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CONSULTATIVE COUNCIL OF EUROPEAN JUDGES (CCJE)
WORKING GROUP « MAGNA CARTA OF EUROPEAN JUDICIAL SYSTEMS »
(CCJE-MC)

Summing-up of Opinions

Distribution of tasks:

Text concerned	Responsible person
European Charter	O. Afonso
Framework programme	
Opinion N°1	
Opinion N°2	Lord Mance
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Introduction (to be completed)

Contribution Orlando Afonso (to be completed)

FUNDING AND MANAGEMENT OF COURTS

1. The state must provide sufficient resources to enable the court system and judiciary to operate independently, fairly and efficiently.
2. The budget for the court system and judiciary should be adopted by a procedure taking into account the views of the judiciary.
3. All judges having responsibility for court administration should have appropriate training and support.
4. Judges should have responsibility for, at the least, administrative decisions which directly affect courts' performance of their functions.

PROFESSIONAL CONDUCT (OPINION N°3)

5. Judges should draw up statements of the ethical principles guiding their conduct, and aim to establish a body or persons within the judiciary to advise upon their application in particular cases.
6. Such principles should address the need:
 - i. to uphold, and avoid political or other activity that could compromise, judicial independence at the individual or institutional level;
 - ii. to behave with integrity in public and private life;
 - iii. both to be and at all times appear impartial;
 - iv. to take into account material and exclude immaterial considerations;
 - v. to show due consideration to those taking part in or affected by proceedings;
 - vi. to ensure the fair and equal treatment of the parties;
 - vii. to be appropriately circumspect in relations with the media;
 - viii. to ensure a high degree of professional competence, diligence and awareness;
 - ix. to devote the bulk of their working time as judges to judicial functions, including associated activities.
7. Liability:
 - a. Penal:
 - i. a judge who in the conduct of his or her office commits an offence of general application cannot claim immunity from prosecution;-
 - ii. a judge should not otherwise be subject to any criminal liability or penalty arising from the conduct of his or her office;
 - b. Civil:
 - i. a judge should enjoy personal immunity from civil liability arising from the conduct of his or her office;
 - ii. judicial errors in respect of jurisdiction, substance or procedure) should be dealt with by appeal;
 - iii. any remedy for other failings (e.g. excessive delay) lies against the state, without recourse against the judge personally.
 - c. Discipline:
 - i. A judge should be liable to disciplinary action in case of serious misconduct.
 - ii. a failure to observe the ethical standards identified under para. 5 above may be relevant to, but is not determinative of, the question whether there has been serious misconduct;
 - iii. the circumstances justifying disciplinary measures, the procedures to be followed and the sanctions available should be specified, so far as possible, in each state by the law governing the judiciary;
 - iv. each state should establish a body or person with responsibility for receiving complaints and determining whether they justify the initiation of disciplinary proceedings;
 - v. any disciplinary proceedings initiated should be determined by an independent authority or tribunal (which may include persons other than judges), operating a procedure guaranteeing full rights of defence;
 - vi. where such authority or tribunal is not itself a court, its members should be appointed by the independent authority advocated by the CCJE under para. above;
 - vii. an appeal should be possible to a court from an initial disciplinary decision.

TRAINING (OPINION N°4)

8. Initial and in-service training are essential to enable the judiciary to perform its functions with due professional competence, diligence, skill and awareness.

9. Training is an ethical duty for judges, the right to which should be established by the law governing the judiciary.
10. The state must provide sufficient resources and time for such training.
11. The responsibility for organising training should rest with the judiciary itself or another independent body (including a judicial service commission), with a separate budget and power over the appointment of staff and trainers.
12. Such an independent body should be separate from any authority responsible for appointing or promoting judges.
13. In drawing up training programmes, such an independent body should act in collaboration with the judiciary.
14. Actual training should be carried out by the judiciary and experts in each discipline.
15. Training programmes and methods should be the subject of frequent appraisal by those drawing them up, based inter alia on the opinions of those being trained.
16. Initial training should be mandatory for all judges, whether they are appointed at or near the outset of their legal career or as experienced lawyers.
17. Initial training should be of a significant length, which will depend upon the extent of previous professional experience, and should, in the case of candidates coming straight from university, include substantial periods in a professional environment, such as a lawyer's practice or company legal department.
18. Initial training should be pluralist in outlook, addressing international law, European Union and Human Rights law and national law as well as ethical standards and other subjects relevant to judicial activity such as case management and court administration, information technology, social sciences and alternative dispute resolution (ADR). Foreign language training may also be provided.
19. The introduction of periods of initial training common to judges, prosecutors and lawyers is recommended.
20. In-service training should normally be based on the voluntary participation of judges.
21. Mandatory in-service training will be appropriate exceptionally, e.g. when a judge takes up a new post or different work, or in case of fundamental legislative change.
22. In-service training should, wherever possible, be common to members of different branches and levels of the judiciary, encouraging the exchange of experiences and insights, breaking down hierarchical tendencies, keeping those concerned informed of others' problems and promoting more cohesive and consistent approaches.
23. Where initial training is a phase in the recruitment process, the quality of performance of trainees undergoing initial training may need to be evaluated in those systems. Otherwise, it should not be evaluated in the case of either initial or in-service training, although the fact of participation in training may be taken into account.

FAIR TRIAL WITHIN A REASONABLE TIME (OPINION N ° 6).

24. 24. The CCJE considers that the judge shall, in the interests of citizens of states participating in the effort to guarantee access to a rapid and efficient settlement of disputes, so that judicial systems can inspire confidence. It recommends

A – Regarding access to justice:

25. That suitable information be provided regarding the functioning of judicial systems;
26. That simplified and standardised format are adopted for legal documents for initiating and proceeding with court actions;
27. That technology and computer technology facilitate the access of litigants to the courts;
28. That the right of every citizen to act or to represent himself in court is guaranteed through a legal aid system, which is the subject of specific funding, covering not only court costs, but also legal advice as to the wisdom or the necessity of bringing an action;
29. That the remuneration of lawyers and court officers are fixed in such a way as to encourage needless procedural steps;

B - Regarding the quality of the justice system and its assessment:

30. That quality indicators should be chosen by wide consensus among legal professionals;
31. That the body guaranteeing the independence of judges (High Council of Justice or equivalent) is competent for the choice and the collection of "quality" data, the design of the data collection procedure, the evaluation of results, its dissemination, the monitoring and follow-up procedures;
32. That the quality evaluation of the judicial system is not confused with the evaluation of professional abilities of each judge and does not reduce to the mere productivity system.

C - Regarding the case-load and case management:

33. That states provide sufficient resources available to courts and that judges have a role to play in defining the actions to be undertaken by the judiciary;
34. That judges should have qualified assistants in the legal field and that some non-judicial activities which they are entrusted should be assigned to bodies or individuals other than judges;
35. That, in criminal matters, it should be studied and / or implemented, systems of sentence discount for a guilty plea under the supervision of a judge at a hearing, the lawyer's role being to ensure that the guilty plea is entered voluntarily and relates to each of the elements of the offence charged;
36. That the judge in civil, plays an active role in the conduct of the proceedings and can exclude any changes and / or adding new elements once the parties have chosen their position;
37. That are in place in civil matters, summary, simplified and/or abbreviated procedures in some cases as well as effective protective measures.;
38. That, subject to certain safeguards, it should be introduced in civil matters provisional enforcement;
39. That abuse of court procedure and / or use are sanctioned.

D - Regarding alternative dispute resolution (ADR):

40. That it is necessary to encourage the development of ADR, both in civil and criminal matters;

41. That Legal aid should be available for both ADR and standard court proceedings;
42. In civil matters, the use of ADR may be chosen on the parties' initiative or the judge;
43. That the refusal of one party can not affect the right to have his case heard by the court;
44. That the use of mediation in criminal matters, either before prosecution or during the trial, should be subject to review by a judge;
45. That the information collected during mediation remain confidential unless the parties agree to lift the confidentiality;
46. That mediation settlements agreements are monitored and confirmed by a judge.

JUSTICE AND SOCIETY (OPINION N ° 7).

47. To inspire confidence, a judicial system should not only enable efficient settlement of disputes, but also work seamlessly. That is why CCJE recommends:

A - As regards the relations of the courts with the public:

48. Whether the State provides to the public, school and university, a civic education that includes an important component of justice;
49. That the courts can participate in training programs and public information on the functioning of justice;
50. That judges should be given the opportunity to receive appropriate training as to relations with the public and the courts should also have the possibility to employ staff specifically in charge of liaising with educational agencies.

B - As regards the relations of courts with participants in court proceedings:

51. That are encouraged all initiatives aiming to show that justice works independently and impartially:
 - Training programs for judges, judicial staff and lawyers to non-discrimination and equal treatment of litigants;
 - 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 - As regards the relations of the courts with the media:

52. That it should be developed courses on judicial institutions and procedures in schools of journalism
53. That exchanges should be promoted on the rules and practices of each profession;
54. That each profession should, draw up a code of practice on its relations with representatives of the other professions;
55. That an independent body has the power in case of difficulty 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;

56. It is also necessary to encourage the setting up of reception and information services in courts under the supervision of the judges, particularly by communicating court decisions to the media, liaising with the media in relation to hearings in cases of particular public interest; providing clarification or correction with regard to cases reported in the media;

57. That all information provided to the media should be communicated in a transparent and non-discriminatory manner;

58. That if the hearings are being broadcasted on television, it is broadcasted under the control of the President of the court in respect of individual rights, to ensure the proper conduct of hearings;

59. That if a judge is attacked by the media, his duty of judicial self-restraint prohibiting him from responding personally using the same channels, the courts can rectify erroneous information and that the national judiciaries can enlist the services of a person or an organ to respond quickly to challenges or attacks.

D - As regards accessibility, simplification and clarity of language used by the courts:

60. That accessibility, simplicity and clarity of the language of courts are desirable;

61. That 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;

62. That 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

Contribution Raffaele Sabato (to be completed)

QUALITY OF JUDICIAL DECISIONS (OPINION N°. 11):
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63. Quality of judicial decisions is a major component of quality of justice.

64. Clear reasoning and analysis are basic requirements in judicial decisions and an important aspect of the right to fair trial.

65. The quality of judicial decisions depends on both external and internal variables of the process of administering justice, such as: the quality of legislation, the adequacy of the resources provided to the judicial system, mechanisms to regulate access to higher courts, the quality of legal training; judges' professionalism, including ethics and awareness of non-legal concepts, case management, conduct of procedures and hearings as well as elements inherent to the decision: reasoning and dissenting opinions.

66. A judicial decision of high quality:

- ✓ Applies correctly legal principles and evaluates the factual background;
- ✓ Is intelligible and drafted in clear and simple language;
- ✓ Is in principle reasoned;
- ✓ Involves in it's reasoning the interpretation of legal principles;
- ✓ Ensures legal certainty and consistency;
- ✓ Mentions it clearly, when a court decides to depart from previous case law;
- ✓ Is given in a reasonable time;
- ✓ Is readily enforceable.

67. Evaluation of quality of judicial decision should in case of the merits of individual judicial decision be done by the appeal or review procedures available in national courts and by the right of access to the European Court of Human Rights; examine the judicial system as a whole; be done on the basis of fundamental principles of the European Convention on Human Rights; aim at identifying the need, if any, for amendment of legislation, for changing or improving judicial procedures and/or for further training of judges and court staff; use different methods of evaluation combined; consider the evaluation methods with the necessary scientific rigour, knowledge and care, as well as define them according to transparent means; be done also in the form of peer review and self evaluation by judges and with the participation of “external” persons, provided that the independence of the judiciary is fully respected; take into account the annual reports of superior courts and their examination of judicial practices of lower courts, provided that the case-law of superior courts is clear, consistent and constant; lie in the power of the Council for the judiciary, where it exists, or of an independent body with the same guarantees for the independence of judges.

68. Evaluation of quality judicial decision should not be done only in the light of considerations of an economic or managerial nature; interfere with the independence of the judiciary as a whole or on an individual basis; serve as bureaucratic tool or an end in itself; be confused with the evaluation of the professional abilities of individual judges for other purposes; challenge the legitimacy of judicial decisions.

JUDGES AND PROSECUTORS (OPINION N°. 12):

69. The proper performance of the distinct but complementary roles of judges and public prosecutors is a necessary guarantee for the fair, impartial and effective administration of justice. Judges and public prosecutors must both enjoy independence in respect of their functions and also be and appear independent from each other.

70. Any attribution of judicial functions to prosecutors should be restricted to cases involving in particular minor sanctions, should not be exercised in conjunction with the power to prosecute in the same case and should not prejudice the defendants’ right to a decision on such cases by an independent and impartial authority exercising judicial functions.