

RECOMENDATION 2010(12)

Training

56. Judges should be provided with theoretical and practical initial and in-service training, entirely funded by the state. This should include economic, social and cultural issues related to the exercise of judicial functions. The intensity and duration of such training should be determined in the light of previous professional experience.

57. An independent authority should ensure, in full compliance with educational autonomy, that initial and in-service training programmes meet the requirements of openness, competence and impartiality inherent in judicial office.

MAGNA CARTA FOR JUDGES -2010

Guarantees of independence

5. Decisions on selection, nomination and career shall be based on objective criteria and taken by the body in charge of guaranteeing independence.

6. Disciplinary proceedings shall take place before an independent body with the possibility of recourse before a court.

7. Following consultation with the judiciary, the State shall ensure the human, material and financial resources necessary to the proper operation of the justice system. In order to avoid undue influence, judges

shall receive appropriate remuneration and be provided with an adequate pension scheme, to be established by law.

8. Initial and in-service training is a right and a duty for judges. It shall be organised under the supervision of the judiciary. Training is an important element to safeguard the independence of judges as well as the quality and efficiency of the judicial system.

OPINION NO. 18 (2015)

"The position of the judiciary and its relation with the other powers of state in a modern democracy"

IV. The legitimacy of judicial power and its elements

A. The importance of legitimacy

1. All three powers of the state exercise considerable authority. The legislature drafts laws and allocates the state's budget. The executive exercises authority, even to the extent of using physical force (within the law) in order to uphold and enforce the laws of the land. The judiciary not only decide matters of fundamental importance to individual citizens and to society at large but also affect with their judgments and rulings even the ordinary affairs of every individual who seeks the aid of the courts. In order to do this, judges are given an authority and powers which are very far

reaching. Such authority and powers are exercised on behalf of society as a whole. Consequently, society and the other powers of the state are entitled to be satisfied that all those given that authority and power (that is the judges individually and collectively), have a legitimate basis on which to exercise it in the name of society as a whole. In all modern democratic states at least one constituent body of the legislature is directly elected by the citizens of the state. There is force in the argument that legislatures and executives that are appointed (directly or indirectly) through elected representatives must thereby have “democratic legitimacy”. It is perfectly proper to ask: from where does the judicial power derive its “legitimacy”?

B. Different elements of legitimacy of judicial power

(1)The judicial power as a whole

2. The judicial power is created as a part of the constitutional framework of democratic states that are subject to the rule of law. By definition, therefore, if the constitutional framework of such a state is legitimate, then the basis of judicial power as a part of that constitution is just as legitimate and just as necessary a part of the democratic state as the other two component powers¹. All member states have some form of a constitution which, by differing means, (e.g. by long custom or a popular vote) is accepted as being the legitimate foundation of the state. The constitutions of all member states recognise and create (whether explicitly or implicitly) the role of a judiciary which is there to uphold the rule of law and to decide

¹ See the CCJE Opinion No. 1(2001), para 11; see also the CCJE Magna Charta of Judges (2010), para 1.

cases by applying the law in accordance with legislation and case law. Thus, the fact that a constitution creates a judiciary to carry out this role must itself thereby confer legitimacy upon the judiciary as a whole. When deciding cases, each individual judge exercises his authority as a part of the judiciary. Accordingly, the very fact that the judiciary is a part of a state's constitution provides legitimacy not only for the judiciary as a whole but each individual judge.

(2) Constitutional or formal legitimacy of individual judges

3. In order to perform the judicial functions legitimised by the constitution, each judge needs to be appointed and thus become part of the judiciary. Each individual judge who is appointed in accordance with the constitution and other applicable rules thereby obtains his or her constitutional authority and legitimacy. It is implicit in this appointment in accordance with constitutional and legal rules that individual judges are thereby given the authority and appropriate powers to apply the law as created by the legislature or as formulated by other judges. The legitimacy conferred on an individual judge by his appointment in accordance with the constitution and other legal rules of a particular state constitutes an individual judge's "constitutional or formal legitimacy".
4. The CCJE has noted the different methods of appointment of judges in the member states of the Council of Europe². These include, for example: appointment by a council for the judiciary or another independent body, election by parliament and appointment

² See the CCJE Opinion No. 1(2001), paras 19-23; see also the Venice Commission, Judicial Appointments, 2007, paras 9-17.

by the executive. As the CCJE has pointed out, each system has advantages and disadvantages³. It can be argued that appointment by vote of Parliament and, to a lesser degree, by the executive can be seen to give additional democratic legitimacy⁴, although those methods of appointment carry with them a risk of politicisation and a dependence on those other powers⁵. To counter those risks, the CCJE has recommended that every decision relating to a judge's appointment or career should be based on objective criteria and be either taken by an independent authority or subject to guarantees to ensure that it is not taken other than on the basis of such criteria⁶. The CCJE has also recommended the participation of an independent authority with substantial representation chosen democratically by other judges in decisions concerning the appointment or promotion of judges⁷. The constitutional legitimacy of individual judges who have security of tenure must not be undermined by legislative or executive measures brought about as a result of changes in political power.

(3) Functional legitimacy of individual judges

³ See the CCJE Opinion No. 1(2001), para 33.

⁴ See e.g.: Fabian Wittreck, *Die Verwaltung der Dritten Gewalt*, Mohr–Siebeck, Tübingen, 2006. He argues that the legitimacy of all officials in a state derives ultimately from “the will of the people” (Art. 20(2) of the German Constitution). A similar argument can be advanced for other constitutions. See e.g. the Art. 3 of the Declaration of the Rights of Man and of the Citizen of 1789, integrated into the French Constitution: “The principle of any Sovereignty lies primarily in the Nation” (“Le principe de toute Souveraineté réside essentiellement dans la Nation”).

⁵ See the CCJE Opinion No. 1(2001), para. 33.

⁶ See the CCJE Opinion No. 1(2001), para 37.

⁷ See the CCJE Opinion No. 1(2001), para 45, rec. 4; Opinion No. 10(2007), paras 48-51. According to the ECtHR, judicial appointments by the legislature and the executive are permissible as long as the appointed judges are free from influence or pressure when carrying out their adjudicatory role. See: *Flux v. Moldova* of 3.7.2007 – 31001/03 - para 27. The notion of separation of powers and its importance for judicial appointment has also been discussed by the ECtHR: see *Volkov v. Ukraine* of 9.1.2013 - 21722/11 - para 109, and *Maktouf and Damjanovic v. Bosnia and Herzegovina* of 18.7.2013 – 34179/08 - para 49. The Venice Commission considers appointment of ordinary judges by vote of the Parliament inappropriate (Venice Commission, *Judicial Appointments*, 2007, para 12) and recommends appointment by a council for the judiciary with a substantial number or majority of members being elected by the judiciary: Venice Commission, *Judicial Appointments*, 2007, para 29.

16. Judicial appointment in accordance with the constitution and law of a state, the exercise of the constitutional role of judges in deciding cases according to the legal framework designed by the legislature and the necessity that each judge must undertake to work within the established legal rules of conduct all provide an initial legitimacy for the judge. But legitimacy cannot rest there. As the CCJE has pointed out before, public confidence in and respect for the judiciary are the guarantees of the effectiveness of a judicial system⁸. To achieve and maintain legitimacy continuously, each judge and the judiciary as a whole can only do so by earning and retaining the confidence of the public. This second kind of legitimacy can be called “functional legitimacy”.

17. “Functional legitimacy” must be earned through work of the highest possible quality which respects high ethical standards. In its previous Opinions, the CCJE has discussed different aspects of good judicial work and the ways of maintaining and improving the quality and efficiency of judicial systems in the interest of the society. Thus the CCJE has given Opinions on various means of achieving this, i.e. initial and in-service training of judges⁹, fair trial within a reasonable time¹⁰, effective application of international and European law¹¹, councils for the judiciary at the service of society¹², the quality of judicial decisions¹³, the effective enforcement of judicial decisions¹⁴, information technologies¹⁵, the specialisation of

⁸ See the CCJE Opinion No. 3(2002), para 22.

⁹ See the CCJE Opinion No. 4(2003).

¹⁰ See the CCJE Opinion No. 6(2004).

¹¹ See the CCJE Opinion No. 9(2006).

¹² See the CCJE Opinion No. 10(2007).

¹³ See the CCJE Opinion No. 11(2008).

¹⁴ See the CCJE Opinion No. 13(2010).

¹⁵ See the CCJE Opinion No. 14(2011).

judges¹⁶, and the evaluation of judges¹⁷. The CCJE has stated that, in order to provide judicial services of high quality, the judiciary must also work with prosecutors¹⁸ and lawyers¹⁹ in an appropriate way. By applying these principles, individual judges and so the judiciary as a whole should achieve the overall goal of providing judgments of the highest possible quality in accordance with high ethical standards. Individual judges and the judiciary collectively will maintain legitimacy and the respect of its citizens by their efficiency and the quality of their work.

OPINION 12 (2009) – Relation between judges and Prosecutors.

c. Training of judges and public prosecutors

43. The highest level of professional skill is a pre-requisite for the trust which the public has in both judges and public prosecutors and on which they principally base their legitimacy and role. Adequate professional training plays a crucial role since it allows the improvement of their performance, and thereby enhances the quality of justice as a whole (Declaration, paragraph 10).

44. Training for judges and prosecutors involves not only the acquisition of the professional capabilities necessary for access to the profession but equally permanent training throughout their career. It addresses the most diverse aspects of their professional life, including the administrative management of courts and prosecution departments,

¹⁶ See the CCJE Opinion No. 15(2012).

¹⁷ See the CCJE Opinion No. 17(2014).

¹⁸ See the CCJE Opinion No. 12(2009).

¹⁹ See the CCJE Opinion No. 16(2013).

and must also respond to the necessities of specialisation. In the interests of the proper administration of justice, the permanent training required to maintain a high level of professional qualification and to make it more complete is not only a right but also a duty for judges and public prosecutors (Declaration, paragraph 10).

45. Where appropriate, joint training for judges, public prosecutors and lawyers on themes of common interest can contribute to the achievement of a justice of the highest quality. This common training should make possible the creation of a basis for a common legal culture (Declaration, paragraph 10).

46. Different European legal systems provide training for judges and prosecutors according to various models. Some countries have established an academy, a national school or other specialised institution; some others assign the competence to specific bodies. International training courses for judges and prosecutors should be arranged. It is essential, in all cases, to assure the autonomous character of the institution in charge of organising such training, because this autonomy is a safeguard of cultural pluralism and independence.

47. In this context, much importance attaches to the direct contribution of judges and prosecutors towards training courses, since it enables them to provide opinions drawn from their respective professional experience. Courses should not only cover the law and protection of individual freedoms, but should also include modules on management practices and the study of judges' and the prosecutors' respective missions. At the same time, additional lawyers' and academic contributions are essential to avoid taking a narrow-minded approach.

Finally, the quality and efficiency of training should be assessed on a regular basis and in an objective manner.

OPINION 16 – RELATION BETWEEN JUDGES AND PROSECUTORS

22. The CCJE considers that the relations between judges and lawyers should be based on the understanding of each other's role, on mutual respect and on independence vis-à-vis each other.

The CCJE accordingly considers it necessary to develop dialogues and exchanges between judges and lawyers at a national and European institutional level on the issue of their mutual relations. Both lawyers' and judges' codes of ethics should be taken into account. In this regard, the CCJE encourages the identification of common ethical principles, such as the duty of independence, co-operation to ensure a fair and swift conduct of the proceedings and permanent professional training. Professional associations and independent governing bodies of both judges and lawyers should be responsible for this process.

23. Training conferences for judges and lawyers should deal with their respective roles and with their relations, with the general aim of promoting the fair and efficient settlement of disputes, whilst respecting the independence of both sides. The CCJE refers to paragraph 10 of its Opinion No. (2009)12, in which it considered that, where appropriate, joint training for judges, public prosecutors and lawyers on themes of common interest could contribute to the achievement of justice of the highest quality.

OPINION 11- QUALITY OF JUDICIAL DECISIONS

PART I. QUALITY FACTORS OF JUDICIAL DECISIONS

A. The external environment: legislation and economic and social context

10. The quality of a judicial decision depends not only on the individual judge involved, but also on a number of variables external to the process of administering justice such as the quality of legislation, the adequacy of the resources provided to the judicial system and the quality of legal training.

1. The legislation

11. Judicial decisions are primarily based on laws passed by legislatures or, in common law systems, upon such laws and upon principles established by judicial precedent. These sources of law not only decide what are the rights that users of the system of justice have and what conduct is punished by criminal law, but also define the procedural framework within which judicial decisions are taken. Thus the choices made by legislatures influence the type and volume of cases brought before courts, as well as the ways in which they are processed. The quality of judicial decisions may be affected by over-frequent changes in legislation, by poor drafting or uncertainties in the content of laws, and by deficiencies in the procedural framework.

12. Therefore the CCJE considers it desirable that national parliaments should assess and monitor the impact of legislation in force and

legislative proposals on the justice system and introduce appropriate transitional and procedural provisions to ensure that judges can give effect to them by high quality judicial decisions. The legislator should ensure that legislation is clear and simple to operate, as well as in conformity with the ECHR. In order to facilitate interpretation, preparatory works of legislation should be readily accessible and drawn up in an understandable language. Any draft legislation concerning the administration of justice and procedural law should be the subject of an opinion of the Council for the Judiciary or equivalent body before its deliberation by Parliament.

13. To achieve quality decisions in a way which is proportionate to the interests at stake, judges need to operate within a legislative and procedural framework that permits them to decide freely on and to dispose effectively of (for example) the time resources needed to deal properly with the case. The CCJE refers to the discussion of “case management” in its Opinion No. 6 (2004) .

2. Resources

14. The quality of a judicial decision is directly conditioned by the funding made available to the judicial system. Courts cannot operate efficiently with inadequate human and material resources. Adequate judicial remuneration is necessary to shield from pressures aimed at influencing judges’ decisions and more generally their behaviour and to ensure that the best candidates enter the judiciary. The assistance of a qualified staff of clerks, and the collaboration of judicial assistants, who should relieve the judges of more routine work and prepare the papers, can evidently contribute to improve the quality of decisions delivered by a

court. If such resources are lacking, effective functioning of the judicial system to achieve a high quality product will be impossible .

3. Judicial actors and legal training

15. Even if one focuses only on the actors within the justice system, the quality of the performance of the judicial system depends clearly on the interaction of many roles: the police, prosecutors, defence lawyers, clerks, the jury where applicable, etc. The judge is only one link in the chain of such co-actors, and not necessarily even the final one as the enforcement stage is of equal importance. Even when one concentrates only on the quality of judicial decisions, it follows from what has already been said that judges' performance of their role is, although central, not the only factor conditioning the production of a judicial decision of quality.

16. The quality of judicial decision depends among others factors on the legal training of all the legal professionals involved in the proceedings. Therefore the CCJE wishes to emphasise the role of legal education and training in general.

17. This means, for judges in particular, that there should be high quality legal training at the start of a legal professional career and a continuous training programme thereafter to maintain and improve professional techniques. Such training needs not only to equip judges with the abilities necessary to give effect to changes in domestic and international legislation and legal principles, but should also promote other complementary skills and knowledge in non-legal matters, giving them a good background understanding of the issues coming before them.

18. Judges also need training in ethics and communication skills to assist them in dealing with the parties in judicial proceedings as well as with the public and the media. Particular importance attaches to training to improve their organisational capacities in the areas of efficient case preparation and management (for example, by use of IT, case management, working techniques, judgment/decision writing techniques - including guidelines with general models for drafting decisions, normally leaving judges some freedom to choose their individual style), all this with the aim of managing trial cases without unnecessary delay or unnecessary steps .

19. Furthermore, court presidents should be trained in the management of human resources, strategic planning to regulate and manage case flows, as well as efficient planning and use of budgetary and financial resources. Administrative staff and court assistants should be specially trained in preparing the hearings and monitoring and ensuring the smooth progress of cases (for example, in relation to the use of IT, case and time management techniques, drafting of judgments, foreign languages, communication with the parties and the public and legal research). This will assist to relieve judges of administrative and technical duties and allow them to focus their time on the intellectual aspects and management of the trial process and decision-making.

B. The internal environment: professionalism, procedure, hearing and decision

20. The quality of judicial decisions also depends on internal factors such as judges' professionalism, procedures, case management,

hearings and elements inherent to the decision.

1. The professionalism of the judge

21. Judges' professionalism is the primary guarantee of a high quality judicial decision. This involves a high level legal training of judges in accordance with the principles defined by the CCJE in its Opinions N° 4 (2003) and N° 9 (2006), as well as the development of a culture of independence, ethics and deontology in accordance with Opinions No. 1 (2001) and 3 (2002).

OPINION 9- ON THE ROLE OF NATIONAL JUDGES IN ENSURING AN EFFECTIVE APPLICATION OF INTERNATIONAL AND EUROPEAN LAW

8. International and European norms, as well as court practice, are rapidly growing both numerically and in complexity. If a country's judges are to be comfortable in the European and international context, the state, in order to remain consistent vis-à-vis its own international commitments, should take the appropriate measures to ensure that judges can gain a full understanding of the relevant European and international reference texts, in particular those related to the human rights protection, enabling them to better perform their activities.

c. Including international and European law in the curricula of universities and training courses for judges

9. In many countries courses in international law, European law, including human rights instruments, form parts of the legal curriculum in universities. However, only in some countries it is necessary for candidates to have an in-depth knowledge of these subjects to obtain a judicial post.

10. The CCJE considers that it is important that international and European legal issues be part of university curricula and also be considered in entry examinations to the judicial profession, where such examinations exist.

11. Appropriate initial and in-service training schemes on international subjects should be organised for judges, in both general and specialist areas of activity. Although differences exist among European countries with respect to the systems of initial and in-service training for judges, training in international and European law is equally important to all the judicial traditions in Europe.

12. In some countries special training initiatives in international and European law are organised specifically for judges, or for judges and prosecutors, by judicial training institutions (including judicial service commissions) or ministries of justice, as well as jointly by these agencies . In other countries, no special training in international and European law is provided; in these countries judges usually may take part in general training courses organised by the judiciary itself or by other bodies (universities, bar associations, foreign judicial training schools).

13. In this respect, the CCJE therefore notes the acquis of the Council

of Europe concerning the training of judges on the application of international treaties , affirming the needs (a) to develop the study of international law, treaties, European and other international institutions within the framework of university courses; (b) where appropriate, to introduce tests on the application of international norms in examinations and entrance competitions for judges; (c) to develop the international dimension in initial and further training of judges; (d) to organise, within the framework of the Council of Europe, and in collaboration with European institutions and other international organisations, training seminars for judges and prosecutors aimed at promoting a better knowledge of international instruments.

d. Ensuring good quality judicial training in the field of international and European law

14. With reference to international and European law training, the CCJE considers that members of the judiciary should be substantially represented among instructors. Such judicial training should include specific aspects relevant for court practice, and be accompanied by relevant study materials, possibly including distance learning materials provided over the internet. The CCJE encourages cooperation between national training institutions in this field and calls for the transparency of the information on such training programmes and the modalities to participate.

3. SINERGY OF NETWORKS AND COE BODIES

.Need to establish cooperation not only within CoE but also among other Networks as . ENCJ, Network of Presidents of Supreme

Courts and Associations on European Level.

4. CCJE Opinion No.4.....

OPINION 4. ON APPROPRIATE INITIAL AND IN-SERVICE TRAINING FOR JUDGES AT NATIONAL AND EUROPEAN LEVELS

Introduction

1. At a time when we are witnessing an increasing attention being paid to the role and significance of the judiciary, which is seen as the ultimate guarantor of the democratic functioning of institutions at national, European and international levels, the question of the training of prospective judges before they take up their posts and of in-service training is of particular importance (see Opinion of the CCJE N° 1 (2001), paragraphs 10-13 and Opinion N° 3 (2002), paragraphs 25 and 50.ix).

2. The independence of the judiciary confers rights on judges of all levels and jurisdictions, but also imposes ethical duties. The latter include the duty to perform judicial work professionally and diligently, which implies that they should have great professional ability, acquired, maintained and enhanced by the training which they have a duty, as well as a right, to undergo.

3. It is essential that judges, selected after having done full legal studies, receive detailed, in-depth, diversified training so that they are able to perform their duties satisfactorily.

4. Such training is also a guarantee of their independence and impartiality, in accordance with the requirements of the Convention for the Protection of Human Rights and Fundamental Freedoms.

5. Lastly, training is a prerequisite if the judiciary is to be respected and worthy of respect. The trust citizens place in the judicial system will be strengthened if judges have a depth and diversity of knowledge which extend beyond the technical field of law to areas of important social concern, as well as courtroom and personal skills and understanding enabling them to manage cases and deal with all persons involved appropriately and sensitively. Training is in short essential for the objective, impartial and competent performance of judicial functions, and to protect judges from inappropriate influences.

6. There are great differences among European countries with respect to the initial and in-service training of judges. These differences can in part be related to particular features of the different judicial systems, but in some respects do not seem to be inevitable or necessary. Some countries offer lengthy formal training in specialised establishments, followed by intensive further training. Others provide a sort of apprenticeship under the supervision of an experienced judge, who imparts knowledge and professional advice on the basis of concrete examples, showing what approach to take and avoiding any kind of didacticism. Common law countries rely heavily on a lengthy professional experience, commonly as advocates. Between these possibilities, there is a whole range of countries where training is to varying degrees organised and compulsory.

7. Regardless of the diversity of national institutional systems and the problems arising in certain countries, training should be seen as essential in view of the need to improve not only the skills of those in the judicial public service but also the very functioning of that service.

8. The importance of the training of judges is recognised in international instruments such as the UN Basic Principles on the Independence of the Judiciary, adopted in 1985, and Council of Europe texts adopted in 1994 (Recommendation N° R (94) 12 on the independence, efficiency and role of judges) and 1998 (European Charter on the Statute for Judges) and was referred to in paragraph 11 of the CCJE's Opinion N° 1.

I. The right to training and the legal level at which this right should be guaranteed

9. Constitutional principles should guarantee the independence and impartiality on which the legitimacy of judges depends, and judges for their part should ensure that they maintain a high degree of professional competence (see paragraph 50 (ix) of the CCJE Opinion N° 3).

10. In many countries the training of judges is governed by special regulations. The essential point is to include the need for training in the rules governing the status of judges; legal regulations should not detail

the precise content of training, but entrust this task to a special body responsible for drawing up the curriculum, providing the training and supervising its provision.

11. The State has a duty to provide the judiciary or other independent body responsible for organising and supervising training with the necessary means, and to meet the costs incurred by judges and others involved.

12. The CCJE therefore recommends that, in each country, the legislation on the status of judges should provide for the training of judges.

II. The authority responsible for training

13. The European Charter on the Statute for Judges (paragraph 2.3) states that any authority responsible for supervising the quality of the training programme should be independent of the Executive and the Legislature and that at least half its members should be judges. The Explanatory Memorandum also indicates that the training of judges should not be limited to technical legal training, but should also take into account that the nature of the judicial office often requires the judge to intervene in complex and difficult situations.

14. This highlights the key importance attaching to the independence and composition of the authority responsible for training and its content. This is a corollary of the general principle of judicial independence.

15. Training is a matter of public interest, and the independence of the authority responsible for drawing up syllabuses and deciding what training should be provided must be preserved.

16. The judiciary should play a major role in or itself be responsible for organising and supervising training. Accordingly, and in keeping with the recommendations of the European Charter on the Statute for Judges, the CCJE advocates that these responsibilities should, in each country, be entrusted, not to the Ministry of Justice or any other authority answerable to the Legislature or the Executive, but to the judiciary itself or another independent body (including a Judicial Service Commission). Judges' associations can also play a valuable role in encouraging and facilitating training, working in conjunction with the judicial or other body which has direct responsibility.

17. In order to ensure a proper separation of roles, the same authority should not be directly responsible for both training and disciplining judges. The CCJE therefore recommends that, under the authority of the judiciary or other independent body, training should be entrusted to a special autonomous establishment with its own budget, which is thus able, in consultation with judges, to devise training programmes and ensure their implementation.

18. Those responsible for training should not also be directly responsible for appointing or promoting judges. If the body (i.e. a judicial service commission) referred to in the CCJE's Opinion N° 1, paragraphs 73 (3), 37, and 45, is competent for training and appointment or promotion, a clear separation should be provided between its branches responsible for these tasks.

19. In order to shield the establishment from inappropriate outside influence, the CCJE recommends that the managerial staff and trainers of the establishment should be appointed by the judiciary or other independent body responsible for organising and supervising training.

20. It is important that the training is carried out by judges and by experts in each discipline. Trainers should be chosen from among the best in their profession and carefully selected by the body responsible for training, taking into account their knowledge of the subjects being taught and their teaching skills.

21. When judges are in charge of training activities, it is important that these judges preserve contact with court practice.

22. Training methods should be determined and reviewed by the training authority, and there should be regular meetings for trainers to enable them to share their experiences and enhance their approach.

III. Initial training

a. Should training be mandatory?

23. While it is obvious that judges who are recruited at the start of their professional career need to be trained, the question arises whether this is necessary where judges are selected from among the best lawyers, who are experienced, as (for instance) in Common Law countries.

24. In the CCJE's opinion, both groups should receive initial training: the performance of judicial duties is a new profession for both, and involves a particular approach in many areas, notably with respect to the professional ethics of judges, procedure, and relations with all persons involved in court proceedings.

25. On the other hand, it is important to take the specific features of recruitment methods into account so as to target and adapt the training programmes appropriately: experienced lawyers need to be trained only in what is required for their new profession. In some small countries with a very small judiciary, local training opportunities may be more limited and informal, but such countries in particular may benefit from shared training opportunities with other countries.

26. The CCJE therefore recommends mandatory initial training by programmes appropriate to appointees' professional experience.

b. The initial training programme

27. The initial training syllabus and the intensiveness of the training will differ greatly according to the chosen method of recruiting judges.

Training should not consist only of instruction in the techniques involved in the handling of cases by judges, but should also take into consideration the need for social awareness and an extensive understanding of different subjects reflecting the complexity of life in society. In addition, the opening up of borders means that future judges need to be aware that they are European judges and be more aware of European issues.

28. In view of the diversity of the systems for training judges in Europe, the CCJE recommends:

i. that all appointees to judicial posts should have or acquire, before they take up their duties, extensive knowledge of substantive national and international law and procedure;

ii. that training programmes more specific to the exercise of the profession of judge should be decided on by the establishment responsible for training, and by the trainers and judges themselves;

- iii. that these theoretical and practical programmes should not be limited to techniques in the purely legal fields but should also include training in ethics and an introduction to other fields relevant to judicial activity, such as management of cases and administration of courts, information technology, foreign languages, social sciences and alternative dispute resolution (ADR);
- iv. that the training should be pluralist in order to guarantee and strengthen the open-mindedness of the judge;
- v. that, depending upon the existence and length of previous professional experience, training should be of significant length in order to avoid its being purely a matter of form.

29. The CCJE recommends the practice of providing for a period of training common to the various legal and judicial professions (for instance, lawyers and prosecutors in countries where they perform duties separate from those of judges). This practice is likely to foster better knowledge and reciprocal understanding between judges and other professions.

30. The CCJE has also noted that many countries make access to judicial posts conditional upon prior professional experience. While it does not seem possible to impose such a model everywhere, and while the adoption of a system combining various types of recruitment may also have the advantage of diversifying judges' backgrounds, it is important that the period of initial training should include, in the case of candidates who have come straight from university, substantial training

periods in a professional environment (lawyers' practices, companies, etc).

IV. In-service training

31. Quite apart from the basic knowledge they need to acquire before they take up their posts, judges are “condemned to perpetual study and learning” (see report of R. Jansen “How to prepare judges to become well-qualified judges in 2003”, doc. CCJE-GT (2003) 3).

32. Such training is made indispensable not only by changes in the law, technology and the knowledge required to perform judicial duties but also by the possibility in many countries that judges will acquire new responsibilities when they take up new posts. In-service programmes should therefore offer the possibility of training in the event of career changes, such as a move between criminal and civil courts; the assumption of specialist jurisdiction (e.g. in a family, juvenile or social court) and the assumption of a post such as the presidency of a chamber or court. Such a move or the assumption of such a responsibility may be made conditional upon attendance on a relevant training programme.

33. While it is essential to organise in-service training, since society has the right to benefit from a well trained judge, it is also necessary to disseminate a culture of training in the judiciary.

34. It is unrealistic to make in-service training mandatory in every case. The fear is that it would then become bureaucratic and simply a matter of form. The suggested training must be attractive enough to induce judges to take part in it, as participation on a voluntary basis is the best guarantee for the effectiveness of the training. This should also be facilitated by ensuring that every judge is conscious that there is an ethical duty to maintain and update his or her knowledge.

35. The CCJE also encourages in the context of continuous training collaboration with other legal professional bodies responsible for continuous training in relation to matters of common interest (e.g. new legislation).

36. It further stresses the desirability of arranging continuous judicial training in a way which embraces all levels of the judiciary. Whenever feasible, the different levels should all be represented at the same sessions, giving the opportunity for exchange of views between them. This assists to break-down hierarchical tendencies, keeps all levels of the judiciary informed of each other's problems and concerns, and promotes a more cohesive and consistent approach throughout the judiciary.

37. The CCJE therefore recommends:

i. that the in-service training should normally be based on the voluntary participation of judges;

- ii. that there may be mandatory in-service training only in exceptional cases; examples might (if the judicial or other body responsible so decided) include when a judge takes up a new post or a different type of work or functions or in the event of fundamental changes in legislation;
- iii. that training programmes should be drawn up under the authority of the judicial or other body responsible for initial and in-service training and by trainers and judges themselves;
- iv. that those programmes, implemented under the same authority, should focus on legal and other issues relating to the functions performed by judges and correspond to their needs (see paragraph 27 above);
- v. that the courts themselves should encourage their members to attend in-service training courses;
- vi. that the programmes should take place in and encourage an environment, in which members of different branches and levels of the judiciary may meet and exchange their experiences and achieve common insights;
- vii. that, while training is an ethical duty for judges, member states also have a duty to make available to judges the financial resources, time and other means necessary for in-service training.

V. Assessment of training

38. In order continuously to improve the quality of judicial training, the organs responsible for training should conduct frequent assessments of programmes and methods. An important role in this process should be played by opinions expressed by all participants to training initiatives, which may be encouraged through appropriate means (answers to questionnaires, interviews).

39. While there is no doubt that performance of trainers should be monitored, the evaluation of the performance of participants in judicial training initiatives is more questionable. The in-service training of judges may be truly fruitful if their free interaction is not influenced by career considerations.

40. In countries that train judges at the start of their professional career, the CCJE considers evaluation of the results of initial training to be necessary in order to ensure the best appointments to the judiciary. In contrast, in countries that choose judges from the ranks of experienced lawyers, objective evaluation methods are applied before appointment, with training occurring only after candidates have been selected, so that in those countries evaluation during initial training is not appropriate.

41. It is nevertheless important, in the case of candidates subject to an appraisal, that they should enjoy legal safeguards that protect them against arbitrariness in the appraisal of their work. In addition, in the case of States arranging for the provisional appointment of judges, the removal of these from office at the end of the training period should take

place with due regard for the safeguards applicable to judges when their removal from office is envisaged.

42. In view of the above, the CCJE recommends:

- i. that training programmes and methods should be subject to frequent assessments by the organs responsible for judicial training;
- ii. that, in principle, participation in judges' training initiatives should not be subject to qualitative assessment; their participation in itself, objectively considered, may however be taken into account for professional evaluation of judges;
- iii. that quality of performance of trainees should nonetheless be evaluated, if such evaluation is made necessary by the fact that, in some systems, initial training is a phase of the recruitment process.

VI. The European training of judges

43. Whatever the nature of their duties, no judge can ignore European law, be it the European Convention on Human Rights or other Council of Europe Conventions, or if appropriate, the Treaty of the European Union and the legislation deriving from it, because they are required to apply it directly to the cases that come before them.

44. In order to promote this essential facet of judges' duties, the CCJE considers that member states, after strengthening the study of European law in universities, should also promote its inclusion in the initial and in-service training programmes proposed for judges, with particular reference to its practical applications in day-to-day work.

45. It also recommends reinforcing the European network for the exchange of information between persons and entities in charge of the training of judges (Lisbon Network), which promotes training on matters of common interest and comparative law, and that this training should cater for trainers as well as the judges themselves. The functioning of this Network can be effective only if every member state supports it, notably by establishing a body responsible for the training of judges, as set out in section II above, and by pan-European co-operation in this field.

46. Furthermore, the CCJE considers that the co-operation within other initiatives aiming at bringing together the judicial training institutions in Europe, in particular within the European Judicial Training Network, can effectively contribute to the greater coordination and harmonisation of the programmes and the methods of training of judges on the whole continent.