

DECLARATION

Of the Consultative Council of European Judges (CCJE), adopted by the Plenary at its 9th meeting in Strasbourg on November 13, 2008, concerning the practice of judicial appointments in Poland.

By a message dated 13 February 2008 and following a request dated 25 January 2008 from the Helsinki Foundation for Human Rights to the Secretary General of the Council of Europe, the Head of the Office of the National Council of the Judiciary of Poland informed the Consultative Council of European Judges (CCJE) that :

- . art. 179 of the Polish Constitution provides for judicial appointments by the President of the Republic, on the petition presented by the National Council of the Judiciary;
- . the President of the Republic of Poland had refused to appoint as judges a certain number of persons presented by the National Council of the judiciary.

After due consideration of the above issue, the CCJE :

- recalls, first of all, that by its Recommendation No R(94)12, the Committee of Ministers of the Council of Europe took the view that, in principle, “the authority taking the decision on the selection (...) of judges should be independent of the government and administration” and “its members” should be selected “by the judiciary”; even “where the constitutional or legal provisions and traditions allow judges to be appointed by the government”, the Recommendation calls for guarantees “to ensure that the procedures to appoint judges are transparent and independent in practice”, e.g. that the government “follows in practice” advice provided by an independent body, and that a guarantee for concerned candidate of a “right of appeal against a decision” to the independent body is established;
- considers, moreover, that this topic was further elaborated by the CCJE in its Opinions Nos 1 (2001) on standards concerning the independence of the judiciary and the irremovability of judges “ and 10 (2007) on “the Council for the judiciary at the service of society”; in this latter Opinion, paragraph 49, the CCJE stated *inter alia* that “while it is widely accepted that appointment (...) can be made by an official act of the Head of State, yet given the importance of judges in society (...), Heads of State must be bound by the proposal from the Council of the Judiciary”;
- reminds that the CCJE, under its Terms of Reference, is available, upon request of the relevant Polish authorities, to provide practical assistance with the matter deferred to it by the National Council of the Judiciary of Poland, in order to ensure a proper implementation of European standards concerning justice.

In view of the above the Plenary:

- a) requests the delegation of Poland at the CCJE to inform the National Council of the Judiciary of Poland of the above declaration;
- b) asks the Bureau of the CCJE to keep in contact with the delegation of Poland in order to further examine the afore-mentioned matter.