COUNCIL OF EUROPE CONSEIL DE L'EUROPE

Strasbourg, 23 October/octobre 2012

CCJE(2012)7
Bilingal/*Bilingue*

CONSULTATIVE COUNCIL OF EUROPEAN JUDGES (CCJE)

CONSEIL CONSULTATIF DE JUGES EUROPEENS (CCJE)

Proposals of amendments to the draft Opinion No.15 of the CCJE by the CCJE members

Propositions d'amendements au projet d'Avis n°15 du CCJE par les membres du CCJE

Comments recieved from:/ commentaires reçu de :

Cyprus/Chypre
Georgia/Géorgie
Romania/Roumanie
Sweden/Suède

Cyprus/Chyrpre

In relation to the draft opinion No 15 of CCJE, first of all congratulations are in order for the excellent work done by the drafters. The text is quite readable and is it well thought out. It follows that my comments are very few.

(i) The word "judges" in par 6 should be avoided in relation to jurors. They fall under a completely different category of their own and do not ever act as judges at least in the common law systems. The sentence might read: "Jurors do not sit in all criminal cases and their role is quite different from that of the presiding judge or judges."

(ii) I am not sure that the idea expressed in par 16 is entirely correct. Although specialist judges do have expertise in some area of the law and have their own specialist tools and concepts (I would hesitate to call them "peculiar"), they always work within a clearly defined basic legal framework, which is common to all judges. By this I mean that whatever the specialist field if the case has to do with contractual matters, the same contract law concepts, common to all, will apply.

(iii) The idea expressed in par 20 is a bit awkward. On the one hand joint training saves money and resources and on the other, we should credit judges with more impartiality and more self-resistance to undue influence.

(iv) In par 23, there should be a clear distinction between specialist and special courts. Special courts sometimes set up to deal with individual cases or terrorist activities that fall outside the general system of justice should be prohibited at all costs.

(v) In par 26, it would be better to delete the introductory words "In principle".

(vi) I discern a possible conflict between the last sentence of par 30 where it is stated that it is difficult for judges to master all legal areas with par 26 where it is said that judges "..should be capable of deciding cases in all fields."

(vii) I wonder whether the second sentence of par 36 would be easy or even desirable to put into practice. Once you are a specialist judge in trademarks, for example, it is not easy to move into criminal law.

(viii) Is "non jurist judges" in the heading of par 43, an apt term? In addition, perhaps we should use the words "lay judges" instead of "non lawyers" in the first sentence of par 43.

(ix) In par 60, maybe we could insert the words "or known" right after "transparent" at the last line. Also the first "that" in the last sentence should read "than".

(x) In par 66, the word "however" should be deleted so that the second sentence starts with "In the interests….".

Georgia/Géorgie

1. The very first impression after review of the Opinion is that it was drafted in the spirit of support of so called generalist approach to the specialization of the judges. Such spirit derives from number of paragraphs but especially in paragraph 19, 23, 38 and 45. To my mind, the Opinion should not be regarded as supporting either specialized courts or generalist courts – it should only describe the situations concerning both of

them. I personally strongly support specialist courts (or chamber) system and would be against of any preference in regard to generalist court.

2. Paragraph 7 should be added by phrase “as well as status of judges” taking into consideration the trends from number of governments to attack status of judges.
3. In last sentence of paragraph 8 the word “knowledge” should be followed by words “and/or experience”, taking into consideration the significance of the experience gained by specialist judges.
4. In paragraph 17 the second sentence after words “smaller courts” should be flowed by word “may”, because otherwise the sentence is too affirmative covering all small courts which is not always a case.
5. In paragraph 19 the word “the purpose” should be deleted because otherwise there is an impression that someone creates the specialized courts for the sole purpose to separate the judges from the rest of judiciary which might not be a case.
6. Second sentence of paragraph 20 should read as follows “Nevertheless, such proximity should not influence judicial independence and impartiality and should not expose judges to a risk of orientation of their case-law”.
7. I do not agree with paragraph 22. Is it unacceptable if the specialist judge shares his/her opinion with the colleagues without presenting his opinion to the parties? Why is it necessary that the judge shares his/her opinion with the parties? Maybe there are some problems with wording in this paragraph?
8. Paragraph 23’s idea is a bit unclear – if the specialist court is established it will by all means require material and human resources but why is it a danger for other courts? Further elaboration on this paragraph is essential.
9. In paragraph 34, the third sentence the words “objective necessity” should be followed by word “or law” in order to fully cover the topic of prioritization of cases. In some jurisdictions it is the law (Act of Parliament) that sets priorities among the cases.
10. The last sentence of paragraph 36 should read as follows “However, such mobility and flexibility subject to judge’s consent should not endanger the principle of unremovability of judges”. This is to ensure that the judge’s specialization is not changed without his/her consent.
11. In paragraph 38 the word “only” should be deleted because the sentence becomes too affirmative.
12. I strongly disagree with the ideas expressed in paragraph 45 and consider that it should be either deleted or rephrased in a manner that allows specialization in appeals level as well. In many jurisdictions the appeals courts are either specialized courts or there are specialized chambers and the ideas expressed in paragraph 45 is contrary to existing practice of many countries.
13. In paragraph 55 the sentence “nonetheless, the CCJE considers that such separate systems are an impediment to access to justice and also are often linked to differences in the status of judges” should be deleted, because separate systems if properly functioning are not in itself impediment to access to justice.

ROMANIA/ROUMANIA

Madame le Vice-président POPA est d'accord avec le contenu.

SWEDEN/SUEDE

Comments on the draft Opinion No. 15 “Specialisation of judges” (Document CCJE(2012)4)
By Eva Wendel Rosberg (Sweden)
Art. 18. Strike the second sentence “It can give judges …” The sentence implies a type of behavior from judges that I would find unlikely.

Art. 28. Strike the last example regarding persons accused of participating in criminal organisations. There are no 'membership cards' for members of criminal organisations - sometimes the most important for a prosecutor is to prove that the accused is involved in a criminal organisation. If a special court or judge is appointed for these cases, it implies that the justice system has already decided that the accused is involved in a criminal organisation and therefore cannot get a fair trial.

Art.55. Strike the first sentence. Sweden is one of the countries in Europe that has a dual system with both ordinary and administrative courts. This is a system that works very well in Sweden and is a good kind of specialisation. The system is not an 'impediment' to access to justice. The administrative courts mainly handle cases where an authority has made a decision. The authority gives information about how and where to appeal against the decision. E.g. the administrative courts handle tax cases.