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**WORKING GROUP OF THE  
CONSULTATIVE COUNCIL OF EUROPEAN JUDGES  
(CCJE-GT)**

**Report of the 32<sup>nd</sup> meeting  
Paris, 8 – 10 March 2016**

Document prepared by the Secretariat  
Directorate General I - Human Rights and Rule of Law

## **I. INTRODUCTION**

1. The Working Group of the Consultative Council of European Judges (CCJE-GT) held its 32<sup>nd</sup> meeting in Paris from 8 to 10 March 2016. The meeting was chaired by Mr Duro SESSA (Croatia), Vice-President of the CCJE.
2. The agenda and the list of participants are appended to this report (Appendices I and II respectively).

## **II. COMMUNICATION BY THE PRESIDENT, MEMBERS OF THE BUREAU AND WORKING GROUP OF THE CCJE**

3. The President opened the meeting by informing the members of the Working Group on the meeting, earlier in the morning, of the Bureau and the topics discussed. He informed about his participation in the official opening of the judicial year of the European Court of Human Rights on 27 January 2017, and some other events<sup>1</sup>.
4. He highlighted in particular his forthcoming participation in an international Conference on the “Binding Effect of Judicial Decisions” organised by the Supreme Court of the Czech Republic, in co-operation with the Ministry of Justice, within the framework of the Czech Chairmanship of the Committee of Ministers of the Council of Europe<sup>2</sup>.
5. Mr SESSA informed about his presentation of the CCJE Opinion No. 19(2016) on the role of court presidents to the Committee of Ministers of the Council of Europe, underlining the positive reflections by a number of Permanent Representatives of member states, as well as briefed the Working Group members on the questions which were raised as regards the CCJE activities vis-à-vis the Council of Europe Plan of Action on strengthening judicial independence and impartiality in member states, prepared at the initiative of the Secretary General and adopted in 2016<sup>3</sup>.
6. The President went on to brief the Working Group on the Bureau decisions as regards the follow-up to the report of the Secretary General of the Council of Europe – 2016 on the “State of democracy, human rights and the rule of law - a security imperative for Europe” which proposed to “develop the methodology and establish a regular in-house evaluation mechanism on the independence and impartiality of the judiciaries of the Council of Europe member states”<sup>4</sup>. The President reminded in particular about the decisions of the plenary meeting of the CCJE in 2016 and that the Bureau decided to proceed accordingly, focusing the Bureau’s report on judicial independence and impartiality<sup>5</sup>.

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<sup>1</sup> For more information, see the report of the 22<sup>nd</sup> meeting of the CCJE Bureau (document CCJE-BU(2017)4), paras 5-7.

<sup>2</sup> Ibid., para 8.

<sup>3</sup> Adopted at the 1253<sup>rd</sup> meeting of the Committee of Ministers on 13 April 2016 (document CM(2016)36final).

<sup>4</sup> See the Report’s Executive Summary, proposed actions and recommendations, judicial independence: 3<sup>rd</sup> bullet point (page 7).

<sup>5</sup> For more information, see the report of the 22<sup>nd</sup> meeting of the CCJE Bureau (document CCJE-BU(2017)4), paras 13-16.

7. Ms Nina BETETTO (Slovenia) briefed the Working Group on the plenary meeting of the European Commission for the Efficiency of Justice (CEPEJ) on 6-7 December 2016 in Strasbourg, which she attended and found very useful and productive.
8. Mr Gerhard REISSNER (Austria) recalled the regular compilations of the CCJE Opinions published by the CCJE Secretariat. It was decided to update this compilation and publish it with 20 Opinions after the current Opinion No. 20(2017) would be adopted by the plenary meeting on 8-10 November 2017.
9. The President briefed the members of the Working Group on discussions of the Bureau regarding the questionnaire for gender equality prepared by Ms Aneta ARNAUDOVSKA («the former Yugoslav Republic of Macedonia»), CCJE Gender Equality Rapporteur for 2017. He mentioned that the Bureau found the questionnaire very useful and detailed and recommended to ask Ms ARNAUDOVSKA to identify a group of key topics from the questionnaire and to assemble relevant questions under each of these topics.
10. The members of the Working Group highly appreciated the initiative of the Gender Equality Rapporteur and underlined that it was a good sign that the CCJE was active on gender issues. They exchanged experiences in their countries having mentioned that in the first instance courts, the majority of judges were women. In some countries, this majority was overwhelming, especially in specialised courts, for example in courts for family matters or juvenile courts. However, the same was not true regarding the number of women at higher instances. Especially at the level of the highest judicial instances, like the Supreme Court, the majority were always men. The Working Group suggested to the Gender Equality Rapporteur to use also the available statistics assembled by the European Commission for the Efficiency of Justice (CEPEJ).
11. The members of the Working Group also discussed specific gender topics such as combatting stereotypes and violence, guaranteeing equal access to decision-making, balance of participation, the role of judges in the protection of gender equality in court proceedings etc. Ms BETETTO and Mr REISSNER mentioned in particular the current lack of studies on gender in the judiciary. The members of the Working Group stated that it would be productive to concentrate on the relevant topics, for example, access to justice, and to collect information. Another question would be how to process the collected information and how to follow up.
12. The Working Group agreed with the above-mentioned recommendations of the Bureau to ask Ms ARNAUDOVSKA to identify a group of key topics from the questionnaire and to assemble relevant questions under each of these topics. It was also agreed to continue these discussions during the next Working Group meeting.
13. The Working Group also discussed the process of the preparation of the 2017 CCJE Conference which would take place on the eve of the CCJE plenary meeting, on 7 November 2017, focusing on the topic of the CCJE Opinion in 2018: "Integrity and corruption". The Working Group supported the Bureau's decisions to invite, as a speaker, the President of the Group of States against Corruption (GRECO) and to establish co-operation with the Secretariat of GRECO in the process of preparation for the conference, as well as Bureau's other decisions<sup>6</sup> as regards the conference.

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<sup>6</sup> Ibid., para 20.

### III. PREPARATION OF THE CCJE OPINION NO. 20 ON THE ROLE OF COURTS WITH RESPECT TO UNIFORM APPLICATION OF THE LAW

14. Mr SESSA presented to the Working Group the analysis of responses to the questionnaire for the preparation of the Opinion No. 20, prepared by the CCJE expert, Professor Aleš Galič<sup>7</sup> (document CCJE(2017)2), as well as the draft structure for the Opinion, prepared by the Secretariat (document CCJE-BU(2017)2Prov). The Working Group members agreed that both documents constituted a good basis for developing the Opinion, expressed their appreciation for the work of the CCJE expert and the Secretariat and proceeded to discussing in detail the relevant aspects of the Opinion. They agreed with the Bureau that the Opinion's subject matter was indeed challenging, taking into account a number of important differences among member states, including common and civil law countries.
15. Mr REISSNER stated that, because of the topic, he was concerned that the Opinion could become too descriptive. He mentioned such aspects as the balance between public and private interest; independence of judiciary and freedom of deliberation; need for population to have trust in the outcome of court proceedings. He suggested to follow the existing instruments listed in the above-mentioned analysis, highlight what were the advantages and disadvantages of these instruments, and make a special focus on European and national law.
16. Mr SESSA mentioned that the origin of problems could come from the legislation and it was important to find out how judges tried to face these problems, and how the organisational structure of the judiciary will respond in such cases.
17. Ms Aida POPA (Romania) focused on the importance of the topic mentioning that the structure of the Opinion was very well organised outlining the judicial system as regards the uniformity, the legal framework was very important, there should be one mechanism for interpretation of law. She suggested some changes in the order of chapters in the Opinion's structure.
18. Ms ARNAUDOVSKA underlined the need to refer to all general principles in the beginning, and after that, the problem of balancing should be touched upon. The European Court of Human Rights stressed the point of inconsistency of case law in several countries. Main differences between common and civil law countries should be mentioned, along with legal reasoning and departure from the previous case law.
19. Mr SESSA emphasised that the state had obligations for the uniformity of law but not infringing the independence of the judiciary, and principle of independence should be mentioned very strongly in the Opinion.
20. Mr REISSNER proposed to split the introduction into separate chapters, to highlight the role of all three powers of state. He mentioned the frequent problems as regards the legislation and how far it could go and the correlation between national laws and treaties. Needs of the society should be the basis, and several models can be clearly identified and explained.
21. Mr Orlando AFONSO (Portugal) agreed with the colleagues' remarks on the needs of the society, equality before the law and equality before the justice, and the trust of the public in courts. He referred to the need for equal treatment, uniformisation of case law, danger

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<sup>7</sup> Dr. sc., professor of law, University of Ljubljana, Slovenia.

of certain negative trends in the uniformity and the same case law staying as it is. He underlined in particular the need for evolution of the case law.

22. Ms BETETTO pointed out to the well elaborated chapters of the structure and spoke of the circumstances in which the Opinion can be used. She mentioned in particular the need to elaborate the situations where the courts can depart from the case law.
23. Mr Raffaele SABATO (Italy) reminded of the need to go back to the CCJE spirit, and because of the current topic, this should be an Opinion looking at the future and not being “prisoner” of the present situation. It should envision how judge must be treated in European countries to ensure the uniformity of the law. The European Court of Human Rights recognised that the legislative power could intervene in solving doubts concerning the interpretation of the previous law. In order to have judiciary ensuring the uniformity of the law, access to the Supreme Court should be provided for. Most countries were increasing the role of court presidents. Judges can change interpretation of the law, thus the uniformity should have evolutionary character. Training to understand the evolutionary needs in the society and the safeguards for the population should be set up. Another question was how to protect judges when attacked.
24. Ms Aida POPA spoke of the criteria for uniformisation of law and of the importance of international case law.
25. Ms Kathrin KLETT (Switzerland) suggested some changes in the introduction and the structure in general as regards the concept and uniform application of law and very different sources of law and different contexts.
26. At the end of the meeting, the Working Group agreed on the improved structure of the Opinion and, as decided previously, entrusted Professor Galič, CCJE expert, to prepare the first draft of the Opinion by 15 May 2017, after which it would be forwarded to all members of the Bureau and of the Working Group for comments which would be considered, together with the first draft, during the meeting on 7-9 June 2017 in Rome.

#### **IV. OTHER ITEMS**

27. The members of the Bureau and of the Working Group expressed their appreciation for the invitation of the High Council for the Judiciary of Italy and its generous support for the forthcoming meeting of the Working Group in Rome, and discussed the modalities of this meeting on 7-9 June 2017, as well as other events planned within this framework by the High Council for the Judiciary of Italy.

## **APPENDIX I**

### **AGENDA / ORDRE DU JOUR**

1. Opening of the meeting / *Ouverture de la réunion*
2. Adoption of the agenda / *Adoption de l'ordre du jour*
3. Communication by the President, members of the CCJE and the Secretariat / *Communication du Président, des membres du CCJE et du Secrétariat*
4. Preparation of the structure and draft of the Opinion No. 20 on « the role of courts with respect to uniform application of the law » / *Préparation de la structure et du projet de l'Avis No. 20 sur « le rôle des tribunaux dans l'application uniforme du droit »*
5. Other work of the CCJE / *Autres travaux du CCJE*
6. Any other business / *Divers*

## APPENDIX II

### LIST OF PARTICIPANTS

#### MEMBERS OF THE CCJE-GT / MEMBRES DU CCJE-GT

Mr Orlando AFONSO, Juge à la Cour Suprême, ALMADA, **PORTUGAL**

Ms Aneta ARNAUDOVSKA, Judge, Director of the Academy of Judges and Prosecutors, SKOPJE, **“THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA”/“L’EX-REPUBLIQUE YOUGOSLAVE DE MACEDOINE”**

Ms Nina BETETTO, Judge, Vice-President of the Supreme Court, LJUBLJANA, **SLOVENIA/SLOVENIE**

Mr José Francisco COBO SÀENZ, Magistrat, President of the 2<sup>nd</sup> Seccion at the Audiencia Provincial (Navarra), PAMPLONA, **SPAIN/ESPAGNE**

Ms Anke EILERS, Presiding Judge, Court of Appeal, Cologne, KÖLN, **GERMANY/ALLEMAGNE**

Mr Viktor GORODOVENKO, President of the Court of Appeal of Zaporizhzhia region, ZAPORIZHZHIA, **UKRAINE**  
(apologised/excusé)

Mr Bart VAN LIEROP, Vice-President of the Administrative High Court for Trade and Industry (College van Beroep voor het bedrijfsleven), THE HAGUE, **NETHERLANDS/PAYS-BAS**  
(apologised/excusé)

Ms Kathrin KLETT, Juge fédéral suprême, 1ère Cour de Droit Civil, LAUSANNE, **SWITZERLAND/SUISSE**

Ms Aida Rodica POPA, Juge, Docteur en Droit, Section Criminelle de la Haute Cour de Cassation et de Justice, BUCAREST, **ROMANIA/ROUMANIE**

Mr Gerhard REISSNER, Vice-President of the Austrian Association of Judges, President of the District Court of Floridsdorf, VIENNA, **AUSTRIA/AUTRICHE**

Mr Raffaele SABATO, Councillor of the Supreme Court of Cassation, NAPLES, **ITALY/ITALIE**

Mr Vigintas VIŠINSKIS, Juge of the Court of Appeal of the Republic of Lithuania, VILNIUS, **LITHUANIA/LITUANIE**

**SCIENTIFIC EXPERT / EXPERT SCIENTIFIQUE**

Mr Aleš GALIČ, Ph.D., Professor of Law, Faculty of Law, University of Ljubljana, LJUBLJANA, **SLOVENIA/SLOVENIE**

**MEMBERS OF THE CCJE-BU / MEMBRES DU CCJE-BU**

Mr Nils A. ENGSTAD, Judge, Hålogaland Court of Appeal, TROMSØ, **NORWAY/NORVEGE**  
**(President of the CCJE / Président du CCJE)**

Mr Duro SESSA, Justice of the Supreme Court, ZAGREB, **CROATIA/CROATIE**  
**(Vice-President of the CCJE / Vice-Président du CCJE)**

Mr George BIRMINGHAM, Judge, Court of Appeal, DUBLIN, **IRELAND/IRLANDE**  
(apologised/excusé)

Mr Mats MELIN, President of the Swedish Supreme Administrative Court, STOCKHOLM, **SWEDEN/SUEDE**

**COUNCIL OF EUROPE'S SECRETARIAT /  
SECRETARIAT DU CONSEIL DE L'EUROPE**

**Directorate General I – Human Rights and Rule of Law / Division for the Independence  
and Efficiency of Justice**

***Direction générale I – Droits de l'Homme et Etat de Droit / Division pour  
l'indépendance et l'efficacité de la justice***

E-mail: [ccje@coe.int](mailto:ccje@coe.int)

Mr Stéphane LEYENBERGER, Head of the Division, Secretary of the CCJE / *Chef de la  
Division, Secrétaire du CCJE*

Tel: + 33 (0)3 88 41 34 12, E-mail: [stephane.leyenbergt@coe.int](mailto:stephane.leyenbergt@coe.int)

Mr Artashes MELIKYAN, Co-Secretary of the CCJE / *Co-Secrétaire du CCJE*

(Tel: + 33 (0)3 90 21, E-mail: [artashes.melikyan@coe.int](mailto:artashes.melikyan@coe.int))

Ms Anna KHROMOVA, Assistante / *Assistant*

Tel: +33 (0)3 88 41 21 68; Fax: +33 (0)3 90 21 50 33, E-mail: [anna.khromova@coe.int](mailto:anna.khromova@coe.int)

**INTERPRETERS / INTERPRETES**

Ms Shan BENSON

Mr Benoît MALMONTET

Ms Claudine PIERSON