its system of justice and, more generally, of strengthening judicial independence.

20. In the CCJE's opinion, in order to develop the above programmes judges should be given the opportunity to receive specific training as to relations with the public. Courts should also have the possibility to employ staff specifically in charge of liaising with educational agencies (public relations offices, as mentioned above, could also be given this task).

21. It seems to the CCJE that a role co-ordinating the various local initiatives, as well as promoting nation-wide "outreach programmes", should be given to the independent body mentioned in paragraphs 37 and 45 of its Opinion No. 1 (2001). This independent body may also, by incorporating the use of professionals with prepared resources, satisfy more sophisticated information needs issuing from policy makers, academics, public interest groups.

22. The CCJE has already advised that appropriate funding, not subject to political fluctuations, should be provided for judicial activities and that judicial bodies should be involved in decisions concerning budget allocations by legislatures, e.g. through a co-ordination role of the above mentioned independent body (see Opinion No. 2 (2001), paragraphs 5, 10 and 11). The CCJE recommends that adequate funding should also be provided for activities explaining and making transparent the judicial system and the principles of justice in society by the court system itself, according to the principles stated in its Opinion No. 2 (2001). Expenses related to "outreach programmes" should be covered by a special budget item, so that they are not charged to the operating budget of courts.

23. The CCJE's discussions showed that, in order to effectively shape a correct perception of justice in society, similar principles, as developed for judges, may apply for public prosecutors. Bearing in mind the *acquis* of the Council of Europe concerning public prosecutors⁷, it seems important to the CCJE that public prosecutors, with regard to the part of the proceedings falling within their jurisdiction, should contribute to the supply of information to the public.

B. THE RELATIONS OF THE COURTS WITH PARTICIPANTS IN COURT PROCEEDINGS

24. The image that the public has of the justice system is influenced by the media, but is also very much shaped by the impressions gleaned by citizens who participate in trials as parties, jurors or witnesses.

25. Such impressions will be negative if the justice system, through its actors (judges, public prosecutors, court officials), appears biased or inefficient in any way. Negative perceptions of this kind will easily spread.

26. The CCJE has dealt in previous Opinions (especially Opinions No. 1 (2001), No. 3 (2002) and No. 6 (2004)) with the need for judges to maintain (in fact and in appearance) strict impartiality and for courts to achieve a just resolution of disputes within a reasonable time. The present Opinion is concerned with the avoidance or correction of ignorance and misapprehensions about the justice system and its operation.

27. The CCJE considers that, in order to foster better understanding of the role of the judiciary, an effort is required to ensure in so far as possible that the ideas that the public has about the justice system are accurate and reflect the efforts made by judges and court officials to gain their respect and trust concerning courts' ability to perform their function. This action will have to show clearly the limits of what the justice system can do.

⁷ See, on this subject, Recommendation Rec(2000)19 of the Committee of Ministers of the Council of Europe on the Role of Public Prosecution in the Criminal Justice System.

28. To improve their relations with the public, a number of justice systems or individual courts have set up programmes which help to shape: (a) the ethical training of judges, court staff, lawyers, etc; (b) court facilities; (c) judicial proceedings.

a) ethical training of judges, court staff, lawyers, etc

29. Some training programmes are intended to ensure that courts are seen, under all aspects of their behaviour, to be treating all parties in the same way, i.e. impartially and without any discrimination based on race, sex, religion, ethnic origin or social status. Judges and court staff are trained to recognise situations in which individuals may feel that a biased approach is, or seems to be, being taken, and to deal with such situations in a way that enhances confidence in and respect for the courts. Lawyers organise and are given special ethical training to prevent them from contributing, whether intentionally or not, to mistrust of the justice system.

b) court facilities

30. Some programmes tackle the causes of potential mistrust vis-à-vis the courts that lie in their internal organisation. For instance, moving the public prosecutor's chair away from the bench and placing it at the same level as the defence will reinforce the impression of equality of arms which a court is supposed to convey. Likewise, the removal from court premises of any visual allusion, for example to a specific religion or political authority, may help to dispel fears of unwarranted bias or a lack of independence of judges. Allowing the accused to appear without handcuffs in court even if he or she has been detained pending trial – save in cases where there is a security risk – and replacing enclosures in courtrooms with other security measures can help to give a clearer impression that the presumption of innocence which defendants enjoy is effectively guaranteed by the courts. A mention should also be made of the benefits, in terms of improving courts' transparency, of setting up court reception services to provide the users of judicial services with information about the conduct of proceedings or the progress made in a particular case, to help users with formalities and, if the layout of the buildings so requires, to accompany them to the office or the courtroom they are looking for.

c) judicial proceedings

31. Some measures are intended to do away with those parts of the proceedings which may cause offence (compulsory religious references in oaths, forms of address, etc.). Others are intended to introduce procedures which ensure for example that, before appearing in court, parties, jurors or witnesses are received, on their own or in group, by court staff who describe to them, either orally or using audiovisual material produced in collaboration with social scientists, what their court experience is expected to be like. The aim of these presentations is to dispel any misconceptions about what actually happens in courts.

32. The CCJE supports all the steps described in paragraphs 29, 30 and 31 where they strengthen the public perception of impartiality of judges and enable justice to be carried out properly.

C. THE RELATION OF THE COURTS WITH THE MEDIA

33. The media have access to judicial information and hearings, according to modalities and with limitations of established by national laws (see, e.g. Recommendation Rec(2003)13 on the provision of information through the media in relation to criminal proceedings). Media

professionals are entirely free to decide what stories should be brought to the public's attention and how they are to be treated. There should be no attempt to prevent the media from criticising the organisation or the functioning of the justice system. The justice system should accept the role of the media which, as outside observers, can highlight shortcomings and make a constructive contribution to improving courts' methods and the quality of the services they offer to users.

34. Judges express themselves above all through their decisions and should not explain them in the press or more generally make public statements in the press on cases of which they are in charge. Nevertheless it would be useful to improve contacts between the courts and the media:

- i) to strengthen understanding of their respective roles;
- ii) to inform the public of the nature, the scope, the limitations and the complexities of judicial work;
- iii) to rectify possible factual errors in reports on certain cases.

35. Judges should have a supervisory role over court spokespersons or staff responsible for communicating with the media.

36. The CCJE would refer to the conclusions of the 2nd European Conference of Judges (see paragraph 3 above) in which the Council of Europe was asked both to facilitate the holding of regular meetings between representatives of the judiciary and the media and to consider drafting a European declaration on relations between justice and the media complementing Recommendation Rec(2003)13 on the provision of information through the media in relation to criminal proceedings.

37. States should encourage exchanges, in particular by round tables, on the rules and practices of each profession, in order to highlight and explain the problems they face. The CCJE considers that the Council of Europe could usefully establish or promote such contacts at European level, so as to bring about greater consistency in European attitudes.

38. Schools of journalism should be encouraged to set up courses on judicial institutions and procedures.

39. The CCJE considers that each profession (judges and journalists) should draw up a code of practice on its relations with representatives of the other profession and on the reporting of court cases. As the experience of states which already have such a system shows, the judiciary would define the conditions in which statements may be made to the media concerning court cases, while journalists would produce their own guidelines on reporting of current cases, on the publicising of the names (or pictures) of persons involved in litigation (parties, victims, witnesses, public prosecutor, investigating judge, trial judge, etc.), and on the reporting of judgments in cases which attracted major public interest. In conformity with its Opinion No. 3 (2002), paragraph 40, the CCJE recommends that national judiciaries take steps along these lines.

40. The CCJE recommends that an efficient mechanism, which could take the form of an independent body, be set up to deal with problems caused by media accounts of a court case, or difficulties encountered by a journalist in the accomplishment of his/her information task. This mechanism would make general recommendations intended to prevent the recurrence of any problems observed.

41. It is also necessary to encourage the setting up of reception and information services in courts, not only, as mentioned above, to welcome the public and assist users of judicial services, but also to help the media to get to understand the workings of the justice system better.

42. These services, over which judges should have a supervisory role, could pursue the following aims:

- to communicate summaries of court decisions to the media;
- to provide the media with factual information about court decisions;
- to liaise with the media in relation to hearings in cases of particular public interest.
- to provide factual clarification or correction with regard to cases reported in the media (see also paragraph 34, iii above). The court reception services or spokesperson⁸ could alert the media to the issues involved and the legal difficulties raised in the case in question, organise the logistics of the hearings and make the appropriate practical arrangements, particularly with a view to protecting the people taking part as parties, jurors or witnesses.

43. All information provided to the media by the courts should be communicated in a transparent and non-discriminatory manner.

44. The question of whether TV cameras should be allowed into courtrooms for other than purely procedural purposes has been the subject of wide-ranging discussions, both at the 2nd Conference of European Judges (see paragraph 3 above) and at meetings of the CCJE. Some members of the CCJE have expressed serious reservations about this new form of public exposure of the work of the courts.

45. The public nature of court hearings is one of the fundamental procedural guarantees in democratic societies. While international law and national legislation allow exceptions to the principle that judicial proceedings should be conducted in public, it is important that these exceptions should be restricted to those permitted under article 6.1. of the ECHR.

46. The principle of public proceedings implies that citizens and media professionals should be allowed access to the courtrooms in which trials take place, but the latest audiovisual reporting equipment gives the events related such a broad impact that they entirely transform the notion of public hearings. This may have advantages in terms of raising public awareness of how judicial proceedings are conducted and improving the image of the justice system, but there is also a risk that the presence of TV cameras in court may disturb the proceedings and alter the behaviour of those involved in the trial (judges, prosecutors, lawyers, parties, witnesses, etc.).

47. Where television recording of judicial hearings occurs, fixed cameras should be used and it should be possible for the presiding judge both to decide on filming conditions and to interrupt filming broadcasting at any time. These and any other necessary measures should protect the rights of the persons involved and ensure that the hearing is properly conducted.

48. The opinion of the persons involved in the proceedings should also be taken into account, in particular for certain types of trial concerning people's private affairs.

⁸ See Conclusions of the 5th Meeting of the Presidents of European Supreme Courts, Ljubljana, 6-8 October 1999, paragraph 4, where it is also made clear that a spokesperson should not give a personal opinion on a decision already delivered or a case still pending.

49. In view of the particularly strong impact of television broadcasts and the risk of a tendency towards unhealthy curiosity, the CCJE encourages the media to develop their own professional codes of conduct aimed at ensuring balanced coverage of the proceedings they are filming, so that their account is objective.

50. There may be overriding reasons justifying the filming of hearings for specific cases which are strictly defined, for example for educational purposes or to preserve a record on film of a hearing of particular historical importance for future use. In these cases, the CCJE emphasises the need to protect the persons involved in the trial, particularly by ensuring that filming methods do not disrupt the proper conduct of the hearing.

51. While the media plays a crucial role in securing the public's right to information, and acts, in the words of the European Court of Human Rights, as "democracy's watchdog", the media can sometimes intrude on people's privacy, damaging their reputation or undermining the presumption of their innocence, acts for which individuals can legitimately seek redress in court. The quest for sensational stories and commercial competition between the media carry a risk of excess and error. In criminal cases, defendants are sometimes publicly described or assumed by the media as guilty of offences before the court has established their guilt. In the event of a subsequent acquittal, the media reports may already have caused irremediable harm to their reputation, and this will not be erased by the judgment.

52. Courts need therefore to accomplish their duty, according to the case-law of the European Court of Human Rights, to strike a balance between conflicting values of protection of human dignity, privacy, reputation and the presumption of innocence on the one hand, and freedom of information on the other.

53. As stated in the conclusions of the 2nd European Conference of Judges (see paragraph 3 above), criminal-law responses to violations of personality rights (such as reputation, dignity or privacy) should be limited to quite exceptional cases⁹. However, the courts do have a duty to ensure that civil damages are awarded, taking account not just of the damage incurred by the victim, but also the seriousness of the infringements suffered and the scale of the publication concerned.

54. The courts should be entitled, in exceptional cases that are strictly defined in order to avoid any accusation of censorship, to take urgent measures to put an immediate stop to the most serious infringements of people's personality rights (such as reputation, dignity or privacy), through the confiscation of publications or through broadcasting bans.

55. When a judge or a court is challenged or attacked by the media (or by political or other social actors by way of the media) for reasons connected with the administration of justice, the CCJE considers that, in view of the duty of judicial self-restraint, the judge involved should refrain from reactions through the same channels. Bearing in mind the fact that the courts can rectify erroneous information diffused in the press, the CCJE believes it would be desirable that the national judiciaries benefit from the support of persons or a body (e.g. the Higher Council for the Judiciary or judges' associations) able and ready to respond promptly and efficiently to such challenges or attacks in appropriate cases.

⁹ See paragraph 28 of the Action Plan adopted by the Ministerial Conference on Mass Media Policy (Kyiv, 10-11 March 2005), whereby the necessity of a review of the situation in member States regarding legislation on defamation was affirmed.

D. ACCESSIBILITY, SIMPLIFICATION AND CLARITY OF THE LANGUAGE USED BY THE COURTS IN PROCEEDINGS AND DECISIONS

56. The language used by the courts in their procedures and decisions is not only a powerful tool available to them to fulfil their educational role (see paragraph 6 above), but it is obviously, and more directly, the "law in practice" for the specific litigants of the case. Accessibility, simplicity and clarity of the language of courts are therefore desirable¹⁰.

57. The CCJE notes that in some European countries, judges believe that very short judgments reinforce the authority of the judgment; in some other countries, judges feel obliged, or are obliged by the law or practice, to explain extensively in writing all aspects of their decisions.

58. Without having the aim to deal in depth with a subject which is heavily influenced by national legal styles, the CCJE considers that a simple and clear judicial language is beneficial as it makes the rule of law accessible and foreseeable by the citizens, if necessary with the assistance of a legal expert, as the case-law of the European Court of Human Rights suggests.

59. The CCJE considers that judicial language should be concise and plain, avoiding - if unnecessary - Latin or other wordings that are difficult to understand for the general public¹¹. Legal concepts and rules of law may be quite sufficiently explained by citing legislation or judicial precedents.

60. Clarity and concision, however, should not be an absolute goal, as it is also necessary for judges to preserve in their decisions precision and completeness of reasoning. In the CCJE's opinion, legislation or judicial practice concerning reasoning of judgments should provide that some form of reasoning always exists, and that sufficient discretion is left to the judge in choosing whether to give, where permissible, an oral judgment (which may be transcribed from a recording upon request or in case of need) and/or a short written reasoned judgment (e.g. in the form of the "*attendu*" style decision adopted in some countries) or an extensive written reasoned judgment, in all those cases in which reference to established precedents is not possible and/or the factual reasoning so requires. Simplified forms of reasoning may apply to orders, writs, decrees and other decisions that have a procedural value and do not concern the substantive rights of the parties.

61. An important aspect of accessibility of law, as enshrined in judicial decisions, is represented by their ready availability to the general public¹². In view of this goal, the CCJE recommends that at least all Supreme Court and other important court decisions be accessible through Internet sites at no expense, as well as in print upon reimbursement of the cost of reproduction only; appropriate measures should be taken, in disseminating court decisions, to protect privacy of interested persons, especially parties and witnesses.

SUMMARY OF THE RECOMMENDATIONS AND CONCLUSIONS

¹⁰ See Conclusions of the 5th Meeting of the Presidents of European Supreme Courts, Ljubljana, 6-8 October 1999, paragraph 1.

¹¹ See Conclusions of the Meeting of the Presidents of the Associations of Judges on "Justice and Society", Vilnius, 13-14 December 1999, paragraph 1.

¹² See Conclusions of the 5th Meeting of the Presidents of European Supreme Courts, Ljubljana, 6-8 October 1999, paragraph 1.

A. The relations of the courts with the public with special reference to the role of the courts in a democracy

A.1. It is the state's important duty to provide everyone, while at school or university, with civic instruction in which a significant amount of attention is given to the justice system (see paragraph 11 above).

A.2. Relevant school and university education programmes should include a description of the judicial system, visits to courts, and active teaching of judicial procedures. Courts and associations of judges can in this respect co-operate with schools, universities, and other educational agencies, making the judge's specific insight available in teaching programmes and public debate (see paragraph 12 above).

A.3. Courts should take part in general framework programmes arranged by other state institutions and take an active role in providing information to the public (see paragraphs 14 and 15 above).

A.4. The following measures are thus recommended (see paragraphs 16 to 19 above):

- creation of offices in courts in charge of reception and information services;
- distribution of printed materials, opening of Internet sites under the responsibility of courts;
- organisation by courts of a calendar of educational fora and/or regular meetings open to citizens, public interest organisations, policy makers, students, etc.;
- "outreach programmes" and programmes for access to justice.

A.5. Judges should be given the opportunity to receive specific training as to relations with the public and courts should also have the possibility to employ staff specifically in charge of liaising with educational agencies (see paragraph 20 above).

A.6. A role co-ordinating the various local initiatives, as well as promoting nation-wide "outreach programmes", should be given to the independent body mentioned in paragraphs 37 and 45 of its Opinion No. 1 (2001) (see paragraph 21 above).

A.7. Adequate funding, not charged to the operating budget of courts, should be provided to the courts for activities explaining and making transparent the principles and the mechanisms of justice in society as well as for expenses related to "outreach programmes" (see paragraph 22 above).

A.8. Public prosecutors, with regard to the part of the proceedings falling within their jurisdiction, should contribute to the supply of information to the public (see paragraph 23 above).

B. The relations of the courts with participants in court proceedings

B.1. The CCJE considers that, in order to foster better understanding of the role of the judiciary, an effort is required to ensure in so far as possible that the ideas that the public has about the justice system are accurate and reflect the efforts made by judges and court officials to gain their respect and trust concerning courts' ability to perform their function. This action will have to show clearly the limits of what the justice system can do (see paragraphs 24 to 27 above).

B.2. The CCJE supports all the steps aiming at strengthening the public perception of impartiality of judges and enabling justice to be carried out (see paragraphs 28 to 32 above).

B.3. Such initiatives may include (see paragraphs 28 to 32 above):

- training programmes in non-discrimination and equal treatment organised by courts for judges and court staff (in addition to the similar programmes organised by lawyers or for lawyers);
- court facilities and arrangements designed to avoid any impression of inequality of arms;
- procedures designed to avoid giving unintended offence and to ease the involvement of all concerned in judicial proceedings.

C. The relations of the courts with the media

C.1. The CCJE considers that it would be useful to improve contacts between the courts and the media (see paragraph 34 above):

- to strengthen understanding of their respective roles;
- to inform the public of the nature, the scope, the limitations and the complexities of judicial work;
- to rectify possible factual errors in reports on certain cases.

C.2. Judges should have a supervisory role over court spokespersons or staff responsible for communicating with the media (see paragraph 35 above).

C.3. The CCJE considers that states should encourage exchanges, in particular by round tables, on the rules and practices of each profession and that the Council of Europe could usefully establish or promote such contacts at European level, so as to bring about greater consistency in European attitudes (see paragraph 36 and 37 above).

C.4. Schools of journalism should be encouraged to set up courses on judicial institutions and procedures (see paragraph 38 above).

C.5. The CCJE considers that each profession (judges and journalists) should, draw up a code of practice on its relations with representatives of the other profession and on the reporting of court cases (see paragraph 39 above).

C.6. The CCJE recommends that an efficient mechanism be set up, which could take the form of an independent body to deal with problems caused by media accounts of a court case or difficulties encountered by a journalist in the accomplishment of his/her information task, to make general recommendations intended to prevent the recurrence of any problems observed (see paragraph 40 above).

C.7. It is also necessary to encourage the setting up of reception and information services in courts under the supervision of the judges in order to help the media to get to understand the workings of the justice system better by (see paragraphs 41 and 42 above):

- communicating summaries of court decisions to the media;
- providing the media with factual information about court decisions;

- liaising with the media in relation to hearings in cases of particular public interest;
- providing factual clarification or correction with regard to cases reported in the media.

C.8. The CCJE considers that all information provided to the media by the courts should be communicated in a transparent and non-discriminatory manner (see paragraph 43 above).

C.9. The CCJE considers, that where television recording of judicial hearings occurs, fixed cameras should be used and it should be possible for the presiding judge both to decide on filming conditions and to interrupt filming broadcasting at any time. These and any other necessary measures should protect the rights of the persons involved and ensure that the hearing is properly conducted. Furthermore, the opinion of the persons involved in the proceedings should also be taken into account, in particular for certain types of trial concerning people's private affairs (see paragraphs 44 to 48 above).

C.10. The CCJE encourages the media to develop their own professional codes of conduct aimed at ensuring balanced coverage of the proceedings they are filming, so that their account is objective (see paragraph 49 above).

C.11. The CCJE considers that there may be overriding reasons justifying the filming of hearings for restricted use specified by the court (for example for educational purposes or to preserve a record on film of a hearing of particular historical importance for future use), in these cases, it is necessary to protect the persons involved in the trial, particularly by ensuring that filming methods do not disrupt the proper conduct of the hearing (see paragraph 50 above).

C.12. The CCJE considers that criminal-law responses to violations of personality rights should be limited to quite exceptional cases. However, the judges do have a duty to ensure that civil damages are awarded, taking account not just of the damage sustained by the victim, but also the seriousness of the infringements suffered and the scale of the publication concerned. The courts should be entitled, in exceptional cases, to take urgent measures to put an immediate stop to the most serious infringements of people's personality rights through the confiscation of publications or through broadcasting bans (see paragraphs 51 to 54 above).

C.13. When a judge or a court is challenged or attacked by the media for reasons connected with the administration of justice, the CCJE considers that in the view of the duty of judicial self-restraint, the judge involved should refrain from reactions through the same channels. Bearing in mind the fact that the courts can rectify erroneous information diffused in the press, the CCJE believes it would be desirable that the national judiciaries benefit from the support of persons or a body (e.g. the Higher Council for the Judiciary or judges' associations) able and ready to respond promptly and efficiently to such challenges (see paragraph 55 above).

D. Accessibility, simplification and clarity of the language used by the courts in proceedings and decisions

D.1. The CCJE considers that accessibility, simplicity and clarity of the language of courts are desirable (see paragraphs 56 to 58 above).

D.2. The CCJE considers that judicial language should be concise and plain, avoiding - if unnecessary - Latin or other wordings that are difficult to understand for the general public. Legal

concepts and rules of law may be quite sufficiently explained by citing legislation or judicial precedents (see paragraph 59 above).

D.3. In the CCJE's opinion, judicial reasoning should always be precise and complete, though simplified reasoning may be appropriate in procedural matters, and judges may, where permissible, give their reasoning orally (subscription to later transcription if required) rather than in writing (see paragraph 60 above).

D.4. The CCJE recommends that at least all Supreme Court and other important court decisions be accessible through Internet sites at no expense, as well as in print upon reimbursement of the cost of reproduction only; however appropriate measures should be taken in disseminating court decisions, to protect privacy of interested persons, especially parties and witnesses (see paragraph 61 above).

APPENDIX IV

2nd EUROPEAN CONFERENCE OF JUDGES « JUSTICE AND THE MEDIA » (Cracow, Poland, 25-26 April 2005)

*organised by the Council of Europe at the initiative of the
Consultative Council of European Judges (CCJE)
in collaboration with the National Council of Judiciary of Poland
and with the support of the Ministry of Justice of Poland,
within the Polish Presidency of the Council of Europe*

CONCLUSIONS

The 2nd European Conference of Judges, on “Justice and the media”, was held in Cracow (Poland) on 25 and 26 April 2005 as part of the Polish Chairmanship of the Committee of Ministers of the Council of Europe. It was organised by the Council of Europe in connection with the implementation of the framework global action plan for judges in Europe, at the instigation of the Consultative Council of European Judges (CCJE), in cooperation with the Polish National Council of Judges and with the support of the Polish Ministry of Justice.

Bearing in mind the relevant provisions of the European Convention on Human Rights, the case law of the European Court of Human Rights and the Council of Europe texts and instruments on freedom of expression and freedom of information on the one hand, and on the right to a fair and public hearing by an independent and impartial tribunal in order to protect human dignity, privacy, reputation and the presumption of innocence on the other, the conference participants - judges and others professionally concerned with the topic, including representatives of the media and international organisations, parliamentarians and experts in this field - agreed as follows:

Integrating justice into society requires the judicial system to open up and learn to make itself known. The idea is not to turn the courts into a media circus but to contribute to the transparency of the judicial process. Admittedly, full transparency is impossible, particularly on account of the need to protect the effectiveness of investigations and the interests of the persons involved, but an understanding of how the judicial system works is undoubtedly of educational value and should help to boost public confidence in the functioning of the courts.

The media are fundamentally free to choose the topics to be brought to the public’s attention and the type of coverage to give them.

The judiciary must accept public criticism from the press, which, as an outside observer, can highlight judicial malfunctions and contribute in a constructive manner to improving court practices.

With this in mind, a number of suggestions were made:

- 1) Progress can be made towards a more transparent and accessible system of justice
 - (a) by educational activity by courts and/or press offices directed at the public and educational institutions (see CCJE’s Opinion No. 6 (2004));

- (b) by facilitating access to courts and the understanding of courts' proceedings by appropriate written guides, personnel and press services;
 - (c) by opening up access to court proceedings including, in appropriately selected and controlled cases, by video and/or televisual recording;
 - (d) by wide dissemination of judgments and especially by resumés prepared by judges and/or court officials.
- 2) Value should be attached to better contacts between courts and journalists to give better mutual understanding of and respect for each other's respective roles; and it could be beneficial if the Council of Europe would organise or promote further such contacts at a European level, to develop more consistent attitudes across Europe.
 - 3) Although the general principles established by the European Court of Human Rights are accepted across Europe, there is a considerable diversity of attitudes towards their concrete application; and the Council of Europe could usefully promote further studies in the specific areas of the relationships between articles 8 and 10 of the European Convention on Human Rights with a view to achieving greater consistency of result.
 - 4) There is a great diversity of attitudes in national laws and responses with regard to both challenges to or attacks on judicial independence or integrity and infringement of individual rights of privacy; penal responses in either area should, if available, be confined to the most exceptional cases; and national judiciaries should establish persons or a body (eg the Higher Council of Judiciary) able and ready to respond to such challenges or attacks in appropriate cases (with disciplinary proceedings being available in accordance with the CCJE's previous Opinion No. 3 (2002) to satisfy legitimate concerns regarding judicial conduct).

At the close of the proceedings the participants asked the Council of Europe to take steps at a European level to improve mutual awareness and understanding between the judicial system and the media, especially by:

- facilitating the holding of regular meetings between representatives of the judiciary and the media,
- considering the drafting of a European declaration on relations between justice and the media (complementing Recommendation Rec (2003) 13 on the provision of information through the media in relation to criminal proceedings and the Committee of Ministers Declaration on the provision of information through the media in relation to criminal proceedings).

The participants invited the CCJE to take account of the results of the conference in drawing up the opinion on "Justice and Society" to be adopted in November 2005.

They expressed their gratitude to the Polish authorities and to all those who had contributed to the success of the conference, and asked the Council of Europe to continue to hold European conferences at regular intervals in order to assist judges in the performance of their tasks and strengthen and implement the principles of the rule of law in the Council of Europe member States.

SUMMARY OF THE PROCEEDINGS

Report presented by the General Rapporteur Sir Jonathan MANCE, Lord Justice of Appeal, Royal Courts of Justice, United Kingdom

Some of you may know Federich Schiller's great play Don Carlos – it is a hymn to freedom of thought and expression. At its very end appears the Grand Inquisitor, a terrifying figure, who tells the King that from the very beginning of the play the Spanish Inquisition has not only watched and listened but has known in advance everything that was going to happen, and followed it as it happened. I wish, at this point, that I could say the same, But I have watched, listened to, and learnt from this Conference, held (as Ambassador Mr Kalwas reminded us) 'under the great chestnut tree of Krakow'. Here are my thoughts:

There are six points and four short conclusions:

First, we here are (for the most part) judges. In any debate about the media judges must start with our own role which is to decide issues between parties – whether public, corporate or individual. We must in the words of the English judicial oath “do right to all manner of people after the laws and usages of [the] realm, without fear or favour, affection or ill will”.

As national constitutions and international instruments increasingly underline, the modern judicial role involves giving special weight to fundamental human rights. I was therefore surprised yesterday to hear us described as ‘law enforcement officers’. There may be a question of translation, but the term “law enforcement officers” tends to me to suggest policeman, public prosecutors or bailiffs. But I suspect that its use was intended to reflect the distinction commonly drawn between the role of law makers on the one hand, and judges applying the law on the other.

We also heard the suggestion yesterday that there is only one right answer to any legal problem and that journalistic criticism of substantive judicial decisions is not therefore appropriate – it was said that it could not amount to anything more than a journalist's subjective view about the merits, on an issue which was one of law. I would suggest that most few sitting judges would now accept those propositions either about their own role or about journalistic activity.

There never was, and certainly is not today, a clear distinction between law making and the application of law. There was always the question of interpretation. There were always situations where the law was silent or left a gap. In modern times, two developments have further blurred, and make it even less possible to draw, any clear distinction:

The first consists in the new social issues which face societies - and growing recourse by citizens to courts to resolve them. Professor Berlinguer reminded us in his talk yesterday of bioethical problems. One can add problems concerning euthanasia or arising from social and family breakdown, single sex relationships, problems of (in)equality, housing and immigration. In all such areas, there are difficult social questions which we have to answer. Of course we have to apply legal reasoning, but legal reasoning is not a matter of dictionaries or mathematical logic. It involves the selection of precedent, the use of analogy, the balancing

of different factors and competing principles, and, fundamentally, reliance on our individual sense of justice.

The second point consists in the scale and the very basic nature of the factors and interests which we have to take into account, particularly in relation to issues arising under the Human Rights Convention. Concepts such as ‘necessary in a democratic society’ require us to reflect as judges the best ideas and principles of modern European society.

I turn to the role of the press: The press have a venerable position. Mr Montserrat has just reminded us of the information revolution that has, in a very literal sense, shaped modern history, in a way that perhaps even the rule of law cannot be said to have done. The press have promoted ideas of freedom and the concept of the rule of law in a totally unprecedented manner. We should value this and work with this. We are both going in the same direction.

The press is of course an independent profession – and judges quite rightly also demand independence! But we should value the press as a control mechanism which offers us some accountability in relation to the public. The press investigates and it checks. Where confidence is due, it builds confidence. Where criticism is due, the press rightly criticises us. At this conference we have also heard it urge us to make full use of the IT revolution. The press are the messengers of society. The press are an essential counterpoint to the judiciary.

The press are fully entitled in my judgement, to criticise substantive decisions after they have been reached, as Mr Marcel Berlins said yesterday; and, as Mr Sobczak has just said, the press are fully entitled to say that a result is not the most appropriate or just, and to call for a change in the law.

The press also have an invaluable role in criticising inefficiencies, delays and of course corruption in the judicial process. And we should not think of press activities as if they are always directed against us. The press can assist understanding about and confidence in the courts, by explaining judicial activity to the public. The press can sometimes assist us by criticising government – for example if government is not giving us sufficient resources, fundings or buildings, information technology support.

My third point is therefore that mutual understanding of and respect for our respective and different roles is key to the relationship between the judiciary and the press. As Mr Sobczak also said, neither of us should over-estimate our roles or importance, although during this conference we have been described as the third and fourth estates and we are not unimportant either.

Of course our mutual objectives differ – the press is strongly motivated by profit. The Guardian has a good fortune to be owned by a Trust, however it still needs to sell copy. Most newspapers are engaged in a bitter commercial war for circulation and advertising revenue. Because of the difference between our mutual objectives a legitimate question mark appeared in the title to Mrs Kehre’s presentation: ‘Working together?’

We need however to have understanding for the fact most of the press operate on a fairly short term and sometimes *ad hoc* basis. As Mr Marcel Berlins explained, you cannot expect to have the same reporter deal necessarily even with the same case on successive dates. And it would be crying for the moon for us to expect that every law case be reported on by veteran legal experts like Mr Berlins. Where there are factual inaccuracies in the press, there is no doubt

that press offices can help and correct them. But I do not consider that press offices or courts come or should come engaged in debates about the merits of substantive decisions or about criticisms which the press may have made about the efficiency or integrity of court proceedings or individual judges. We should of course take notice and consider these seriously on an internal basis and our response should be a reform where appropriate.

The fourth point is, therefore, that there are limits to the extent that there can be any true 'dialogue'. Judges cannot discuss with the media the issues in cases before the court before or after giving a decision, and journalists cannot be expected to discuss their articles with judges or courts before publishing them.

Mr Lacabarats, our Chair of the CCJE, used a phrase yesterday about which I am not totally happy, when he said justice must 'sell' itself. As Magna Carta says, that is the one thing that justice should not do. But I am happier with another way of putting the point at which he was aiming, which is that justice must not only be done but must be seen to be done. We should not regard our activities as some sort of private mystery. We need to help the press in a number of ways which have been clearly identified over the last two days.

Our judgment should be clear – that was a point repeated by many speakers. They should be expressed in language comprehensible to everyone. In a complicated case we should consider indexes, executive summaries and/or press résumés. In an English context, I would say that such a résumé should be prepared by a judge. It may be that in other contexts a press office could do it. But I would not personally entrust a press officer with a résumé of one of my judgments, though perhaps that implies that my judgments are too complicated.

We should disseminate our judgments in a convenient and widely accessible way. We should use the internet, as we do in Great Britain. I am less sure about the suggestion that we should accredit certain journalists whom we trust. I do not think that that would work in an English context. There are of course journalists who we trust, but to favour or seem to favour a journalist in that way would not be acceptable.

That justice should be administered in public is of course fundamental, subject to well-known limited exceptions. We have heard much about using modern methods of broadcasting, television in particular. There seems to be increasing confidence, if I sense the mood of the conference, that this is appropriate under carefully thought-through conditions. We had an impressive indication of the facilities in Spain, which showed how it may even be accepted as appropriate there in the case of contentious criminal trials.

I have reservations about the extent to which it would be appropriate in a jury system, or in a system as heavily slanted towards advocacy as the English system, but we are moving to televise some appellate proceedings.

Another means of ensuring transparency and assisting the press consists in the provision of access to information, witness statements and other documentation, so as to enable proper understanding of public trials. We also have heard about the benefits of informal relations with the press - during the Spanish presentation, we saw a photograph of the President of the Audiencia Nacional speaking to journalists. In the United Kingdom it is not at all uncommon for us judges to meet journalists, informally at lectures or dinners and by way of interview. The value of such contacts was underlined both by Mr Berlins and by the accounts we have heard of the position in Poland.

On the other hand, coming back to where I started my forth point, Mr Justice McMenamin and Mr Gardocki emphasised that we must not over engage with the press. There is a risk that in some situations we could become too close or be unduly influenced. Mr Gardocki was right to distinguish Judges from politicians; we do not have - thank goodness! – to seek election either by the people or parliaments in most European countries. I am personally very glad about the independence which that gives us. We are there to protect minorities against majorities, not to represent popular will. Sometimes we have to be unpopular and we certainly need on occasion to be able to stand firm in the face of misconceptions or criticisms by the media or politicians.

The fifth point I would like to touch on is abuse. The jurisprudence of the European Court of Human Rights has been described. Journalism may offend, shock, disturb, exaggerate or provoke. When this is irritating, unfair or wounding, that is part of the price which we pay for democratic freedom and for the function which the press fulfils. I was very glad to hear that one is in Austria now able to call a politician ‘ein Trottel’ without fear of judicial recrimination. The phrase ‘mutual control’ was used yesterday, but to my mind that was surprising and I do not think that it represents the mood of the conference. I do not think that judges should put themselves into a position where they risk being thought of as ‘censors’. We are not controlling the press. We heard (during Mr Berlin’s presentation) some striking examples of the attitudes of some Turkish courts to separatist propaganda and the repeated criticisms of such attitudes in Strasbourg. We also heard about prison sentences being handed down in Poland in respect of libel - although there was some indication of change of attitude in that respect.

It seems to me that we should be very careful to avoid unnecessary and excessive reactions towards the press. Of course, there are situations where the judicial process risks being undermined and that must not be allowed to happen. But I suggest that it is only in very rare situations that courts should consider sanctioning journalistic behaviour by penal sanctions. Much the best attitude in most situations is to rely on the integrity of judges and their ability to ignore or put aside wounding or prejudicial comments.

Once again, in the context of jury trials we face a particular problem in the United Kingdom. However, it is very very rarely necessary to discipline a journalist. In serious cases of attacks on the judiciary or attacks which affect the independence or challenge the integrity of a judge, there is a role for a dignified rebuttal or response by persons or by a body representing the judiciary. In England this might come from the Lord Chief Justice’s office or possibly the Council of Judges; in other European countries perhaps from the Higher Council of the Judiciary. Prof. Berlinguer in his presentation yesterday urged us to support the admissibility of such interventions by such bodies when necessary and I personally would wish to do so.

Of course, if there is a legitimate complaint about the behaviour of a judge, the possibility should also exist of instituting disciplinary proceedings. That is a subject which the Council of European Judges addressed in its third Opinion.

What about journalistic ethics? This is an important subject for journalists to consider. It is also important for the public at large. I understood from what we heard that there is a code of ‘journalistic ethics’ in Latvia and no doubt that there is in other countries also. We have in the United Kingdom a voluntary Press Commission and various regulatory regimes in respect of radio and television. Maybe on a European level the Council of Europe could interest itself in

the subject. However, it seems to me that it is not really a subject for judges. Mrs Kehre emphasised the futility of judges seeking to persuade journalists to behave in a way which judges would prefer. I do not think that it is even appropriate for us to embark on that activity.

My sixth and last point relates to today's discussion about the protection of individual privacy by Courts. There are European standards laid down by the European Court of Human Rights in Strasbourg and generally accepted throughout all European countries. But their concrete application is clearly very different from country to country. Even applying the same standards, there are distinctions between the interests which are seen as worthy of protection. There are distinctions in the application of the concept that the press should be free to publish what is in the public interest but not necessarily to publish everything which interests the public. Distinctions have been drawn according to whether the person about whom the publication is made is a public personality or not, and, if a public personality is involved, according to whether the publication relates to his or her public activity or private life, according to whether he or she has put themselves in the public eye – and if so whether voluntarily or involuntarily – and whether they have in the past been seekers of publicity from the press and according to whether the subject-matter of the publication is political or non political. I do not detect any consistency of attitude across different European countries. Indeed it is quite plain that in some areas like sexual misbehaviour there are considerable differences. There are also considerable differences in the sanctions applied. We have touched on some of them already. There are huge differences, as Mr Berlins reminded us, in the content and severity of different national libel laws. There are differences in regard to the damages recoverable (including whether they are purely compensatory or may be exemplary) and in regard to the remedies available (including the circumstances in which relief preventing publication may be available).

Mr Lampe suggested that it may be a good idea to contemplate a greater availability of exemplary damages. But we should be careful that we do not freeze press activity. The press does operate under considerable constraints – both of time and financial. This has been recognised to some degree in British jurisprudence.

The issue was raised whether privacy is a primary right. The Minister of Justice suggested yesterday that all rights were equal, but Mr Berlins suggested that Article 10 was (in the language of George Orwell's *Animal Farm*) 'more equal' than other Articles, particularly Article 8, of the European Convention on Human Rights. That is certainly one reading of section 12 of the United Kingdom's Act incorporating the Convention which requires Courts in the United Kingdom, in considering whether to grant any relief to 'have particular regard to the importance of the Convention right to freedom of expression'.

The jurisprudence of the European Court in Strasbourg has in general also favoured freedom of the press, but the recent case involving Princess Caroline of Hannover may mark a slight retreat. We will have to see how the European Court of Human Rights interprets and applies that decision in practice in the future.

The four conclusions I draw from the conference are as follows:

(1) Progress can and should be made towards a more transparent and accessible system of justice, in particular:

(a) by educational activity by Courts and press offices, directed to the public and educational institutions;

(b) by opening up access to court proceedings, including, in appropriately selected and controlled cases, by video and or televisual recording.

(c) by wide-spread dissemination of judgments and the use of résumés prepared by judges or court officials.

(2) Value would attach to better contacts between judges and journalists with a view to achieving better mutual understanding of, and respect for, each others' respective roles. It would also be beneficial if the Council of Europe could organise or promote further such contacts (between journalists and courts) at a European level, with a view to developing more consistent attitudes across Europe.

(3) Although the principles established by the European Court of Human Rights are generally accepted across Europe, there is considerable diversity of attitudes towards their concrete application. The Council of Europe could usefully promote further studies in the specific areas of the relationships between Article 8 and 10 of the European Convention on Human Rights to achieve greater consistency of result.

(4) There is a great diversity of attitude in national laws and responses with regard to both challenges to or attacks on judicial independence or integrity and infringement of individual rights and privacy. Penal responses should, if available at all, be confined to the most exceptional cases, and national judiciaries should establish persons or a body, for example the Higher Council of Judiciary, able and ready to respond to such challenges or attacks in appropriate cases. Disciplinary proceedings should also be available in accordance with the CCJE's previous Opinion No. 3 to satisfy legitimate concerns regarding judicial conduct.

PROGRAMME OF THE CONFERENCE

Lieu de la réunion:

*Aula Collegium Novum,
Uniwersytet Jagielloński
ul. Gołębia 24, Cracovie*

Dimanche, 24 avril 2005

17h30 Départ de Cracovie (rencontre: hôtel Campanile ou hôtel Novotel)

18h30 Visite de la mine de sel à Wieliczka

19h30 Dîner dans la mine de sel à Wieliczka

22h00 Retour à l'hôtel

Lundi, 25 avril 2005

09h30 Séance d'ouverture

Allocutions d'ouverture par :

M. Krzysztof STRZELCZYK, Président du Conseil National de la Justice de Pologne

M. Andrzej KALWAS, Ministre de la Justice de Pologne

M. Krzysztof KOCEL, Ambassadeur, Président du Comité des Ministres du Conseil de l'Europe

M. Marek SAFJAN, Président de la Cour Constitutionnelle de Pologne

M. Roberto LAMPONI, Directeur de la coopération juridique, Conseil de l'Europe

10h30 Pause

Président de la Conférence: **M. Alain LACABARATS**, Président du Conseil Consultatif de Juges Européens (CCJE)

Publicité de la justice

**11h00 Le juge face aux médias – le journaliste dans un tribunal:
l'image de la justice dans la société**

Rapporteur: **M. Lech GARDOCKI**, Premier Président de la Cour Suprême, Pologne

Débat

12h00 La publicité des audiences et l'accès des médias

Rapporteur: **M. Jean-Marie COULON**, Premier Président honoraire de la Cour d'Appel de Paris, France

Débat

13h00 *Déjeuner (Restaurant « Wierzynek »)*

14h30 Les audiences à huis clos et les limites à l'accès des médias à l'information

Rapporteur: **M. Paul-André COMEAU**, Professeur invité à l'Ecole Nationale de l'Administration Publique du Québec, Canada

Débat

15h30 Table ronde : convergences et divergences dans les relations entre la justice et les médias

Modérateur: **M. Raffaele SABATO**, Président du Groupe de Travail du Conseil Consultatif de Juges Européens (CCJE-GT), Italie

17h00 *Fin des travaux de la journée*

19h00 *Dîner offert par le Ministre de la Justice de Pologne, Restaurant du Château de Wawel, et visite du Château Royal de Wawel*

Mardi, 26 avril 2005

Liberté des médias et protection des personnes

09h30 Le respect de la dignité humaine et de la vie privée et familiale

Rapporteur: **M. Paulo MOTA PINTO**, Juge, Cour Constitutionnelle, Portugal

Débat

10h30 La liberté de pensée et d'expression

Rapporteur: **M. Marcel BERLINS**, journaliste juridique, THE GUARDIAN, Professeur de droit des médias, City University, Londres, Royaume-Uni

Débat

11h30 *Pause*

12h00 Les mesures préventives et la responsabilité des médias pour les dommages causés par eux en cas d'atteinte aux droits individuels

Rapporteur: **M. Peter LAMPE**, Président du Tribunal de Maastricht, Pays-Bas

Débat

13h00 *Déjeuner (Restaurant « Hawelka »)*

14h30 Réunion-débat : travailler ensemble pour mieux protéger les droits de l'homme et les libertés fondamentales

Modérateur: **M. Nicholas HODGSON**, Conseiller juridique principal, Ministère des affaires constitutionnelles, Royaume-Uni

Panélistes: **M. Paul-André COMEAU**, Professeur invité à l'École Nationale d'Administration Publique du Québec, Canada

M. Eric COTTIER, Juge, Tribunal Cantonal, Suisse

Mme Anita KEHR, Premier Conseiller, Chef de l'Administration, Cour Suprême, Lettonie

M. Andreu MANRESA MONTSERRAT, Journaliste, EL PAIS, Espagne

M. Krzysztof SOBCZAK, Chef de la Section Juridique, RZECZPOSPOLITA, Pologne

Débat

15h45 *Pause*

16h00 Synthèse des travaux et conclusions

Rapporteur Général: **Sir Jonathan MANCE**, *Lord Justice of Appeal, Royal Courts of Justice*, membre du Conseil Consultatif de Juges Européens (CCJE), Royaume-Uni

17h00 Clôture de la réunion

Allocutions de clôture par :

M. Andrzej ZOLL, Médiateur, Pologne

M. Alexey KOJEMIAKOV, Chef du Service du Droit Privé, Direction Générale des Affaires Juridiques, Conseil de l'Europe

M. Alain LACABARATS, Président du Conseil Consultatif de Juges Européens (CCJE), France

18h30

Visite du Musée National, concert, dîner au Restaurant « Sukiennice »

LIST OF PARTICIPANTS IN THE CONFERENCE

ALBANIA / ALBANIE : Mr Perikli ZAHARIA, Judge of the Supreme Court of the Republic of Albania, TIRANA

ARMENIA / ARMENIE: Mr Stepan MIKAELYAN, Judge of the Malatia-Sebastia Community Court of Armenia, YEREVAN

AUSTRIA / AUTRICHE : Mr Gerhard REISSNER, Vice-President of the Austrian Association of Judges, President of the District Court of Floridsdorf, VIENNA

Mr Thomas KOEBERL, General Directorate of the Ministry of Justice, VIENNA

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CROATIA / CROATIE: Mr Lidija GRUBIC RADAKOVIC, Judge, Supreme Court, ZAGREB

Mr Dusan MILJUŠ, President of the Court, Journalist Section, ZAGREB

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Mr Aleš PAVEL, Assistant to the Chief Justice of the Supreme Court of the Czech Republic, BRNO

Mr Petr WULKAN, Ministry of Justice, PRAHA

DENMARK DANEMARK: Mr Boerge DAHL, Justice, Supreme Court, COPENHAGEN

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Mrs Sandra STRENCE, Chief Judge of Riga District Court, RIGA

Mrs Agnija KARLSONE, External Relation Officer of the Administration Court, RIGA

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Mr Vytas MILIUS, Chairman of the Court, Court of Appeal of Lithuania, VILNIUS

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OBSERVATEURS AUPRES DU CONSEIL DE L'EUROPE**

HOLY SEE / SAINT-SIEGE: H.E. Tadeusz PIERONEK, Counsellor of the Pontifical Council for Legislative Texts, former Rector of the Pontifical Theological Academy in Krakow

JAPAN / JAPON: Mr Niro SHIMADA, Justice of the Supreme Court of Japan, TOKYO

Mr Masataka YAMAGUCHI, Judge of Chiba District Court c/o Supreme Court of Japan, TOKYO

Mr Naoyuki IWAI, Consulate General of Japan, STRASBOURG

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Mr Krzysztof KOCEL, Ambassador Extraordinary and Plenipotentiary, Permanent Representative of Poland to the Council of Europe, STRASBOURG

**EUROPEAN NETWORK OF COUNCILS FOR THE JUDICIARY (ENCJ) /
RESEAU EUROPEEN DES CONSEILS DE LA JUSTICE (RECJ)**

Mr Luigi BERLINGUER, President of the European Network of Councils for the Judiciary

**SECRETARIAT COUNCIL OF EUROPE /
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Mr Roberto LAMPONI, Director of Legal Co-operation, Directorate General I - Legal Affairs
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INTERPRETERS / INTERPRETES

Mr Marcin EKSTEIN
Mr Andrzej REJ

APPENDIX V**OBSERVATIONS No. 1 (2005)****OF THE CONSULTATIVE COUNCIL OF EUROPEAN JUDGES (CCJE)****ON THE DRAFT ACTION PLAN
FOR FOLLOW-UP TO THE OPINIONS OF THE CCJE
*prepared by the CEPEJ at the request of the CDCJ***

During its 6th meeting, which took place in Strasbourg on 23-25 November 2005 the Consultative Council of European Judges (CCJE) took note of the draft action plan for follow-up to the opinions of the CCJE prepared by the European Commission for the Efficiency of Justice (CEPEJ) (document CEPEJ (2005) 11 Prov.).

The CCJE noted that the European Committee on Legal Co-operation (CDCJ) decided at its 80th meeting to ask the CEPEJ to examine the opinions of the CCJE with a view to drawing up an Action Plan to be considered by the CDCJ in connection with any future work on judicial standards. The CCJE welcomed this initiative. It believes that the promotion of the CCJE's opinions requires both wider dissemination of information about their existence and content and also the involvement of the CCJE in the work to be carried out at the Council of Europe on judicial standards.

The CCJE wished to make the following observations on the draft action plan for follow-up to the opinions of the CCJE:

1. The draft action plan concerns areas which the CCJE has not yet addressed such as rules on the training of court auxiliaries, rules relating to the enforcement of court judgments, and the division of powers between judges and prosecution services. The latter topic should be the subject of one of the CCJE's forthcoming opinions.
2. The updating of Recommendation R(94)12 on the independence, efficiency and role of judges called for in the draft action plan should take account of the particular importance which the CCJE attaches not only to the solemn proclamation of the independence of judges as one of the foundations of democratic states but also to the actual realisation of that independence.
3. This requires particular attention to be paid to the establishment in all states of High Councils for Justice or equivalent independent bodies and the assignment to them of powers that enable them to play a leading, if not exclusive, role in the appointment and promotion of judges.
4. In this connection, the CCJE intends devoting one of its future opinions to the issue of High Councils for Justice and their membership and powers.
5. Subject to the opinion to be presented on this subject and with a view to actual realisation of the independence of the judiciary, it is deemed necessary that the membership of High Councils for Justice should be such as to ensure fair representation of the judiciary and civil society, as only balanced representation of that kind can prevent the dual pitfalls of political control of the appointment of judges and corporatism.

6. It is deemed to be equally important that High Councils for Justice should also have real powers regarding the appointment and promotion of judges, an area where there are currently significant disparities between the various systems. Some restrict the role of the relevant independent bodies to issuing opinions on appointment proposals or particular aspects thereof, others allow them to make recommendations while still others assign them full decision-making powers in this area.

7. The CCJE also believes that High Councils for Justice should play a leading part in the training of judges, which is crucial to the credibility of the courts, the confidence which the public must have in the judiciary and, in the final analysis, the actual independence of judges. High Councils for Justice must therefore have a say in determining training systems and their content, as well as in the appointment of the persons in charge of the training bodies which exist.

8. In order to make point 15 of the CEPEJ draft action plan more explicit, the CCJE would like to recall that in its opinions it has also considered the issues of the professional conduct and liability of judges, stressing in particular:

- i. the need to distinguish between ethics and discipline;
- ii. the need to define ethical principles to guide judges' professional conduct;
- iii. the need for the judiciary itself to take charge of the development of rules of conduct ;
- iv. the usefulness of ethics bodies which are separate from those responsible for taking disciplinary measures;
- v. the need clearly to define misconduct which can give rise to disciplinary measures;
- vi. the crucial role of the relevant independent bodies in disciplinary proceedings.

9. Among the CCJE's other work, attention should also be drawn to the opinion on the funding of courts, as the issue of funding is closely tied up with that of independence.

10. From this point of view, it is essential that the judiciary should not have to go through the executive to obtain funding for its activities but, instead, that supreme courts or the above-mentioned independent bodies should, for example, be able to submit requests directly to parliaments or any other authorities with the power to set the budget of the judiciary.

11. Similarly, in order to complete point 28 of the CEPEJ draft action plan, the CCJE would like to recall the terms of its Opinion No 6 (2004) (paragraph 35 and following paragraphs) about the necessity to avoid an overlap between quality assessments of justice and professional evaluation of the judges, as well as about the necessity for the High Council for Justice or equivalent independent body to participate in the selection and collection of the data concerning the quality of justice.

12. All of the above issues require further consideration of the existing standards, as well as additional studies, for which the CCJE is willing to offer its assistance in such a form as the CDCJ may determine. It would be desirable for the opinions of the CCJE to be subject to a thorough examination and for the CCJE to contribute to the setting of new standards.

The CCJE would like to thank the CDCJ for having taken the initiative to provide a normative follow-up to the opinions it has drawn up.

APPENDIX VI

COMMENTS No. 2 (2005)
OF THE WORKING PARTY
OF THE CONSULTATIVE COUNCIL OF EUROPEAN JUDGES
(CCJE-GT)

ON

THE FRAMEWORK PROGRAMME
« A NEW OBJECTIVE FOR JUDICIAL SYSTEMS :
THE PROCESSING OF EACH CASE WITHIN AN OPTIMUM
AND FORESEEABLE TIMEFRAME »

*established by the European Commission
for the Efficiency of Justice (CEPEJ)*

The Working Party of the Consultative Council of European Judges (CCJE-GT), during its meeting held in Katowice (Poland) on 27-29 April 2005, took note of the Framework Programme “a new objective for Judicial systems: the processing of each case within an optimum and foreseeable timeframe” adopted by the European Commission for the Efficiency of Justice (CEPEJ).

The CCJE-GT noticed that the Framework Programme restates, among its “Lines of Action”, some of the measures suggested in instruments of the Council of Europe, and shared the goal pursued by the programme to reduce the length of judicial proceedings.

The CCJE-GT believed that specific attention should be given to lines of actions concerning resources of judicial institutions, improvement of statistical tools and development of information and communication strategies, indication of priorities in case management, definition of rules establishing an optimal duration for each type of case and monitoring their implementation, as well as improvement of the quality of procedures.

The CCJE-GT submitted the following observations:

- The CCJE noted in its Opinion No. 1 (2001) that efficiency of the judiciary should be one of the important elements that authorities in charge for recruitment and careers should consider when selecting candidates for judicial positions.

On the other hand, it is important that evaluation of personal ability of individual judges be kept distinguished from assessment of the judicial system in its globality; and that quality of justice should not become a mere synonym for productivity (Opinion No. 6 (2004), paragraphs 34 and 42), as such productivity may jeopardise a correct accomplishment of the judges’ role (Opinion No. 1 (2001), paragraph 69).

In view of the above the CCJE-GT recalled the necessity to involve the independent body¹³ in charge of protecting judicial independence and managing the judiciary in the activities of

¹³ As specified in the European Charter on the Statute for Judges and the CCJE’s Opinion No. 1 (2001).

selection and collection of qualitative data concerning justice. The independent body¹⁴ should also play a central role in working out procedures of data collection, as well as in evaluating results and disseminating them towards interested persons and authorities. This will reconcile the necessity of an evaluation and the necessity of protecting judicial independence (Opinion No. 6 (2004), paragraph 43).

- The CCJE-GT also noted in its Opinion No. 3 (2002) that a diligent and speedy accomplishment of their tasks is a deontological obligation of judges (paragraph 26).

It is therefore necessary that judicial training programmes include specific exposure to case and court management, it being clear that training is also a deontological obligation for judges (Opinion No. 4 (2003), paragraph 28).

However, diligence implies that resources are adequate to the objectives to be achieved.

The CCJE-GT already recalled that funding of courts is closely connected with judicial independence, as it shapes the conditions under which courts exercise their mission (Opinion No. 2 (2001), paragraph 2), and that both access to justice and the right to a fair trial do not occur whenever a case is not heard in a reasonable time because of the lack of resources in the courts (Opinion No. 2 (2001), paragraph 3).

It is therefore necessary that States allocate adequate resources to the courts, through a procedure that should be respectful of judicial independence and should involve judicial authorities in the evaluation of financial needs and in the submission of budget requests to the national legislatures (Opinion No. 2 (2004), paragraphs 5, 10, 11 and 14).

On this subject the CCJE-GT recalled the CCJE's suggestion to confer upon an authority representing all the courts, and separate from the executive branch, the task of budget requests to the national legislatures.

- The CCJE-GT noticed that pilot programmes, to be carried out in some courts in order to develop statistical tools and monitoring proceedings, and to experiment with solutions are to involve costs.

The use of such a tool, however, should not generate the idea that a court that takes longer on average than another to deal with a case is less efficient, as administration of justice differs greatly from purely administrative tasks, where measurements through indicators may be effective (see CCJE's Opinion No. 6 (2004), paragraph 41).

- The CCJE-GT recommended that measures aimed at reducing the workload of courts as well as at assisting the handling of cases coming to court, as indicated in the CCJE's Opinion No. 6 (2004), section C, should be considered as the most effective tools to achieve efficiency.

¹⁴ See note 1 above.

APPENDIX VII

DRAFT

SPECIFIC TERMS OF REFERENCE OF THE CCJE FOR 2006 AND 2007

*as approved by the CCJE
at its 6th meeting (23-25 November 2005)*

Specific Terms of Reference¹

1. Name of committee: CONSULTATIVE COUNCIL OF EUROPEAN JUDGES (CCJE)
2. Type of committee: Ad Hoc Committee / Consultative body
3. Source of terms of reference: Committee of Ministers
4. Terms of reference:

Pursuant to:

- the main recommendation No. 23 in the Wise Persons' report concerning the reinforcement of direct co-operation with national judicial institutions,
- the conclusions and the follow-up action agreed by the Committee of Ministers in 2000 on the respect of commitments of member states concerning the functioning of the judicial system,
- Resolution No. 1 on measures to reinforce the independence and impartiality of judges in Europe adopted by the European Ministers of Justice at the end of their 22nd Conference in 2000, in particular concerning a global action plan to strengthen the role of judges and the setting up within the Council of Europe of a consultative group composed of judges to assist in the implementation of the priorities identified in this plan and to advise the Steering Committees on whether and how to update the Council of Europe's legal instruments,
- the framework global action plan for judges in Europe adopted by the Committee of Ministers in 2000,
- **the Action Plan adopted at the Third Summit of Heads of State and Government (Warsaw, 16-17 May 2005), in particular the decision to make proper use of the opinions given by the Consultative Council of European Judges (CCJE) in order to help member states to deliver justice fairly and rapidly and to develop alternative means for the settlement of disputes,**
- **the Warsaw Declaration which stresses the role of an independent and efficient judiciary in member states with a view to strengthening the rule of law throughout the continent,**

¹ Any changes made to the previous terms of reference appear in bold.

and in the framework of the annual Programme of Activities,

the CCJE has the task of contributing in **2006 and 2007**, to the implementation **of the Third Summit Action Plan** and of the framework global action plan for judges in Europe, in particular by:

- a. **adopting an opinion in 2006 for the attention of the Committee of Ministers on the role of the judge and the balance between protection of the public and human rights, in the context of terrorism;**

In this connection, the CCJE will consider the following points which appear in the framework global action plan for judges in Europe:

- **the application by national judges of the European Convention on Human Rights and the case law of the European Court of Human Rights, European community law and other international legal instruments (see Part IV (b) of the Action plan),**
- **dialogue between national and European judicial institutions (see Part IV (c) of the Action plan),**
- **the availability of information and documentation on all relevant international texts (see Part IV (d) of the Action plan);**

This work will be carried out on the basis of replies by delegations to a questionnaire, a report prepared by a specialist and a draft opinion prepared by the Working Party of the CCJE in 2006;

- b. **adopting an opinion in 2007 for the attention of the Committee of Ministers on the structure and role of the Judicial Service Commission or another equivalent independent body as an essential element in a state governed by the rule of law for a balance between the legislature, the executive and the judiciary;**

In this connection, the CCJE will examine the present situation in the member states and consider in particular the following points which appear in the framework global action plan for judges in Europe:

- **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 or executive authorities, with responsibility for managing judges' careers (see Part I (e) of the Action plan);**

This work will be carried out on the basis of replies by delegations to a questionnaire, a report prepared by a specialist, the results of the European Conference of Judges on this topic and a draft opinion prepared by the Working Party of the CCJE in 2007, in consultation with the Venice Commission;

- c. **preparing, for the attention of the Committee of Ministers, a report containing detailed proposals on the measures to be taken in order to make proper use in**

member states of the opinions given by the CCJE. This work will be carried out by the Working Party and finalised by the CCJE in 2006;

- d. providing practical assistance to enable states to comply with Council of Europe standards concerning judges (e.g. Best Practice Survey);
- e. preparing texts or opinions at the request of the Committee of Ministers or other bodies of the Council of Europe;
- f. encouraging partnerships in the judicial field involving courts, judges and judges' associations.

5. Membership of the committee:

A. Members

Governments of member states are entitled to designate representatives of the highest possible rank in the relevant field. Members should be chosen in contact, where such authorities exist, with the national authorities responsible for ensuring the independence and impartiality of judges and with the national administration responsible for managing the judiciary, from among serving judges having a thorough knowledge of questions relating to the functioning of the judicial system combined with utmost personal integrity.

The Council of Europe will cover travel and subsistence expenses for one representative per state.

B. Participants

The Consultative Council of European Prosecutors (CCPE) and the European Commission for the efficiency of justice (CEPEJ) may send a representative to meetings of the CCJE without the right to vote and at the charge of their respective administrative budgets.

C. Other participants

- i. The European Commission and the General Secretariat of the Council of the European Union may take part in the work of the CCJE without the right to vote or defrayal of expenses.
- ii. The following states having observer status with the Council of Europe may send a representative to meetings of the CCJE without the right to vote or defrayal of expenses:

Canada
 Holy See
 Japan
 Mexico
 United States of America

D. Observers

The following non governmental organisations may send a representative to meetings of the CCJE, without the right to vote or defrayal of expenses:

- the European Association of Judges (EAJ),
- the association “Magistrats européens pour la démocratie et les libertés” (MEDEL),
- the Association of European Administrative Judges.

6. Structures and working methods:

The CCJE is an advisory body of the Committee of Ministers which prepares opinions for that Committee on general questions concerning the independence, impartiality and competence of judges. To this end, the Consultative Council works in co-operation, in particular, with the European Committee on Legal Co-operation (CDCJ), the European Committee on Crime Problems (CDPC) and also, depending on the subjects dealt with, other committees or bodies.

To discharge its terms of reference, the Consultative Council may set up subordinate bodies and organise hearings. It may also make use of scientific specialists.

The CCJE may appoint a representative to accept invitations to attend meetings of those Council of Europe bodies whose terms of reference include activities concerning justice. Furthermore, the CCJE will take appropriate measures to develop co-operation on justice matters with these bodies as well as with other international organisations, in particular by determining working methods which will enable it, in due time, to make the necessary contributions requested in the framework of these bodies' and organisations' work.

7. Duration:

These terms of reference will expire on 31 December 2007.

APPENDIX VIII

QUESTIONNAIRE ON:

"The role of judges in striking a balance between protecting the public interest and human rights in the context of terrorism"

Preliminary remark

Questions under sections A-C hereafter should be answered by respondent delegations not only taking into account the problems relating to the role of the judge in the context of terrorism, but from a more general point of view. Questions under section D, on the contrary, are specifically aimed at dealing with the role of the judge in the context of terrorism.

A. Availability of information and documentation on all international legal instruments relevant to judicial activities (point IV (d) of the framework action plan)

If a country's judges are to be at home in a European and international context, that country must, beyond the uncertain substance of the *iura novit curia* principle, do everything to ensure that its judges can gain a full understanding of the relevant European and international reference texts, enabling them to perform their activities under the best possible conditions.

In this connection, it is important that appropriate initial and in-service training schemes should be run for judges on international subjects in both basic and specialist areas of knowledge. Judges should also have access to paper or electronic versions of legal instruments, so as to permit documentary research in the European and international legal spheres. Lastly, encouragement should be given to appropriate measures - including the allocation of grants - aimed at teaching judges foreign languages as part of their basic or specialist training and ensuring that each court has legal translation facilities, without any consequent increase in the length of proceedings.

Questions

A.1. Does your country have schemes to provide judges with initial and in-service training in international and European law? If it does, please provide a list of those schemes, specifying the subjects dealt with over the last year. Please indicate the number of judges concerned by these schemes, distinguishing between initial and in-service training, and the total number of judges in your country.

A.2. Do all judges periodically receive full information on recent legislation and case-law at the European and international levels, without it being necessary for them to perform their own research in these matters? If they do, please indicate what types of documents are sent direct to each judge by the national authorities (e.g. official gazettes, legal periodicals). Please also specify what information is available on paper and what is provided in electronic form (CD-Rom, for instance).

A.3. Do judges have an opportunity to attend foreign language courses? Are these courses free of charge or state-subsidised? Does each court have legal translation facilities?

B. Dialogue between national and European judicial institutions (point IV (c) of the framework action plan)

For all national courts, the European Court of Human Rights and the Court of Justice of the European Communities serve as a reference regarding interpretation of a uniform European body of law. National courts have been delegated jurisdiction for administering European law since they are required, firstly, to apply it directly and, secondly, to interpret it in conformity with European standards.

To establish an effective dialogue between national and European courts, it is necessary that national judicial institutions should be the target of initiatives aimed at fostering not just the exchange of information but also, wherever possible, direct contacts between institutions.

Questions

B.1 What means does your country use to enhance dialogue between the national courts and the European courts? Please provide information on training dispensed in this connection over the last year.

B.2 Does your country hold events bringing together the national courts and the European courts? Who participates in these gatherings? How are their results passed on, so as to enhance their reach?

C. Application by national courts of the European Convention on Human Rights and the case-law of the European Court of Human Rights, European community law and other international legal instruments (point IV (b) of the framework action plan)

Each country's application of the European standards depends to a large extent on the rank they enjoy in national law, including under the Constitution. Nonetheless, national case-law also plays a role since it is able to give interpretations adapting national law to European law, while upholding national constitutional standards.

A study is necessary to allow the CCJE to consider the most appropriate measures to be proposed to national courts in order to solve the problems encountered in this field.

Questions

C.1 In your country what rank do the following sources of law enjoy in the hierarchy of law in particular in relation to constitutional provisions and ordinary legislation?

- a) the European Convention on Human Rights (ECHR)*
- b) EU treaties*
- c) the case-law of:*
 - the European Court of Human Rights*
 - the Court of Justice of the European Communities*
- d) international treaties.*

Please cite the relevant constitutional provisions or case-law.

C.2. *Does your country's case-law recognise the value - at least for interpretation purposes - of Council of Europe recommendations and resolutions?*

C.3. *If the European Court of Human Rights were to hold that certain provisions of your country's legislation violate the ECHR, would your national courts be permitted not to apply those provisions? Apart from execution of the Court's judgments by the government, do the national courts have authority to prescribe their own measures implementing the Court's decisions?*

C.4. *Where legislation violating provisions of the ECHR has been applied in legal proceedings concluded by a final, non-appealable decision, are the following remedies available in your country before a possible application to the Court in Strasbourg:*

- *a direct application for reopening of the proceedings?*
- *lodging of a claim for compensation?*

Please specify whether national law affords solutions of this kind which are solely confined to certain violations of the ECHR, such as legal proceedings which have breached the reasonable time requirement.

D. The role of judges in striking a balance between protecting the public interest and human rights in the context of terrorism

Since 1949 the Council of Europe has been committed to safeguarding human rights, the rule of law and pluralist democracy.

Terrorism is a denial of these three fundamental principles, and the Council of Europe has produced a number of conventions aimed at combating terrorism while seeking to uphold human rights.

Questions

D.1. *Has your country incorporated the Council of Europe recommendations and resolutions in its legislation or taken special measures to distribute and publicise these instruments?*

D.2. *Has your country adopted substantive and procedural measures specifically applicable for cases where a suspicion about terrorism exists? Please describe what is the role of the judge in the proceedings in this type of cases and indicate in what way his or her role in this case is different from his or her role in ordinary proceedings.*

D.3. *What means does your country use to reconcile the demands of security and of the protection of human rights in cases where suspicion about terrorism exists? Please indicate the measures taken, in particular in the fields of criminal law, administrative law, admission, exclusion and deportation of aliens, and preventive actions.*

Can you quote some specific cases where the question about such a reconciliation was raised?