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**The Council of Europe's policies in the judicial field:
promoting independence, efficiency and quality of judicial systems,
for the benefit of European citizens**

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Foreword

The proper functioning of the judiciary is an issue of particular importance to the Council of Europe as it is a pillar of the rule of law and the guarantee and the safeguard of individual freedoms and fundamental rights.

At their Third Summit held in Warsaw in May 2005, the Heads of State and Government of the member states of the Council of Europe, emphasised the need to reinforce the protection of human rights and committed themselves to strengthening the rule of law and the security of citizens throughout the continent, building on the standard setting potential of the Council of Europe, its mechanisms of legal co-operation and its contribution to the development of international law. They stressed the role of an independent and efficient judiciary in the member states in this respect (Warsaw Declaration of 17th May 2005). They decided to develop the evaluation and assistance functions of the European Commission for the Efficiency of Justice (CEPEJ) and 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 (Action Plan adopted by the Third Summit, 17th May 2005).

1. The European standards and their implementation

The Council of Europe has been dealing with questions relating to the independence and impartiality of the judiciary and to the rights to a fair trial within a reasonable time (Article 6 of the ECHR). The Council of Europe and has adopted further European norms in this field (see Appendix).

The Council of Europe's action is based in particular on the legal instruments adopted by the Committee of Ministers in the field of the independence, efficiency and fairness of justice (in particular Recommendation No R (94)12 on the independence, efficiency and the role of judges)¹, the European Charter on the statute for judges, the Opinions of the Consultative Council of European Judges (CCJE) and the Consultative Council of European Prosecutors (CCPE), the case law of the European Court of Human Rights and the conclusions of the Conferences of European Ministers of Justice. It is also

¹ This Recommendation is being studied in view of possible updatings.

guided by the work of the networks of judicial professions set up by the Organisation, such as the Conference of European Ministers of Justice, the European network for the exchange of information between individuals and entities responsible for the training of judges and prosecutors (Lisbon network), the Conference of the Prosecutors General of Europe, or the regular meetings of the Presidents of European Supreme Courts.

On the basis of these norms and standards, the Council of Europe has developed its "Co-operation programme to strengthen the Rule of Law" within its member states (in particular in South-Eastern Europe and the CIS countries). The Programme² is designed to help beneficiary countries to press ahead with their institutional, legislative and administrative reforms. They chiefly involve working with government authorities to:

- prepare and introduce legislation and an operational framework which match the country's specific needs and features, but are also consistent with fundamental rule-of-law principles;
- ensure that reforms are carried out in accordance with these principles, and as prescribed by law, by providing in-service training for professionals on all levels of the legal system who are involved in implementing new legislation.

See: www.coe.int/justice

2. Evaluating and improving the functioning and quality of judicial systems: the European Commission for the Efficiency of Justice (CEPEJ)

In setting up the CEPEJ in September 2002, the Committee of Ministers of the Council of Europe wanted to establish an innovative body to ensure the implementation of European standards and improve the quality and efficiency of our judicial systems.

Thus the CEPEJ is focused on an essential field for the development of the rule of law and democracy in Europe. It has been entrusted since 2003 by the Committee of Ministers the task of proposing to the 46 member States of the Council of Europe pragmatic solutions as regards judicial organisation, taking fully into account the users of justice, and to contribute towards relieving the case-load of the European Court of Human Rights by offering to States effective solutions to prevent violations of the right to a fair trial within a reasonable time (Article 6 ECHR).

CEPEJ is today a unique body for all European States to assess the efficiency of judicial systems and propose concrete solutions, towards an increasingly efficient service to the citizens.

Evaluation of judicial systems

A better knowledge of the operation of European judicial systems and a comparative analysis of the information regarding the organisation of these systems can certainly contribute to achieving these objectives.

Based on the lessons learnt from the pilot exercise conducted between 2002 and 2004, the CEPEJ launched an initial evaluation of European judicial systems in 2005. The report "European judicial systems – Edition 2006" was made public in October 2006.

The report outlines the results of a survey conducted in 45 European states based on data for 2004. It provides policy-makers, judicial practitioners, researchers and anyone interested in judicial matters in the member states with qualitative and quantitative data presented from a comparative perspective, as well as some initial pointers for a more in-depth analysis. The report contains comparative tables and relevant comments on key areas for understanding the functioning of European judicial systems, grasping the main developments, identifying problems and steering policy policies aimed at improving the quality, equity and efficiency of services offered to citizens by the justice systems. It is a unique exercise in terms of the number of subjects and countries covered. This exercise is part of a regular process aimed at gradually identifying some core quantitative and qualitative data, which will be collected and processed in the same way in all the member states.

This report is only the first step. The next is to draw valuable lessons and conclusions from this information in order to be able to offer member states practical tools for developing justice policies. At the end of the year, therefore, the CEPEJ embarked on an in-depth analysis phase, which is due to be completed in 2007. This analysis is being carried out, mainly in the following areas: access to justice, administration and management of judicial systems, workload of courts and individual judges, information technologies in courts, enforcement of court decisions.

The CEPEJ is thus engaged in a dynamic process, in which fact-finding will alternate with analysis. The next evaluation round will begin in 2007, with a view to publishing a further report in 2008.

Improving the concrete knowledge, optimisation and foreseeability of judicial timeframes

To help ease congestion in the European Court of Human Rights, the CEPEJ is developing activities and tools to enable member states to implement the lines of action contained in its Framework Programme: "A new objective for judicial systems: the processing of each case within an optimal and foreseeable timeframe"³; studies aimed at learning more about the actual situation with regard to timeframes in European states; practical tools for policy-makers and judicial institutions: the "Checklist list for judicial time management" and the "Compendium of "best practices" on time management of judicial proceedings".

The experience has shown the only few concrete data were available regarding length of judicial proceedings, though excessive length of proceedings (breach of Article 6 ECHR) is the first reason for European citizens to go the European Court of Human Rights. How is it possible to cure a disease without being able to have a diagnostic first?

Therefore CEPEJ has established in 2007 the SATURN Centre for judicial time management aimed at collecting specific information necessary to the knowledge of judicial timeframes in the member States and detailed enough to enable member states to implement policies aiming to prevent violations of the right to fair trial within a reasonable time.

³ Document CEPEJ (2004) 19 Rev.

Developing alternative dispute resolution methods

CVEPEJ promotes ADR to improve the functioning of justice systems. It has set up a working group to facilitate the implementation of the Committee of Ministers' recommendations to member states concerning mediation. The Group has prepared a report in which it seeks to assess the impact of the four Council of Europe recommendations on mediation (in civil, family, criminal and administrative matters) and guidelines aimed at ensuring effective implementation in member states of the principles contained therein.

Developing exchanges with networks of professionals

The CEPEJ has developed networks of professionals involved in the justice system so as to be able to supplement its work with information and comments from practitioners, and facilitate assimilation of the measures it introduces by the main target groups. The Network of Pilot Courts counts 45 courts from 30 member states.

Supporting member states in their judicial reforms: targeted cooperation

The CEPEJ cooperates with its individual members states to facilitate judicial reforms on the basis of European norms and standards. Thus the CEPEJ has worked for instance with:

- the Netherlands on the territorial organisation of courts,
- the Russian Federation on “the execution of decisions by national civil courts against the state and its entities in the Russian Federation”,
- The French Court of Cassation on the selection and training of heads of major courts, further to the task set by the Ministry of Justice,
- Croatia and Slovenia on “practical ways of combating delays in the justice system, excessive workloads of judges and case backlogs.

Contributing specific expertise to the debate about the functioning of the justice system

The CoE together with the European Commission have launched the European Day of Civil Justice (25 October of each year) to get European citizens closer to their judicial systems through specific events to be organised by judicial institutions (courts, bar associations, ministries, etc). Within this framework has also been launched the European prize that rewards innovative practices contributing to the quality of civil justice: the “Crystal Scales of Justice”. This competition aims to discover and highlight innovative and efficient practices used in European courts which deserve to be drawn to the attention of policy-makers and the legal community so as to improve the operation of the public system of civil justice.

The Council of Europe and the CEPEJ were also closely involved in the “E-justice and e-law” congress held in Vienna (31 May - 2 June) under the Austrian Presidency of the European Union. The Deputy Secretary General of the Council of Europe and the Chair of the CEPEJ took part in the opening of the event. The CEPEJ will continue its dialogue with the European Union concerning the development of information technologies for the efficiency of judicial systems.

The CEPEJ also participate actively in various for a dedicated to the functioning of justice in European, or beyond.

See: www.coe.int/CEPEJ

But justice is a complex issue. Therefore the CEPEJ does not work in isolation. It is an instrument of the global policy of the Organisation for the proper functioning of justice, to which other bodies contribute as well, in complementarity.

3. Strengthening the role and status of judges: the Consultative Council of European Judges

Unless the right training is provided for the legal professions, judicial systems cannot function effectively and will forfeit public trust. Therefore the Council of Europe attaches special importance to dialogue with members of the judicial service, who play a key role in promoting the rule of law and protecting fundamental rights and individual freedoms.

The **Consultative Council of European Judges (CCJE)** is the first body consisting solely of judges ever set up within an international organisation, and in this respect it is unique in Europe. It supports the Committee of Ministers in carrying out the priorities regarding the status of judges and advises on whether it is necessary to update the legal instruments.

The CCJE has already finalised 9 Opinions for the Committee of Ministers on:

- the independence of the judiciary and the irremovability of judges
- the funding and management of courts
- judges' professional conduct, in particular ethics, incompatible behaviour and impartiality
- initial and in-service training for judges
- the law and practice of judicial appointments to the European Court of Human Rights
- fair trial within a reasonable time and judges' role in trials, taking into account alternative means of dispute settlement
- justice and society
- the role of judges in the context of terrorism
- the role of national judges in ensuring an effective application of international and European law.

Preparation of an Opinion on High Councils of Justice (or similar organs)

It is presently working on the role, powers and composition of the bodies entrusted with the guarantee of the independence of judges. A judge can indeed only exercise his/her duty being fully independent. The principle of the separation of powers also implies that the body entrusted with the protection of this independence, and with the management of the judiciary, be itself independent. Such independence cannot be seen as a privilege of the judicial function but a fundamental principle for the sake of the community: thus the citizens who turn to justice cannot be satisfied only with an independent justice, but expect that justice be fair and efficient as well. Therefore, to cope with an always more

litigious society, an in-depth reflection should be led on the concrete means enabling to benefit from a justice of quality combining these fundamental values.

As the functioning of judicial institutions is sometimes challenged in the Council of Europe's member states, the CCJE is reflecting on the existence, structure and role of these independent bodies, which are at the crossroads of powers (hence the essential elements of balance between these powers), while taking into account the situation, particularly contrasted between member states.

The composition and duties of the bodies vary from one country to another, just as their relationships with the executive and legislative powers, and even with the society.

It is too early to know the final positions of the CCJE, to be decided by the end of 2007. However it can be indicated that CCJE will possibly recommend:

- that a Council be provided for at constitutional or the highest legislative level of national systems, as the best way to ensure:
 - separation of powers,
 - judicial independence,
 - internal independence and autonomy of the judiciary,
 - access to law and court,
 - efficiency and quality of justice to serve courts' users to restore their confidence,
 - impartiality,
 - the reconciliation of independence and responsibility;
- that such a Councils should have wide range of tasks, interrelated in order to better protect and promote independence and efficiency, namely as regards:
 - selection and appointment of judges,
 - promotion of judges,
 - evaluation of judges,
 - disciplinary matters and complaint procedures,
 - administration of justice / facilitation of court management,
 - control and management of the justice budget,
 - training of judges,
 - image of judges and transparency,
 - professional ethics,
 - responsibility towards court users and the public: transparency, accountability, reporting, etc. ;
- that the Council might be composed only of judge or with a mixed composition (judges/ non judges), but with "at least half of judges" and excluding members of the legislative and executive powers;
- that the responsibilities and duties (obligations) of the councils be properly organised.

Targeted cooperation and specific opinions

The CCJE may be called upon to provide practical assistance to help States comply with standards relating to judges. It addresses topical issues and, if necessary, visits the country concerned to discuss ways of improving the existing situation in legislative and practical terms. In the course of addressing the issue of professional conduct, the CCJE was consulted by the UN Special Rapporteur on Judicial Independence to make proposals included into the Bangalore Principles of Judicial Conduct.

Policy makers and judicial bodies can also rely on the CCJE's ability to respond rapidly to requests for opinions on clearly defined, practical issues that constitute a serious problem at national level. The CCJE might equally play an active role when Council of Europe bodies are informed of specific situations concerning judges within the member states and can deal with specific national problems concerning judges.

See: www.coe.int/CCJE