



Strasbourg, 23 November 2005
[ccje/doc2005/ccje(2005)obs n°1e]

CCJE (2005) OBS N°1

CONSULTATIVE COUNCIL OF EUROPEAN JUDGES
(CCJE)

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

adopted by the CCJE
at its 6th meeting (23-25 November 2005)

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.